



Appeal Decision

Site visit made on 22 June 2020

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2020

Appeal Ref: APP/U1430/W/20/3244200

Lindsay Hall, 128 Dorset Road, Bexhill, TN40 2HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Rawlings (Complete Building Design) against the decision of Rother District Council.
 - The application Ref RR/2019/581/P, dated 9 January 2019, was refused by notice dated 6 November 2019.
 - The development proposed is the erection of 3 No dwellings together with an access drive and parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 No dwellings together with an access drive and parking spaces at Lindsay Hall, 128 Dorset Road, Bexhill, TN40 2HT, in accordance with the terms of the application, Ref RR/2019/581/P, dated 9 January 2019, and the plans submitted with it, subject to the conditions set out in Annex A.

Main Issue

- The main issue is the effect of the proposal on the living conditions of the occupiers of 128 Dorset Road, with particular reference to communal garden space, outlook, and daylight and sunlight.

Reasons

Living conditions

2. The appeal site is located at 128 Dorset Road in a dense residential area of brick and tile dwellings set on relatively large plots, some of which appear to have been subdivided into apartments with more contemporary development to the rear. Lindsay Hall is a two and three storey building that contains a number of residential apartments, and to the right-hand side of the host dwelling, when viewed from Dorset Road, there is a gated stepped access to the rear of the property where there is a substantial and overgrown tree-lined garden area that slopes down to the boundary with Tiverton Drive.
3. The proposal is to construct a terrace of three brick and tile dwellings with hipped roofs and dormers in part of the back garden associated with Lindsay Hall. A new access would be constructed from Tiverton Drive that would rise up towards the host dwelling along the boundary with No 130 Dorset Road. A parking area with 5 parking spaces and cycle storage would be provided to service the new dwellings.

a) Communal garden space

4. While the proposal would result in the development of most of the existing communal garden, as noted at my site visit, the host dwelling has a number of private balconies and patio areas to the rear of the building that are useable by their occupiers for activities such as clothes drying, small-scale gardening, dining and sitting out. I acknowledge that some of the flats do not have an outside space available to them, and that the Council has a preference to retain at depth of at least 10m of the existing garden space for shared use. However, the relatively large communal space available to the current occupiers appears to be little used. As such, the reconfigured outside space is likely to meet any demand for residential outdoor type activities carried out by the existing or future occupiers. Indeed, while there may well be families occupying a number of those flats, ultimately it is a matter of individual choice whether the dwelling is suitable to meet their needs or not.

b) Outlook

5. The submitted drawings show that the rear of Lindsay Hall would look onto the appeal site. However, the proposed development is at a distance not uncommon in a residential area, for example, the development glimpsed to the rear of Nos 120 and 122 Dorset Road. Moreover, notwithstanding the two-storey wall to the side elevation, the proposal due to its modest scale, including lowered eaves and half-dormer windows, in combination with the lower topography, would remain subordinate, rather than overbearing, in relation to the proposed amenity space for Lindsay Hall.
6. My opinion is reinforced by the proposed location of the parking and turning area, in addition to a proposed new boundary treatment, that would provide an additional margin of separation between the communal garden and the development on this generally downward sloping site.

c) Daylight and sunlight

7. I have little technical evidence before me in respect of overshadowing related to the proposed communal garden. However, given the solar path, the sunlight and daylight experienced in the shared garden to the rear of Lindsay Hall may well rise and fall during the day and through the course of the year. Nonetheless, given the distance between the buildings and the relative height and topography of the proposed development, including the location of the parking area and shorter flank of the end property, I find this would not be materially harmful on the basis of the evidence before me.
8. As such, I conclude that the proposal, for the reasons given above, would not harm the living conditions of the occupiers of Lindsay Hall.
9. Consequently, the proposal accords with policy OSS4 (ii) of the Rother Local Plan Core Strategy 2014, which seeks to ensure that development does not unreasonably harm the amenities of adjoining properties. For similar reasons, the proposal meets the aims of Paragraph 127 of the *National Planning Policy Framework* (the Framework), which aims include that proposals will create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

10. The Council, given the size of the proposal, do not intend to impose public highway improvement costs upon the appellant, moreover the Council has highlighted that damages to an unadopted road is a private matter between the interested parties, and I see no reason to disagree.
11. My attention has been drawn to concerns related to planning contributions, traffic, parking and road surface conditions near to the appeal site. However, the proposal is for three residential dwellings, as such the vehicular movements and parking associated with the development is likely to be modest and does not justify dismissal of the appeal.

Conditions

12. I have considered the suggested conditions against Paragraph 55 of the Framework and the national *Planning Practice Guidance* and imposed the following conditions; a standard time limit condition, and a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
13. I have also imposed the following conditions; a pre-commencement condition related to surface water drainage to confirm that surface water run-off from the development will be managed safely, and a pre-commencement condition requiring the provision of a Construction Method Statement to support highway safety and to ensure that the living conditions of surrounding residents are not adversely affected during the construction period.
14. There are also conditions imposed related to external materials, soft and hard landscaping, and soft landscaping maintenance in order to preserve the visual amenities of the area. There are conditions for access, parking and turning, to ensure adequate safe access arrangements and parking and turning on site, and a condition related to cycle storage in order that there is adequate provision for cycle parking associated with the development.
15. A pre-commencement condition for the retention of trees on the site is also required to ensure there is adequate protection of the trees in order that they continue to make a positive contribution to the character and appearance of the area, as well as conditions related to maintenance and replacement of the retained trees, and a condition for an ecological appraisal to minimise the impact of the development on biodiversity during the construction period.

Conclusions

16. The main parties agree that the Council cannot demonstrate a five-year supply of deliverable housing sites. However, given that I have not found that the proposal conflicts with the development plan as a whole and equally do not find conflict with the Framework, I have not considered this matter further.
17. For the reasons given above the appeal should succeed and planning permission be granted, subject to the conditions in Annex A.

J E JOLLY

INSPECTOR

Annex A – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:
 - Drawing No. 257100 71 Revision C (Proposed Site Location & Block Plans), dated 26 June 2019,
 - Drawing No. 257100 83 Revision B (Proposed Site Layout), dated 28 May 2019,
 - Drawing No. 257100 84 Revision A (Proposed Floor Plans), dated 29 May 2019,
 - Drawing No. 257100 86 Revision B (Proposed Elevations), dated 29 May 2019,
 - Drawing No. 257100 87 Revision A (Proposed Site Elevation), dated 28 May 2019,
 - Preliminary Ecological Appraisal (Ref: EA/62618), prepared by The Mayhew Consultancy Ltd, dated June 2018, and;
 - Arboricultural Report (Ref: AR/62618), prepared by The Mayhew Consultancy Ltd, dated July 2018.
- 3) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: include hydraulic calculations which show that the drainage system will not increase surface water run-off from the application site for all rainfall events including those with a 1 in 100 (plus climate change) annual probability of occurrence; provide information about the design storm period and intensity, include the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters, include a timetable for its implementation. Where infiltration is proposed to manage surface water runoff, this should be supported by findings of infiltration testing in accordance with BRE365 and groundwater monitoring undertaken between autumn and spring. Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for: the method of access and egress and routing of vehicles during construction, the parking of vehicles of site operatives and visitors, loading and unloading of plant and materials, storage of plant and materials used in constructing the development, the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate, wheel washing facilities, measures to control the emission of dust and dirt during construction, a scheme for recycling/disposing of waste resulting from demolition and construction works, delivery, demolition and construction working hours. The approved Construction Method Statement shall be adhered to throughout the construction period of the development.
- 5) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 6) No development above slab level shall take place until a scheme of both hard and soft landscape works has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. Details shall include: Hard surfacing materials. Planting plans. Written specifications (including cultivation and other operations associated with plant and grass establishment). Schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate.
- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No dwelling shall be occupied until a means of vehicular access has been constructed in accordance with the approved drawings.
- 9) No dwelling shall be occupied until parking and turning areas have been provided in accordance with approved Drawing No. 257100 83 Revision B (Proposed Site Layout) dated 28 May 2019, and that 5 spaces shall thereafter be kept available at all times for the parking of vehicles.
- 10) No dwelling shall be occupied until details of the cycle stores shown on approved Drawing No. 257100 83 Revision B (Proposed Site Layout), dated 28 May 2019, have been submitted to and approved in writing by the Local Planning Authority. The cycle stores shall thereafter be constructed in accordance with the approved details and kept available for the parking of bicycles.

- 11) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 12) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the building for its permitted use, other than in accordance with the approved plans, without the prior written approval of the local planning authority. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 13) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted, in accordance with condition 12, at such time as may be specified in writing by the local planning authority. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 14) The development hereby permitted shall be carried out in accordance with the recommendations detailed in section 8.0 of the approved Preliminary Ecological Appraisal (Ref: EA/62618), prepared by The Mayhew Consultancy Ltd, dated June 2018.

*****End of Conditions*****