
Appeal Decision

Site visit made on 18 August 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th August 2020

Appeal Ref: APP/D3830/W/20/3249364

Tower Car Sales, Tower Close, East Grinstead, RH19 3RT

- 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 Willow Developers Ltd. against the decision of Mid Sussex District Council.
 - The application Ref: DM/19/4331 dated 8 October 2019 was refused by notice dated 28 February 2020.
 - The development proposed is demolition of car sales office and workshop and erection of three storey building comprising 10 apartments with 8 parking spaces, 10 cycle spaces, waste and recycling enclosure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's first reason for refusal relates to a failure to mitigate the impact of the proposed development on the Ashdown Forest Special Protection Area (SPA), within the zone of influence of which the appeal site is located. The second reason for refusal relates to a failure to provide requisite infrastructure contributions.
3. The appellant has advised that a unilateral undertaking (UU) has been submitted to the Council for final comment¹. However, no obligation has been provided to me before the deadline for its submission. The National Planning Policy Framework (the Framework) sets out that decisions should be made as quickly as possible and with no very exceptional circumstances for the delay in submitting the UU, I see no reason to delay this decision. I return to the matters of financial contributions for mitigation and infrastructure below.
4. From the evidence before me planning permission for proposals including a three storey building on the site was granted in 2015 and again in 2017². I have had regard to these permissions in my determination of this appeal.

Main Issues

5. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;

¹E-mail dated 20 August 2020

²14/04338/FUL and DM/17/1537

- ii) the effect of the proposed development on the living conditions of the occupiers of neighbouring properties on Moat Road with particular regard to outlook;
- iii) whether the proposed development would provide satisfactory living conditions for the future occupiers of proposed apartments 1 and 2 with particular regard to outlook; and
- iv) should the proposal make provision for education, libraries, highways, formal sport, play space, community buildings and local community infrastructure and, if so, whether it makes adequate provision.

Reasons

Character and appearance

6. The appeal site currently accommodates two single-storey buildings and an area of hard standing associated with the former use of the site for car sales and repairs, which had ceased at the time of my site visit. The site is located within an area of varied building types, ages, size, scale and design and land uses. To the north of the site are 3 and 4-storey blocks of flats, with a large supermarket to the west and more modest 2-storey dwellings on Moat Road to the south-east.
7. The area is therefore of mixed character, although I observed during my site visit that the residential properties in the vicinity of the appeal site are characterised by pitched roofs. The Council accepts that a contemporary high density scheme could be acceptable in design terms. Furthermore, the principle of a 3 storey building has been established by the previous permissions.
8. However, the proposed development would extend across the substantial majority of the site, with only a small garden area for apartment 2 and little scope for softening the appearance of the block or the access and parking area with planting. The front entrance to the proposed building would be sited in the under croft such that little active frontage would be presented to the public realm.
9. I observed during my site visit that some other properties in the locality have a horizontal emphasis, e.g. Tower Court. However, with vertical elevations over three storeys and a largely unrelieved flat roof, notwithstanding the proposed variety in materials, the proposed building would be monolithic and with a roof form at odds with those of other residential properties in the area.
10. The depth of the proposed balconies to the north-west elevation at their south-western end as shown on the submitted drawings would be disproportionate to the width of the building and harmful to its overall composition. The erection of privacy screens between the balconies for each apartment which, whilst not shown on the drawings, would be necessary to ensure privacy for each apartment, would increase the bulky appearance of the proposed building.
11. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. Accordingly, in this respect, it would not accord with Policy DP26 of the Mid Sussex District Plan 2014-2031 (2018) (MSDP) which requires demonstration that development is, amongst other things, of high quality design. It would also fail to comply with criterion a) of

Policy EG3 of the East Grinstead Neighbourhood Plan (EGNP) in its form, scale and site coverage.

12. Moreover, I find that the proposal would also conflict in this respect with clauses a) – d) of paragraph 127 of the Framework, which require planning decisions to ensure that developments are, in summary, of good design. Clauses d) and e) of paragraph 122 of the Framework set out that planning decisions should take into account the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places.
13. The proposed development would also fail to take the opportunity available for improving the character and quality of the area and thus fails to accord with paragraph 130 of the Framework. The Framework's policy and objectives for good design are highlighted in the National Design Guide (2019).

Living conditions of the occupiers of neighbouring properties

14. The proposed building would extend across the full width of the rear gardens of Nos. 24 and 26 Moat Road and partially across the rear garden of No. 22 Moat Road. The building would be separated from the rear boundaries of these gardens by a narrow accessway at ground floor level and slightly further away at first and second floor levels due to a set-back in the south-east elevation. I note that the building permitted in 2014 was of a different configuration with the third storey set back much further from Nos. 24 and 26.
15. From the appellant's evidence, the building permitted in 2017 would be lower than that before me, even if the appellant is correct that the approved building would have needed to be higher than shown on the approved drawings to conform with Building Regulations. Furthermore, the top floor of the approved building would be accommodated within the roof space such that the third floor would slope away from Nos. 24 and 26. In contrast, the proposal before me would present a vertical elevation over all three floors with little relief other than the set-back and a further slight set-back of the stairwell at first and second floor levels.
16. This extensive, largely unrelieved building would dominate the rear gardens of Nos. 24 and 26. It would consequently be unacceptably overbearing for the occupiers of those properties. Whilst there is 3 and 4 storey development on Tower Close, the layout of this development is such that its relationship with the nearby 2-storey development on Mason Close and of Tower Court differs from the relationship of the proposed development to Nos. 24 and 26. It therefore does not justify the proposal before me, which I have assessed on its own merits.
17. I therefore conclude that the proposed development would be unacceptably harmful to the living conditions of the occupiers of Nos. 24 and 26. Accordingly, in this respect, the proposal would not accord with Policy DP26 of the MSDP or Policy EG3 of the EGNP, which seek to protect the living conditions of the occupiers of neighbouring properties amongst other things. Furthermore, the proposal would conflict in this respect with paragraph 127 f) of the Framework, which requires decisions to ensure that developments create places with a high standard of amenity for existing users.

Living conditions of future occupiers of the development

18. Using the Technical housing standards – nationally described space standard (NDSS) as a guide, the proposed apartments are of sufficient internal floorspace to provide satisfactory living conditions for future occupiers. However, the two proposed apartments on the ground floor would each have both their large bedroom windows and, for apartment 1, a kitchen window, looking out onto the access road and parking area underneath the upper floors.
19. Whilst bedrooms are primarily used for sleeping, for which an absence of light would be unlikely to be problematic, a lack of natural light in the mornings upon waking would represent a poor living environment for future occupiers. Furthermore, the bedrooms may also be used for studying or as home offices rather than bedrooms during the day, for which natural light would be beneficial. Neither the adequacy of natural sunlight and daylight for the other habitable rooms in these properties nor the surveillance of the access and parking area overcomes or outweighs the harmful deficiency in natural light for these single-aspect rooms in these apartments facing onto the undercroft.
20. The window for one of the bedrooms of apartment 10 in the proposed south-east elevation is shown as high level on the submitted drawings. Whilst adequate daylight to this room would be provided through the proposed rooflight and there is a small secondary window to the room, the proposals fail to provide acceptable outlook for this room.
21. The provision of a larger window as suggested by the appellant would, in my view, represent a material change to the proposal on which the occupiers of Nos. 24 and 26 may wish to comment. They would be deprived of the opportunity to do so by my imposing a condition were planning permission to be granted. Therefore, having regard to the 'Wheatcroft principles'³, I do not consider this to be an acceptable approach. Furthermore, such a window would need to be obscure glazed, at least in part, to avoid overlooking from its elevated position and consequent loss of privacy for the occupiers of Nos. 24 and 26. In my view, this too would provide an unacceptable outlook for these habitable rooms.
22. I therefore conclude that the proposed development would fail to provide satisfactory living conditions for the future occupiers of apartments 1, 2 and 10. Accordingly, the proposal would not accord in this respect with Policy DP26 of the MSDP which seeks, among other things, to protect the living conditions of the future occupants of new dwellings. Furthermore, the proposal would conflict in this respect with paragraph 127 f) of the Framework, which requires decisions to ensure that developments create places that promote health and well-being with a high standard of amenity for future users.

Provision for infrastructure

23. Policy DP20 of the MSDP sets out that developers will be expected to provide for, or contribute towards, the infrastructure and mitigation measures made necessary by their development proposals. In this case, the development would result in 10 apartments, the future occupiers of which would be likely to impose additional burdens on existing infrastructure.

³ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL 1982 P37]

24. West Sussex County Council has submitted evidence justifying financial contributions towards its services within East Grinstead, to which the appellant has not objected. However, the appellant has questioned whether the District Council's required contributions meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) in respect of being necessary to make the development acceptable in planning terms and being directly related to the proposed development.
25. The District Council has also submitted evidence to justify financial contributions towards local infrastructure in accordance with Policy DP20 of the MSDP and the Development Infrastructure and Contributions Supplementary Planning Document (adopted in July 2018 and updated in October 2019) (the SPD). This evidence sets out that existing leisure and community facilities cannot cope with extra demand from an increasing population and will require enhancement. It also explains how the levels of the contributions have been calculated and how they would be used to contribute towards infrastructure within the locality of the appeal site.
26. From the evidence before me, I am satisfied that without such contributions, the proposed development would have a harmful effect on the provision and availability of local infrastructure. Therefore, in my view, an obligation undertaking to make these contributions would accord with Regulation 122(2) and with paragraph 56 of the Framework as being necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
27. However, without the planning obligation before me, I have no evidence of the financial contributions that the appellant is willing to undertake to provide. I therefore conclude that adequate provision for infrastructure should be made with the proposal but I do not have the evidence that it has been. Accordingly, I find the proposed development conflicts with Policy DP20 of the MSDP and with the SPD in this respect.

Other Matters

Ashdown Forest

28. Ashdown Forest is an extensive area comprising predominantly lowland heath and woodland. This forms an internationally important habitat classified as a SPA because of the presence of breeding populations of Dartford Warbler and European nightjar. It is also classified as a Special Area of Conservation (SAC), the qualifying features of which are the North Atlantic wet heaths with *Erica tetralix*, the European dry heaths, and the presence of Great crested newts.
29. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require the decision maker to undertake an Appropriate Assessment (AA) before giving any permission where there are likely significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal. Significant effects on the integrity of the SPA are likely to arise from recreational activity associated with residential development proposals within the zone of influence. The SAC is also vulnerable to atmospheric pollution from additional vehicle movements.

30. Therefore, had I reached a different conclusion on the main issues it would have been necessary for me to undertake an AA and give consideration to the likely effectiveness of mitigation measures associated with the SPA / SAC. In doing so I would have had regard to the lack of a planning obligation before me as I would have had to be certain that the integrity of this protected site would not be adversely affected. However, as I am dismissing this appeal for other reasons, this has not been necessary.

Other considerations

31. I acknowledge that permission has previously been granted for the redevelopment of the site. From the Planning Officer's report and my observations during my site visit, these planning permissions have not been implemented and have now expired. Furthermore, from the evidence before me, the approved developments would not cause the harm I have identified would arise from the development now proposed in respect of design and living conditions. I have therefore given these previous permissions moderate weight in my decision.
32. Paragraph 59 of the Framework sets out the Government's objective of significantly boosting the supply of homes, and paragraphs 117, 118 and 122 of the Framework encourage the effective and efficient use of land, particularly suitable brownfield land within settlements. There would be economic benefits from the proposal arising from the construction and the contribution of future occupiers to the local economy. The development would have good access to facilities and services. These factors lend support to the proposals.
33. The proposed development would be acceptable with regard to biodiversity and, subject to conditions were planning permission to be granted, highway safety, drainage, sustainability and noise. However, these represent an absence of planning harm rather than benefits of the proposals, and I therefore accord them neutral weight in my decision.
34. I have no evidence that the development plan for Mid Sussex district does not identify a sufficient supply and mix of housing sites or that the Council cannot demonstrate a 5-year supply of deliverable housing sites as required by paragraphs 67 and 73 of the Framework.

Conclusion

35. The factors lending support to the proposals do not outweigh the harm to important considerations that I have identified above and the consequent conflict with the development plan and the Framework in these respects.
36. Therefore, for the reasons given above, and having regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR