
Appeal Decision

Site visit made on 27 October 2020

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Appeal Ref: APP/B1415/W/20/3251722

Land at Chiltern Drive, Hastings TN34 3PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Park Lane Homes (South East) Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/OA/19/00326, dated 11 April 2019, was refused by notice dated 16 March 2020.
 - The development proposed is erection of 17 no. terraced houses with parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 17 no. terraced houses with parking at land at Chiltern Drive, Hastings TN34 3PH in accordance with the terms of the application, Ref HS/OA/19/00326, dated 11 April 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for a full award of costs was made by Park Lane Homes (South East) Ltd against Hastings Borough Council. This application is the subject of a separate decision.

Preliminary matters

3. The application was made in outline with access, layout and scale to be determined at this stage. Appearance and landscaping would be determined at reserved matters stage. A revised block plan (reference 4750/18/201/C) was submitted while the application was before the Council. The application was accompanied by illustrative elevations which I have taken into account on that basis. Floor plans were also submitted. Although these were not marked as illustrative, the appellant subsequently stated that they were intended to be so. That seems to me to be consistent with the illustrative nature of the elevations and I have taken them into account on that basis.
4. Reason for refusal (5) related to the lack of affordable housing or a contribution to the provision of affordable housing. Evidence on viability had been submitted with the application and this had been reviewed by the Council. This information was subsequently updated and the Council carried out a further review, following which it was agreed that the scheme would not be viable if a contribution to affordable housing was required. Accordingly the Council did not pursue this reason for refusal.

Main issues

5. The main issues are the effects of the proposal on:

- the character and appearance of the area;
- the living conditions of nearby residents; and
- the living conditions of future occupiers.

Reasons

Character and appearance

6. The site lies in a predominantly residential area characterised by a mix of housing types and styles. It comprises an open grassed area with trees and landscaping which slopes up from Chiltern Drive and also has a frontage to Southdown Avenue. The open area wraps around four bungalows which front Chiltern Drive. Immediately to the west of the site is a recently constructed terrace of 7 houses, backing onto the appeal site and facing Upper Broomgrove Road. Further up this road there are mainly semi-detached houses.
7. To the north of the site is a series of four storey blocks of flats in a regular arrangement on the west side of Southdown Avenue. The flats have main elevations facing south, with flank elevations facing towards Southdown Avenue. They are set well back from the road and the intervening space is landscaped with an avenue of trees. Sloping ground and changes of level are a feature of the area, such that houses are often set at a higher level than the adjoining road. On the opposite side of Chiltern Drive the land falls away steeply into a wooded valley which is a designated local wildlife site.
8. Policy HOV7 of the Council's Development Management Plan (DMP) allocates the greater part of the appeal site for housing. The DMP describes this as a vacant site formerly occupied by flats. The plan indicates that the allocated site has a possible net capacity of 12 dwellings. This does not take account of the area occupied by the four bungalows which is not included in the allocated area.
9. Two adjoining terraces are proposed facing Chiltern Drive. The front elevations would be stepped in a symmetrical manner, adding visual interest and creating a coherent built form for the group as a whole. Terraced houses are an established part of the mix in this varied residential area. In this case the proposed terraced house types would make effective use of the site and create a clear definition of the public and private realm. The Council has criticised the elevations but these are illustrative.
10. Parking would be provided in grouped bays accessed directly off the road. This would also make effective use of the site and the parking would be overlooked. The bays would be interspersed with landscaping to avoid an over-dominance of hard surfacing. There would be space for landscaping and footways between the parking spaces and the front elevations of the houses. The arrangement would be similar to the adjoining development at Upper Broomgrove Road. Subject to satisfactory detailed design and landscaping, which could be secured at the reserved matters stage, I see no reason to think that the proposed layout would not form the basis of a well-designed scheme.

11. The Council is concerned that the scheme has an excessively high density and would result in the loss of the open character of the site. I note that, in the wider area, there are several examples of estate layouts which include generous open amenity areas that make positive contributions to the character and appearance of the area. The adjoining flatted development at Southdown Avenue is one example of that. However, the balance between preserving all such spaces and making provision for housing will have been considered in the local planning process. The outcome of that process was to allocate this site for housing so it is inevitable that its current character will change.
12. The possible net capacity quoted in the DMP is not determinative. Nevertheless, the fact that the 12 units suggested for the allocated site, together with the 4 existing bungalows that would be replaced, would result in only one unit fewer than the appeal scheme is some indication that the proposed density is not unreasonable.
13. The Council also refers to the "building line" set by the flats at No 32 Southdown Avenue. This is not a building line in the conventional sense in that the flats do not face the road. These blocks are larger in scale and are set within commensurately generous landscaped areas. If the same, or a similar, set back were applied to the appeal site it would have a significant impact on the ability of this allocated site to make its intended contribution to housing delivery.
14. I note that the proposed buildings would be closer to the road than buildings further up Southdown Avenue. This is already the case on the opposite side of the road where the flank wall of the corner property at No 7 Chiltern Drive is closer to the footway than other buildings in Southdown Avenue. The flank wall of the proposed plot 17 would adjoin the open landscaped area associated with the flats and would be seen in views south along Southdown Avenue. However, I do not think that the scale of this building would be such as to harm the character of Southdown Avenue.
15. Overall, I consider that the proposal would change the open character of the site itself. That is an inevitable consequence of the site allocation. There would also be a change in housing type with smaller scale terraced houses (as proposed) juxtaposed with larger flatted blocks in a landscaped setting. This variation is part of the character of the wider area and the contrast is not necessarily harmful. I consider that the proposal would accord with DMP Policy DM1 which seeks to achieve a good standard of design, taking account of local character and context, as far as it can at this outline stage. It would also accord with Policy HOV7 which allocates the site for housing.

Effect on living conditions of nearby residents

16. The Council considers that the flank wall of plot 1 would have an unduly overbearing effect on the adjoining properties fronting Upper Broomgrove Road. The appellant points out that there would be a minimum separation distance of 13m between the rear elevation of No 4 Upper Broomgrove Road and the proposed house at plot 1. In my view this is not an unusual separation distance for two storey residential buildings. Moreover, the proposed house would be at an angle (so that the separation distance would vary from 13m to 16m) and would be built at a lower level, thereby reducing its visual impact.

17. I note that the flank wall of Plot 1 would be relatively close to the rear garden boundary of No 4 Upper Broomgrove Road. However, it would not be hard on the boundary because there is a pedestrian access to the rear of No 4 and there would be a garden path around the side of Plot 1. I do not think that the resulting relationship would result in an unduly overbearing effect.
18. There is no suggestion that the proposal would result in harmful overlooking or overshadowing of nearby properties. I conclude that it would accord with DMP Policy DM3 insofar as it seeks to achieve a good living standard for neighbours of the proposed development through considerate design solutions for the spaces around buildings.

Effect on living conditions for future occupiers

19. The submitted floor plans show two house types. Both would have a combined kitchen/living area at ground floor level. One is shown with one bedroom and a home office, the other with two bedrooms and a home office. The Council considers that the home offices are likely to be used as bedrooms and has applied the nationally described space standard on that basis.
20. Policy DM3 of the DMP also seeks to achieve a good living standard for future occupiers, stating that dwellings should be designed to allow residents to live comfortably with sufficient internal space. Space standards are set out in the policy although the Council suggests that these have been superseded by the nationally described space standards. However, in this case it doesn't matter which standards are considered. This is because, as discussed above, the floor plans were intended to be illustrative. Although they were not marked as such the appellant subsequently confirmed this to be the case. I have taken them into account on that basis because that seems to me to be consistent with the illustrative nature of the elevations. Consequently, details shown on the floorplans should not be a determining factor in this appeal.
21. The Council and the appellant agree that the house types would comply with the space standards for one and two bedroom homes. This would be the case whether national or local standards are applied. Layout and scale are to be determined at this stage. This has the effect of defining the total floorspace for each house type. There is no dispute that, within these totals, the units are capable of being configured in a way that would be compliant. I therefore conclude that the proposal is in accordance with Policy DM3 in this respect, as far as it can be at this outline stage.

Other matters

22. The proposal would contribute a net gain of 13 units to housing land supply. That is a benefit of the scheme, particularly in circumstances where the Council accepts that it cannot demonstrate the five year supply required by the National Planning Policy Framework.

Conclusion

23. For the reasons given above I conclude that the proposal would accord with the development plan. The fact that it would contribute to housing land supply is a matter that weighs in favour of the appeal. I have not identified any considerations that indicate a decision other than in accordance with the development plan. The appeal should therefore be allowed.

Conditions

24. The Council has suggested conditions which I have considered in the light of Planning Practice Guidance. Some conditions require matters to be approved before development commences. These are necessary because they relate either to reserved matters or to impacts arising during construction. The pre-commencement conditions have been agreed by the appellant.
25. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. Condition 4 requires development to be in accordance with the approved plans in the interests of clarity. I have amended the plans schedule to remove the illustrative plans. Conditions 5, 6 and 7 require details of external materials, hard landscape works and soft landscaping to be approved. Condition 8 requires replanting in the event that some of the new planting fails. These conditions are needed in the interests of the character and appearance of the area. Condition 9 requires the implementation of the approved facilities for car and cycle parking in the interests of highway safety and sustainable transport. Condition 10 requires details of boundary walls and/or fences to be approved in the interests of the character and appearance of the area. Condition 11 requires submission of a land contamination report in the interests of managing risks of pollution.
26. Condition 12 requires the submission of an air quality mitigation assessment. Having regard to the scale of development proposed, I consider that this is necessary in the interests of protecting air quality. I have adjusted the wording of this suggested condition because it is not necessary for it to be a pre-commencement condition. Condition 13 requires the implementation of measures outlined in the ecological survey report and site waste management plan in the interests of biodiversity and sustainable development. Condition 14 requires submission of details of foul and surface water drainage. This is necessary in the interests of managing risks of flooding and pollution. Condition 15 requires submission of a construction management plan in the interests of highway safety and the living conditions of nearby residents during construction. Condition 16 requires measures to protect badgers during construction to manage the risks of harm to this protected species.
27. I have not imposed all of the suggested conditions. A suggested condition limiting the number of dwellings is not necessary because these details are shown on the approved layout. Details of car and cycle parking are not needed because these details are shown on the approved layout, with further detail to be approved under condition 6. Condition 9 covers the implementation and retention of the approved facilities. Conditions requiring details of a vehicular access and associated visibility splays are not needed because there is no such access in the approved layout. A condition requiring drainage details in relation to the public highway would duplicate condition 14. A condition requiring a Construction Environmental Management Plan is not needed because the ecological report confirms that there is little ecological interest within the site. Ecological interests would be addressed by conditions 13 and 16. The Council has not provided any justification for the removal of permitted development rights.

David Prentis

Inspector

Schedule of conditions

- 1) Details of appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 4750/18/EX; 4750/18/LBP; 4750/18/201C
- 5) The details submitted pursuant to condition (1) shall include full details and samples of the materials to be used in the construction of the external surfaces of the development. Thereafter development shall be carried out in accordance with the approved details and the works shall be carried out prior to first occupation of any part of the development or in accordance with a programme agreed in writing by the local planning authority.
- 6) The details submitted pursuant to condition (1) shall include full details of the hard landscape works including proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (such as refuse stores and lighting) and existing and proposed functional services above and below ground (such as drainage, power, communications cables and pipelines). Thereafter development shall be carried out in accordance with the approved details and the works shall be carried out prior to first occupation of any part of the development or in accordance with a programme agreed in writing by the local planning authority.
- 7) The details submitted pursuant to condition (1) shall include full details of soft landscaping which shall include indications of all existing trees and hedgerows on the land including details of those to be retained, together with measures for their protection in the course of development. New soft landscaping details shall include 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 together with an implementation programme. All soft landscaping works shall be carried out in accordance with the approved details and implementation programme.
- 8) Upon completion of the approved soft landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced in the next planting season with trees or shrubs of such size and species as may be approved in writing by the local planning authority.

- 9) The facilities for car and cycle parking shown on the approved layout, together with such further details as may be approved pursuant to condition (6), shall be provided prior to first occupation of any of the units and thereafter the areas shall be retained for those uses and shall not be used other than for the parking of motor vehicles and cycles respectively.
- 10) The details submitted pursuant to condition 1 shall include full details of all boundary walls and/or fences. Thereafter development shall be carried out in accordance with the approved details and the works shall be carried out prior to first occupation of the houses which they serve.
- 11) The details required by Condition 1 shall include a full and adequate site investigation and soils report (Phase 1 Land Contamination Report) and work shall not proceed until and unless measures deemed to be necessary by the local planning authority as a result of such report have been incorporated in the development proposals.
- 12) No development above ground shall take place until an Air Quality Mitigation Assessment has been submitted to and approved in writing by the local planning authority. Any air quality mitigation measures identified in the report shall be implemented before any of the units are occupied and the measures shall be permanently retained as such thereafter.
- 13) No development shall take place until the measures outlined in the submitted statements and reports listed below have been fully implemented, unless the scheme(s) or programme(s) of measures contained within the statements and reports is otherwise first varied, by way of prior written approval from the local planning authority. The submitted statements and reports are:
 - Ecological Survey Update (Patrick Roper, February 2019)
 - Site Waste Management Plan
- 14) (i) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the local planning authority. The details shall include:
 - attenuation through SuDS techniques such as permeable paving or geocellular storage tanks;
 - information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely;
 - hydraulic calculations;
 - proposals to utilise pumping for surface water drainage;
 - details of the outfall of the proposed drainage system and how it connects to the public sewer (including cross sections and invert levels);
 - responsibilities of each party for the implementation of the SUDs scheme;
 - a timetable for implementation; and

- a management and maintenance plan for the lifetime of the development. This should 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, together with details of maintenance and management of the pumps, including how the pump will be monitored and protocols to be followed if it fails.

Surface water runoff from the proposed development should be limited to 2.9 l/s for all rainfall events including those with 1 in 100 (+40% climate change) annual probability of occurrence. Evidence of this (in the form hydraulic calculations) should be submitted with the detailed drainage drawings. The hydraulic calculations should take into account the connectivity of the different surface water drainage features.

Proposals to utilise pumping for surface water drainage should incorporate the following details:

- at least two pumps should be provided, one as a back-up in the event that the main pump fails; and
- evidence that the drainage system can accommodate at least 24 hours of emergency storage during extreme events.

The condition of the surface water sewer which will take surface water runoff from the development should be investigated before discharge of surface water runoff from the development is made. Any required improvements to the condition of the sewer should be carried out prior to construction of the outfall. Details of how the necessary maintenance access and easements for the outfall from the attenuation tank to the sewer will be secured for the lifetime of the development should also be provided.

(ii) Development shall then be carried out in accordance with the details approved under (i) and no occupation of any of the dwellings hereby approved shall occur until those works have been completed.

(iii) No occupation of any of the dwellings hereby approved shall occur until the local planning authority has confirmed in writing that it is satisfied that the necessary drainage infrastructure capacity is now available to adequately service the development. Evidence (including photographs) should be submitted showing that the drainage system has been constructed as per the final agreed detailed drainage designs.

- 15) No development shall take place, including any ground works or works of demolition, until a Construction Management Plan to take account of highway and environmental protection issues has been submitted to and approved in writing by the local planning authority. Thereafter the approved Plan shall be adhered to throughout the construction period. The Plan shall include:

- a programme and phasing of the demolition and construction work, including roads, footpaths, landscaping and open space;
- location of temporary site buildings, compounds, construction material, and plant storage areas used during demolition and construction;

- the anticipated number, frequency and types of vehicles used during construction;
- the method of access and egress and routing of vehicles during construction;
- the parking of vehicles by site operatives and visitors;
- the loading and unloading of plant, materials and waste;
- the storage of plant and materials used in construction of the development;
- the erection and maintenance of security hoarding;
- the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
- details of public engagement both prior to and during construction works;
- measures to minimise the noise (including vibration) generated by the construction process to include hours of work, proposed method of piling for foundations, the careful selection of plant and machinery and use of noise mitigation barrier(s);
- details of any floodlighting, including location, height, type and direction of light sources and intensity of illumination;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- protection of pedestrian routes during construction; and
- restoration of any damage to the highway (including vehicle crossovers and grass verges).

An indicative programme for carrying out the works should be included within the Plan.

- 16) No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the local planning authority. The measures shall be adhered to throughout the construction phase and may include:
- creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
 - open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

End of schedule