



Appeal Decision

Site visit made on 4 May 2021

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Appeal Ref: APP/B1415/W/20/3261495

Land Rear of 10 Elphinstone Road, Hastings, East Sussex, TN34 3LH.

- 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 Gemselect Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/19/00605, dated 18 July 2019.
 - The development proposed is the construction of two detached houses.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The Council did not determine the application within the prescribed period, but its appeal statement indicated that it would have refused the application for two reasons; these were in essence; (i) the effect of the proposal on the living conditions of both existing neighbouring occupiers and future residents of the new houses and (ii) the lack of adequate amenity space.

Main Issues

3. I have considered the application a fresh and consider the main issues to be:
 - a) the effect of the proposed development on the living conditions of the occupiers of the flats at 10 Elphinstone Road and the dwellings numbered 53 and 58 St. James's Road, in terms of the development's potential to appear overbearing and result in a loss of light, loss outlook, overlooking leading to a loss of privacy and a harmful sense of enclosure and over shadowing, and;
 - b) the effect of the proposed development on the living conditions of the future occupiers of the proposed houses, in terms of overlooking leading to a loss of privacy, and whether the proposal would provide a good standard of accommodation in respect the provision of private amenity space.

Reasons

4. The appeal site, which is undeveloped, is located to the south east of 10 Elphinstone Road and shares a common boundary with numbers 53 and 58 St James Road in a built up urban residential area.
5. 10 Elphinstone Road, a detached Victorian house, divided into flats is set on higher ground above the appeal site. Number 58 St. James Road to the south west of the appeal site is the end of a short terrace of modern town houses

with small rear courtyards. Number 53, to the north east, is one half of a semi-detached pair Victorian houses.

6. The appellant proposes the construction of two detached, three-storey houses.

First main issue: Living conditions of the occupiers of the flats at 10 Elphinstone Road and 53 and 58 St. James's Road

7. *Loss of light:* The appellant has submitted a detailed Daylight and Sunlight Assessment for the development. Based on that assessment, that has not been challenged by the Council, I conclude that although the proposed development would have some minor impact overall it would have a negligible effect on the daylight and sunlight received by neighbouring residential occupiers of the flats at 10 Elphinstone Road and 53 and 58 St. James's Road.
8. *Sense of enclosure, overbearing, loss of outlook tunnelling effect and overshadowing:* The proposed development would have a visual impact on the neighbouring occupiers overlooking the appeal site. However, given the relationship of the new houses to the flats at 10 Elphinstone Road, the topography of the site and their height and three-dimensional form I do not consider that the new houses would appear so overbearing or result in such a loss of outlook or a sense of enclosure or tunnelling effect as to cause significant harm to the living conditions of occupiers of those flats.
9. I appreciate that any development here will impact to some degree on the occupiers of numbers 53 and 58 St James's Road. However, the relationship between the new houses and numbers 53 and 58 is comparable to the established relationship between the neighbouring houses in the street. Accordingly, based on the limited evidence to the contrary I am not persuaded the new houses would cause harm to the residential living conditions of the occupiers of numbers 53 and 58 as suggested by the Council.
10. *Overlooking and loss of privacy of neighbouring property:* Due to the topography of the site and as the ground floor would be set down there would be no harmful overlooking from ground floor windows.
11. Generally, the windows in the side and rear walls of the new dwellings at first and second floor level would not directly overlook the private gardens of 10 Elphinstone Road and 53 and 58 St. James's Road as many of the views would be oblique.
12. The windows to the ensuite bathrooms serving bedroom 2 in each dwelling are shown as obscure glazed thereby mitigating any overlooking concerns. However, the rear windows to bedroom 2 in each house would lead to overlooking and a loss of privacy, as would the side windows to bedrooms 4 in each house and bedroom 5 of the house numbered 54. The appellant, in acknowledging this consideration, has shown these windows as obscure glazed. However, I agree with the Council, obscure glazing the bedroom windows would result in substandard and detrimental living conditions for future occupiers of the dwellings.
13. I agree with the appellant that there may well be architectural devices that would overcome the potential for overlooking and loss of privacy other than obscure glazing or applied finishes that would detract from residential living conditions. However, given the vernacular design of the houses these would need to be very carefully considered and detailed if such devices are not to cause

harm to the architectural integrity of the new dwellings as currently designed. Accordingly, I do not agree with the appellant that this matter could be conditioned as proposed if I were minded to allow the appeal.

14. I conclude in respect of the first main issue that the proposed development would not appear overbearing, result in a loss of light, loss outlook, a harmful sense of enclosure or overshadowing so as to cause significant harm to the living conditions of the neighbouring residential properties.
15. However, the proposal would result in overlooking leading to a loss of privacy for the occupiers of 10 Elphinstone Road and 53 and 58 St. James's Road. This would, in my judgement, cause significant harm to the living conditions of those occupiers contrary to the objectives of Policy DM3 of the Hastings Local Plan–Hastings Development Management Plan (Adopted 23 September 2015) (DMP) and the National planning Policy Framework (the Framework).

Second main issue: Living conditions of future occupiers of the proposed dwellings

16. *Overlooking and loss of privacy of future occupiers of the proposed dwellings:* The Council are concerned that the living conditions of future occupiers would be harmed by reason of overlooking of the private gardens, leading to a loss of privacy, from the windows of 10 Elphinstone Road and 53 and 58 St. James's Road.
17. I accept that there would be overlooking of the private gardens from neighbouring properties. However, given the relatively high-density built-up nature of this urban site mutual overlooking is to be expected. On balance therefore, in this case, I do not consider that the potential overlooking leading to some loss of privacy would be so detrimental to future occupier's enjoyment of their gardens. In any case future occupiers would be well aware of the potential for overlooking from neighbouring properties and could weigh this consideration when deciding to purchase, lease or rent the properties.
18. *Standard of accommodation for future occupiers in respect the provision of private amenity space:* Criterion (g) of DMP Policy DM3 states that appropriate levels of private external space are included, especially for larger homes designed for family use (dwellings with two or more bedrooms). In respect of proposed family dwellings, the Council would expect to see the provision of private garden space (normally at the rear), of at least 10 meters in length.
19. Due to the topography of the site the two dwellings would have very shallow rear gardens. However, the houses would be set in landscaped garden plots with amenity space to either side and principally to the front, set above street level to ensure privacy from passers-by. Further, as observed by the Council neighbouring dwellings already rely on side and front gardens for their private amenity space.
20. In my judgement, given this urban location close to public amenity spaces I consider, that in this case, the area of private amenity space is appropriate. I therefore conclude in respect of the fourth main issue that proposal would accord with the objectives of criterion (g) of DMP Policy DM3 as it seeks to ensure adequate amenity space is provided for residential occupiers.
21. I conclude in respect of the second main issue that the proposed development would not cause harm to the living conditions of future occupiers in terms of private amenity space and overlooking and loss of privacy. It therefore accords

with DMP Policy DM3 and the Framework as they seek to protect the living condition of future residential occupiers.

Planning Balance

22. The Council does not dispute the appellant's contention that it is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 73 of the Framework. As such, the relevant policies for the supply of housing should not be considered up-to-date and paragraph 11 should therefore be applied. There is no information about the scale of the shortfall in housing supply. Although paragraph 59 of the Framework refers to boosting significantly the supply of housing the provision of two additional units would make little meaningful difference.
23. When judged against some core planning principles the proposal would, given its urban location, perform well in that it would be in an urban area where access to facilities is likely to be greatest. However, the harm to residential living conditions as identified is also a key aspect of sustainability. As a result the social role of sustainable development would not be achieved.
24. In terms of its component dimensions there would be a small environmental benefit in providing extra housing while making effective use of land. Economic advantages would also arise from the construction and occupation of the houses. However, the harm to the residential living conditions identified would be so significant that as a result the social role of sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusions

25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR