



Appeal Decisions

Site visit made on 12 May 2021

by **Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal A Ref: APP/M2270/W/20/3271527

Land adjacent to 206 Forest Road, Tunbridge Wells, Kent TN2 5JB

- 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 Lee Greaves against the decision of Tunbridge Wells Borough Council.
 - The application Ref. 20/01400/FULL, dated 20 May 2020, was refused by notice dated 31 July 2020.
 - The development proposed is a sustainable dwelling: a detached 3 bedroom house.
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Appeal B Ref: APP/M2270/W/20/3271682

Land adjacent to 206 Forest Road, Tunbridge Wells, Kent TN2 5JB

- 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 Lee Greaves against the decision of Tunbridge Wells Borough Council.
 - The application Ref. 20/00484/FULL, dated 14 February 2020, was refused by notice dated 29 April 2020.
 - The development proposed is a sustainable dwelling: a detached 4 bedroom house with 2 bathrooms, garage and store room.
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Appeal C Ref: APP/M2270/W/20/3271521

Land adjacent to 206 Forest Road, Tunbridge Wells, Kent TN2 5JB

- 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 Lee Greaves against the decision of Tunbridge Wells Borough Council.
 - The application Ref. 20/01210/FULL, dated 29 April 2020, was refused by notice dated 1 July 2020.
 - The development proposed is a sustainable dwelling: a detached 2 bedroom house.
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Decisions

1. Appeals A, B and C are dismissed.

Preliminary Matter

2. As I consider it logical to deal firstly with the principle of the site's development and this is effectively the only reason for the refusal of Appeal A, I shall explain my decision on this proposal before turning to Appeals B and C.

Main Issues

3. The main issue in Appeal A is issue (i): the effect of the proposed development on the character and appearance of the area, with particular reference to the street scenes of Forest Road and Elphick's Place. This issue also applies to Appeals B and C. However, in respect of both these appeals there are two

additional main issues, in the form of (ii): the effect of the proposal on highway safety and (iii): the effect on trees situated in the south and west of the site.

Reasons

Appeal A

4. Appeal A concerns the third of three applications made to the Council for the site's development for a sustainable dwelling in the form of a house. The proposal was for a detached 3 bedroom house, with the application made in May 2020 and refused on 31 July. As explained in paragraph 3 above, the single main issue in the appeal is the loss of an open space and the resulting effect on the surrounding area.
5. The loss of open space referred to in the Council's refusal is part of a rectangular area of a size similar to a typical residential plot in Forest Road. In addition to conferring visual amenity the site also provides a pedestrian link between Forest Road and Elphick's Place, the latter comprising a cul-de-sac on the south side of Birling Road.
6. This type of visual amenity / pedestrian access gap between houses is commonplace in post-war medium / low density residential estate developments all over the country. Normally they are taken into Local Authority ownership under the management of their Highways or Parks/Open Spaces departments for their future maintenance, and with their public ownership also serving to guarantee their perpetuity for the benefit of local residents. In other cases they are protected by covenants, but with the same objective of safeguarding the visual amenity of the area and thereby the character and appearance of the wider locality. In this way, local residents are deemed to have the benefit of the covenant.
7. Neither the Council's nor the appellant's evidence in this appeal refer to the origins of the site as an open space. However, third party submissions in responding to public consultation on the appeals has supplied documentary evidence. This shows that planning permission for 89 houses with garages on land known as the 'Old Gardens Estate' with its frontages to Bayham, Birling and Forest Roads was granted in 1964.
8. The permission's approved plan shows the appeal site omitted from the parcels of land intended for the erection of the individual houses (in this case between Plots 32 and 53 with frontages to Forest Road) and with a curved footpath between the proposed hammer head for Elphick's Place and the main footway along the north west side of Forest Road. The detail shown is essentially the same as that shown on the appellant's Site Location Plan Ref. 0120.LG.6A.
9. Several of the more long established residents of the area who have objected to the appeal proposals confirm that the appeal site was one of the original open spaces of the development, and in this particular case I am also satisfied that the open area was intended to provide a landscaped setting for the footpath as a convenient link between Elphick's Place and Forest Road.
10. Some local residents have also argued that they have legal rights that if exercised would preclude the development of the site, but this is not a planning matter and is not within my remit in this appeal. I am also aware of many planning applications in other localities for the enclosure and / or development of land originally intended for the visual amenity of the occupiers of estate

developments - indeed I have dealt with appeals that have followed a refusal of permission by a Local Planning Authority. And not all applications / appeals for development are rejected, as in some cases the land concerned does not make a positive contribution to the character or appearance of the locality and / or is of little or no benefit to the public.

11. However, in this instance, I saw on my visit that the elevated position of the site affords extensive views over the town and beyond. I noted that a public seat has been placed on the roadside verge in Forest Road, but some of this very pleasing aspect of views to the north west has been lost through the growth of bushes and trees on the site. Nonetheless, the perception remains one of the area forming an attractive open and green landscaped gap in the otherwise continuous run of domestic curtilages in Forest Road.
12. Even more important in my view is the visual amenity of Elphick's Place, with the open green area and its vegetation a focal point in the approach towards the end of the cul-de-sac. The fact that the land rises towards Forest Road markedly increases its prominence in the public and private views along Elphick's Place. Moreover, it is not without significance that the orientation of No. 5 Elphick's Place with a side rather than a rear elevation to Forest Road was clearly part of the original plan to keep this area permanently open and free from development.
13. For the appellant it is argued that the Council has attached too much weight to the significance of the site in landscape terms and that the policies that have been applied are out of date. In any event it is considered that the site cannot be reasonably regarded as being part of an 'Area of Landscape Importance' ('ALI') and its status as such has not been supported by any of the Council's more recent initiatives, including the Borough's Landscape Character Assessment SPD 2017.
14. However, whilst I have noted these points, the Council's intention is for ALIs to be carried through into Policy EN18 of the Draft Local Plan. And whilst I can give only limited weight to this Plan because it is in its formative stages, I do not consider that any formal status of the land, including as an ALI, is necessarily material to my decision. In paragraph 6 above I have observed that the provision of this type of open space, with its intention to provide visual amenity and facilitate pedestrian access, can be found in innumerable areas throughout the country.
15. However, this frequency of occurrence does not in any way diminish their importance to the character and appearance of residential areas and the substantial benefit that local residents derive from their visual amenity and convenience as an access route. The large number of objections to this appeal and Appeals B and C is clear evidence of this. I can see no reason why the passage of time should encourage and enable an abandonment of the principles of good town planning that were adopted in the original development of the Old Gardens Estate. It is for this reason that I do not regard the site as a 'legitimate' infill site as regards a realistic opportunity for additional residential development within the built up area of Tunbridge Wells.
16. Moving from the principle of the site's development to the particulars of this appeal, the dwelling in Appeal A has been designed to sit to the side of the site, thereby allowing more of the open space to remain unencumbered by the house and its curtilage. However, whilst I consider the siting and design to be

- an improvement on the proposal in Appeals B & C, I nonetheless regard the proposed development as causing a significant visual intrusion in the Elphick's Place street scene and as running counter to the principle that the whole of the site should remain open as a green space accommodating the footpath between Elphick's Place and Forest Road. The street scene of Forest Road would also be harmed, but to a lesser degree because of the dwelling being positioned at a lower land level and the tree cover in the south west of the site.
17. Furthermore, the realignment of the footpath to a straight line close to the boundary with No. 206 Forest Road and two steep bends at the north western end to meet the required part of the hammer head would appear as contrived and likely to be inconvenient to users. As I understand it, the footpath is now formally a Public Right of Way and this increases the weight that should be given to its retention on its current alignment. Together with the path's varying width, this existing route enhances the visual amenity which the site as a whole presents to all who see and use it.
18. I have taken all other matters raised for the appellant into account, but overall I conclude that the proposed dwelling in Appeal A would be unacceptably harmful to the character and appearance of the area, with particular reference to the street scenes of Forest Road and Elphick's Place. Accordingly, the proposed development would be in conflict with Policies H5 (paragraph 3(i); EN1 (Character and Site context) & EN22 of the Tunbridge Wells Local Plan 2006; paragraph 1 of Core Policy 4 of the Tunbridge Wells Core Strategy 2010, and Section 12: 'Achieving Well-Designed Places' of the National Planning Policy Framework 2019 ('the Framework').

Appeals B and C

19. Appeal B relates to the first of the three applications and is for a 4 bedroom house. It was submitted to the Council in February 2020 and refused permission on 29 April. Appeal C is for the second of the three applications. It was submitted to the Council in April 2020 with the development proposal amended from the 4 bedroom house to one with 2 bedrooms. The application was refused permission on 1 July. Both Appeals B and C are subject to reasons for refusal as regards highway and/or pedestrian safety and the effect on trees in the south west corner of the site.
20. On the first issue of the principle of development, the proposals in Appeals B and C would result in the loss of all or some of the open space respectively through the erection of a dwelling on the site. Accordingly and notwithstanding the individual designs, scale and sitings, they are therefore subject to the same appraisal and conclusions as I have already explained in respect of Appeal A.
21. However, as regards the details of the proposed dwellings in Appeals B and C, I have indicated in paragraph 16 above that I regard their siting and design to be inferior to the dwelling in Appeal A. The Appeal B's 4 bedroom dwelling is a more conventional approach to development of the site with access from Forest Road. But with its occupation of most of the width of the plot, the harm caused in terms of the loss of open space and the effect on the footpath would be significantly greater. The highway and tree issues are essentially matters of the Council requiring more information, but even if these had been satisfactorily resolved or the subject of conditions it would not enable the grant of permission for the reasons I have explained in regard to Appeal A.

22. Appeal C is for a contemporary flat roofed dwelling which would be positioned in the middle of the site and extend from the boundary with No. 5 Elphick's Place to follow the curvature of the existing footpath. Whilst this is an innovative scheme with excellent sustainability credentials in terms of design and future use, I consider that the appearance would be somewhat incongruous. And together with its siting tight up to the footpath the dwelling would draw the eye as being out of keeping with the character and appearance of the area.
23. The highways objection relates to the absence of an access and on-site parking and I agree with the Council that this would be likely to cause problems of safety and convenience as regards use of the turning head in Elphick's Place. In terms of the third refusal reason, as with Appeal B the application failed to provide sufficient information in respect of the effect on the trees in the southwest corner of the site and now subject to a preservation order.
24. In summary on Appeals B and C, I conclude that the Council was correct to refuse permission on the highway safety and tree issues on the basis that the development would conflict with Local Plan Policy TP4 and Core Strategy Policy 3 (Highways) and Local Plan Policy EN1 and Core Strategy Policy 4 (Trees). However, as I have already made clear, it is the conflict with the principle of the loss of open space that is the fundamental reason why I consider that both proposals and the development in Appeal A would be unacceptable.

Other Matters

25. The Council is unable to demonstrate that it has a 5 year housing land supply, with an updated figure of 4.8 years as at 1 April 2020 referred to in the Appeal Statement. In these circumstances and having regard to the appellant's argument that ALIs or similar are not a policy application of the Framework, paragraph 11d) of the latter must be considered. However, I consider that the benefits of a single additional dwelling would be significantly and demonstrably outweighed by the harm that I have identified as part of my Decision.
26. The proposed dwellings in all three appeals has a number of features that would enhance their sustainability credentials in terms of construction and future occupancy. I have taken this into account but again they are insufficient to outweigh the objection in principle to the development of part or all of the overall site as edged red on the application plans.
27. The appellant has applied for and been accepted for entry on the self-build register. I recognise the difficulty in finding suitable sites to fulfil the aspiration of building one's own home and therefore acknowledge that my Decisions on these appeals will, to say the least, be disappointing. However, I am in no doubt that it is in the public interest for the Council to have refused permission on land which has been regarded, correctly in my view, as a public amenity from the time of the development of the Old Gardens Estate in the 1960's up to the present day. I have determined these appeals accordingly.

Conclusions

28. For the reasons I have explained, Appeals A, B and C are dismissed.

Martin Andrews

INSPECTOR