



Appeal Decision

Site visit made on 6 September 2021

By Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/B1415/W/21/3271199

Land to the rear of 12 Downey Close, St Leonards-on-Sea TN37 7LT

- 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 T Alam against the decision of Hastings Borough Council.
 - The application HS/FA/20/00736, dated 12 October 2020, was refused by notice dated 16 February 2021.
 - The development proposed is proposed 2 x 3 bedroom dwellings with associated landscaping and car parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - the character and appearance of the area, including open space;
 - the living conditions of neighbouring occupants, with regard to outlook and dominance; and
 - whether satisfactory living conditions would be created for future residents, with regard to privacy.
3. It is also necessary to consider what effect the lack of a five year housing land supply should have in the appeal decision. I address this issue in the planning balance.

Reasons

Character and appearance

4. The residential area is largely defined by terraces of two storey houses separated by areas of open space, mainly laid to grass. The area lies on steeply sloping land. The buildings are plain in form and materials, with the overriding characteristic of the area being the generous sense of space and separation between buildings resulting from the grassed open areas. This layout of terraces of houses separated by open space is repeated elsewhere and forms and integral part of the overall design of the residential estate.
5. The introduction of 2 additional houses fronting the road would reduce the sense of space provided by this particular area of land. Some of the open space would remain, but it would play a lesser role visually in the character and appearance of the area because of the reduction in its size and because a

substantial part of it would be screened in public views from the road by the new buildings.

6. The land is in private ownership and according to the appellant there are no public rights for recreational use or access across the site, including the existing footpath. On my site visit there was nothing preventing informal recreational use of the land or access along the footpath, although the grass had not been cut for some time and was unkempt. Furthermore, none of the open space is identified on the Local Plan Policies Map as part of the green spaces network nor is it explicitly protected from development because of its recreational or biodiversity value or contribution towards accessibility. The public benefit of the land is therefore limited to the role it plays in the visual character and appearance of the area when viewed from the road and surrounding buildings.
7. The appellant has drawn attention to other sites in the area where former open space has been developed. A development of 7 houses off Downey Close¹ was an allocated housing site in the Hastings Local Plan Development Management Plan 2015 unlike the appeal site, which is not allocated. The policy considerations are therefore different. The site at Harrow Lane Playing Field² lies outside the residential estate of which the appeal site forms part and is therefore not directly comparable. For those reasons, I place little weight on these other examples of development.
8. I conclude that the proposed development would erode one of the key characteristics of the area by reducing the open, spacious appearance of the site. It would not however affect the recreational value of the site or the role it plays in providing accessibility, as there do not appear to be public rights to such uses on or across the site. The development would therefore cause limited harm to the character and appearance of the area and would as a result conflict with Policy EN8 of the Hastings Local Plan Planning Strategy 2014 and Policies DM1 and DM3 of the Hastings Local Plan Development Management Plan 2015, which seek to protect and enhance local character and open space.
9. However, on the evidence before me, it would not appear to reduce accessibility as there is no public right to use the land, and in any event a replacement footpath is shown to be provided. There would therefore be no conflict with Policy DM4 of the Hastings Local Plan Development Management Plan 2015, which promotes public access.

Living conditions of neighbouring occupants

10. The flank elevation of one of the proposed dwellings would span across most of the rear boundary of the rear gardens to 2 and 4 Plough Lane. Because of the slope of the land, the proposed dwellings would also be positioned at a significantly higher level than these dwellings. Their rear gardens are short in length, and the combination of the proximity of the flank wall and its higher elevation would dominate the outlook from the rear elevations of these existing dwellings and their rear gardens.
11. Generous spacing between dwellings is one of the characteristics of this residential area with many of the terraces of dwellings backing onto open space, particularly on the steeper sloping parts of the estate. Although most of

¹ HS/OA/12/00616 and HS/DS/15/00784

² HS/OA/17/00901

the terraced dwellings have small rear gardens, this spacing avoids the rear gardens being dominated by buildings and provides the dwellings with an open outlook. The relationship between the proposed dwellings and those in Plough Lane would fall well short of the general level of amenity found in the area. I consider the harm caused to the living conditions of occupants in 2 and 4 Plough Lane would be significant.

12. The Council has also raised concern at overlooking of the rear of 8-12 Downey Close. However, the separation between the rear elevations of the existing and proposed dwellings is not dissimilar to that found elsewhere in the area. I consider that it would be sufficient to avoid a harmful degree of overlooking to these dwellings.
13. The terrace of dwellings at 1-7 Roundwood Road sits above the appeal site and is further away from it than the terrace at 2-8 Plough Lane. Because of this level of separation, I do not consider the living conditions of the occupants in Roundwood Road would be harmed through dominance or outlook in the same way as those properties downhill of the appeal site.
14. I conclude that the proposal would significantly harm the living conditions of the occupants of the existing dwellings at 2 and 4 Plough Lane by reason of dominance and loss of outlook. It would consequently conflict with Policy DM3 of the Hastings Local Plan Development Management Plan 2015, which requires new development to avoid any adverse impact on the amenity of neighbouring properties.

Living conditions for future occupants

15. For similar reasons as given above, I consider that the separation between rear elevations of the proposed dwellings and those in Downey Close is sufficient to avoid a harmful degree of overlooking for future occupants of the scheme. There would be some intervisibility between the surrounding properties in Downey Close, Plough Lane and Roundwood Road and the gardens of the proposed dwellings, but such mutual intervisibility is common in a residential area and would not be unduly oppressive or prevent the enjoyment of the garden spaces. Although the terrace of houses in Roundwood Close would be sited higher up the slope than the proposed dwellings, it is sufficiently separated by the intervening open space such that it would avoid appearing overbearing on future occupants of the proposed dwellings.
16. I consider that the proposed development would create satisfactory living conditions for its future residents and would therefore accord with Policy DM3 of the Hastings Local Plan Development Management Plan 2015 in so far as it relates to ensuring adequate amenities for occupants of new development.

Planning Balance

17. I have concluded that the proposed development would cause limited harm to the character and appearance of the area, and significant harm to the living conditions of neighbouring occupants. I do not agree with the Council about some aspects of the impact of the development on neighbouring occupants, nor that it would create harmful living conditions for future occupants. I also recognise the modest benefits of adding an additional 2 dwellings to the local housing stock, particularly given the need for housing in the district. However, taking all these considerations into account, I conclude that the proposed

development would conflict with the policies in the development plan when taken as a whole.

18. The Council acknowledges that it cannot demonstrate a 5 year housing land supply, nor has it met the latest housing delivery test. In such circumstances, paragraph 11 of the National Planning Policy Framework requires planning permission to be granted unless, amongst other criteria, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
19. I consider the harm identified above would significantly and demonstrably outweigh the modest benefits. The 'tilted' balance provided by paragraph 11 of the Framework is therefore not sufficient in this case to outweigh the conflict with the policies in the development plan and Framework when taken as a whole. It follows that the appeal must fail.

Conclusion

20. I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

