



Appeal Decision

Site visit made on 21 December 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/U1430/W/21/3276177

Greyfriars Flat, Friars Road, Winchelsea, East Sussex TN36 4ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Adam Slater, Gallium Homes (Winchelsea) Ltd against the decision of Rother District Council.
 - The application Ref RR/2020/1217/P is dated 9 February 2021.
 - The development proposed is "Demolition of existing buildings and construction of five new houses".
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Decision

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

Preliminary Matters

2. The appeal follows the Council's failure to issue a decision within the relevant timescale. The Council has advised it would have refused planning permission, and an officer report setting out the reasons therefore has been submitted. The appellant has commented on this.

Main Issues

3. With this in mind, there are three main issues. These are: i) the effect of the proposed development on the character and appearance of the area, with particular regard to the Winchelsea Conservation Area (CA) and the setting of listed buildings; ii) whether the proposed development would provide acceptable living conditions for the future occupants of Units 10 and 11 with particular regard to outlook, light and garden space; and iii) the effect of the proposed development on protected species.

Reasons

Character and Appearance

4. The appeal site forms part of the historic town of Winchelsea, which is more akin to a village in terms of scale, but forms part of what was once a much larger example of early medieval town planning which created a grid pattern of streets set around a market and churches in the bastide style. The town occupies approximately a third of the late 13th century planned settlement, all of which is within the CA. It retains a dense concentration of listed buildings, including a variety at Grade II on either side of Friars Road. The appeal site and the wider CA therefore form part of a sensitive historic setting, the significance of which is defined to an extent by the intimate village feel,

structured wide streets with strong building lines and mix of historic architecture displaying a range of vernacular materials.

5. The appeal site benefits from planning permission¹ ('the Approved Scheme') for the demolition of existing 20th century buildings and the erection of 4 terraced houses. The Council has described the Approved Scheme as sympathetic in scale and design to the Grade II listed buildings at Friars Cottages to the north of the appeal site. The proposal would also comprise a terrace of 4 houses with contemporary fenestration layout, including zinc clad dormers to the front and rear, in addition to a detached single storey dwelling. I have not been provided with the full details of the Approved Scheme, but it is sufficiently clear that the proposed terrace would be of a wholly different design to that approved.
6. The building line of the proposed terrace would deviate from that of the adjacent terrace of Friars Cottages and would be offset from the street by what the appellant defines as approximately 5°. This small variation in building line would fail to respect the historic wide street pattern and would reduce the grass verge adjacent to the highway at the southern end of the appeal site. In this historic setting, the small change to the building line and grass verge would emphasise the presence of the distinctly more modern terrace, particularly the unbroken volume of Units 8 – 10 and its jettied first floor, which would appear discordant and unduly dominant in views from the north. I am not convinced that the orientation of the proposed terrace could be required to be amended by a condition compliant with the tests set out at Paragraph 56 of the Framework².
7. The height of the proposed terrace would match that of the northern end of the Friars Cottages terrace. The northern end of Friars Cottages is a building of traditional design, with hipped gables, abutting a characteristic crossroads. The roof eaves and ridges of the Friars Cottages terrace step down towards the appeal site, forming part of an historic roofscape. There is variety in the design and height of taller buildings on the eastern side of Friars Road, but they remain modest in scale. In comparison, the proposed gables and contemporary first and second floor windows of Units 8 - 10 would accentuate their height and mass at the more intimate end of Friars Road. Unit 11 would be seen in narrow views, set back from the street in an elevated position, but the overall scale and bulk of the whole proposal would be significantly at odds with, and detract from, its quaint surroundings which form part of the historic and architectural setting of the listed buildings on both sides of Friars Road.
8. The Design and Heritage Statement³ refers to the proposed terrace comprising a 'barn like building', the intention of which is to evoke the 'business end' of the medieval burgrave plot. The proposal would bear little resemblance to a barn, save for its mass, which would fail to read as a reference to the historic use of the appeal site. Similarly, although the proposed jettied first floor may be reminiscent of medieval building forms and of minimal depth, it would not relate to the existing architecture of Winchelsea set out in the detailed CA Appraisal⁴. Although aspects of the proposal's design may have been influenced by the medieval history of the appeal site, this is not clear from its overall

¹ Council reference: RR/2018/677/P

² The National Planning Policy Framework (2021)

³ Design and Heritage Statement reference 743/MB dated 12 January 2021 by Marcus Beale Architects Ltd

⁴ Rother District Council Conservation & Design Advice, Conservation Area Appraisal: Winchelsea (2008)

form, and the positioning of proposed buildings would not reinforce the medieval street pattern.

9. The proposed development would therefore fail to preserve or enhance the character or appearance of the CA and would have an adverse effect on the setting of listed buildings on account of its siting, form, scale, mass and design. This would cause 'less than substantial harm' to the significance of those heritage assets as referred to by the Framework and I assign significant weight to that harm. My attention has not been drawn to any public benefits associated with the proposal, but it is clear that the provision of 5 new dwellings would create a public benefit by increasing housing supply. It has not been demonstrated that the proposal is an appropriate means of achieving any such benefit or that any significant weight should be assigned to this benefit. There are therefore no public benefits worthy of sufficient weight which would outweigh the harm.
10. The proposal would therefore fail to accord with Policies OSS4, EN2 and EN3 of the Rother Local Plan Core Strategy (2014) (CS). These require, amongst other things, development to reinforce the special character of historic settlements through siting, scale, form and design, and respect and not detract from the character and appearance of the locality.

Living Conditions

11. The proposed blank side elevation of Unit 11 would run the length of the rear garden to Unit 10, directly to the south. The proposed sections AA⁵ and CC⁶ show there would be considerable differences between the height of Unit 11 and the rear garden of Unit 10. The rear garden would be set over two levels, but even at the higher garden level, the overbearing presence of Unit 11 would create extremely poor outlook for future occupants of Unit 10. Furthermore, due to their orientation, positioning, and differences in height, most of the rear garden would be overshadowed by Unit 11 much of the time.
12. French doors on the eastern elevation of Unit 11 would serve the proposed living/dining area, and a single narrow window on each of the north and east elevations would serve Bedroom 1. There would also be roof lights to the kitchen and living/dining areas. However, future occupants of Unit 11 would be heavily reliant on windows and French doors on the southern elevation to provide access to light and outlook.
13. The proposed dwelling would be located close to the southern boundary shared with the neighbouring Police House, and I note the Council refer to the proposed separation gap as ranging between approximately 0.5m and 0.75m. This boundary is heavily planted within the Police House plot and the appellant has referred to further planting proposed along the boundary to protect the privacy of future occupants of Unit 11.
14. The standard of outlook from the southern elevation windows and French doors would be severely restricted by the existing southern boundary planting and any further boundary treatment intending to protect future occupants' privacy. In the absence of any such boundary treatment, the privacy of future occupants would be severely compromised. The French doors and windows on the other elevations of the proposed dwelling would be insufficient to offer

⁵ Plan ref: 743 /021 P1

⁶ Plan ref: 743 /014 P1

satisfactory outlook for future occupants. This would be on account of the small size of those windows, which would face onto a parking area, and the narrow outlook from the French doors confined to the living/dining area. The proposed internal layout and fenestration arrangement of Unit 11 would therefore create unsatisfactory living conditions for future occupants on account of the unacceptably poor outlook that they would experience.

15. Private garden and parking spaces are proposed to the rear of Unit 11, but the arrangement would be cramped, awkward and contrived by virtue of the confines of the site and the parking and building layouts. The Council has referred to the proposed private garden space as measuring 5m in length and 7.5m in width. Open garden space would also be proposed to the front of Unit 11, but it would front onto the highway and would not be private. This garden space would not mitigate the unsatisfactory relationship between the proposed dwelling and the southern boundary, and it would be of insufficient size for the proposed dwelling.
16. The proposed development would therefore create unacceptable living conditions for future occupants of Units 10 and 11 on account of the unacceptably poor outlook and light they would experience and the insufficient private garden space that would be provided. This would be contrary to Policies OSS4 and DHG7 of the CS. These require, amongst other things, new dwellings to meet the needs of future occupiers, including providing appropriate amenities and the provision of appropriate and proportionate private usable external space of at least 10m in length.

Protected Species

17. The Ecology Surveys Report⁷ (ESR) confirms bat roosts and a low population of slow worms were recorded at the appeal site in August and September 2017. The ESR makes recommendations as to how the effect of the Approved Scheme on these protected species could be mitigated and states the Approved Scheme would include gardens and the planting of an orchard of sufficient size to allow appropriate mitigation measures in respect of reptiles. The proposal does not include the planting of an orchard and it is not clear whether the proposed gardens would be similar in size or arrangement as those the ESR refers to.
18. The appellant has advised that a European Protected Species Mitigation License has been issued by Natural England, but I have not been presented with a copy of that license and there is no information before me to clarify its validity or explain which species or mitigation measures it may refer to. The ESR is of significant age and its recommendations were made in respect of a materially different scheme. For these reasons, I cannot conclude with any certainty that the effects of the proposed development on protected species would be sufficiently mitigated by the recommendations of the ESR or any further details which could be required to be approved by conditions.
19. The proposal would therefore fail to accord with Policy EN5 of the CS and Policy DEN4 of the Council's Development and Site Allocations Local Plan (2019). These require, amongst other things, developments to conserve and enhance protected species and avoid adverse impacts on biodiversity or habitat, or where wholly unavoidable, to provide appropriate mitigation or compensation.

⁷ Ecology Surveys – Bats and Reptiles, Report for East Sussex County Council, ref: 6122 dated 10 September 2017 by The Ecology Consultancy

Other Matters

20. The Council has confirmed that it is unable to demonstrate a five-year supply of deliverable housing sites. Where this is the case, Paragraph 11(d)(i) of the Framework advises that the policies which are most important for determining the application should be considered out-of-date and planning permission should be granted for new housing unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. I have identified harm which would be caused to the significance of the CA and the setting of listed buildings which would not be outweighed by the public benefits of the proposal.
21. Policies within the Framework encourage the conservation of heritage assets and their protection from harm, except where there is clear and convincing justification for that harm. I have not found any such justification and the application of those policies provides a clear reason for refusing the proposal. Therefore, the presumption in favour of sustainable development referred to by Paragraph 11 of the Framework, does not apply in this instance.
22. The appellant has claimed the Approved Scheme fails to allow appropriate internal floor to ceiling heights, but no evidence has been provided to demonstrate the proposal is the best way of addressing that issue, or that the environmental efficiencies of the proposal could not be incorporated within the Approved Scheme. The harm that would be caused by the proposal is not justified by the alleged harm that would be caused by the internal floor to ceiling heights of the Approved Scheme. I can therefore give these matters only limited weight.

Conclusion

23. The proposal would harm the character and appearance of the CA and the setting of listed buildings in the terms I have set out. It would create unsatisfactory living conditions for the future occupants of Units 10 and 11 and would fail to be acceptable in terms of protected species. In each case, there would be conflict with the development plan taken as a whole. There are no material considerations, including the approach of the Framework, that indicate my decision should be made other than in accordance with the development plan. The appeal should not therefore succeed.

L Douglas

INSPECTOR