



Appeal Decision

Site visit made on 7 September 2022

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/T1410/W/21/3286035

10 Milnthorpe Road, Eastbourne BN20 7NR

- 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 and Mrs M Donsbach against the decision of Eastbourne Borough Council.
 - The application Ref PC/210598, dated 6 July 2021, was refused by notice dated 5 October 2021.
 - The development proposed is replacement of existing garage with proposed new build 2-bedroom chalet style coach house with off street parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants have requested that I consider an amended drawing as part of my consideration of this appeal. This drawing indicates that the windows and French doors would be constructed of timber rather than UPVC. I am satisfied, having regard to the Wheatcroft Principles¹, that the proposed changes are not so significant as to materially alter the nature of the proposed development and that no party would be prejudiced if I were to consider them. Accordingly, my consideration of this appeal includes the amended drawing (plan reference 2130/04 D).
3. Within their statement of case Eastbourne Borough Council (the Council) have identified concern regarding the living conditions available to future occupiers of the development caused by noise and odour disturbance levels within the proposed courtyard garden to the front of the property, as well as to occupiers of adjacent properties due to increased noise and general disturbance. In addition, interested parties have raised concern regarding the level of privacy available to future occupiers of the development when utilising outdoor spaces. These specific matters were not raised within either the decision notice or officer report. The appellant has had the opportunity to comment on these matters within their final comments. Therefore, they would not be prejudiced by my consideration of these matters as part of the main issues.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

Main Issues

4. The main issues are the effect of the proposed development on:
- the character and appearance of the Meads Conservation Area (CA);
 - the living conditions of future occupiers of the dwelling and the occupiers of numbers 10 and 12 Milnthorpe Road, with particular regard to privacy, sound, odour, activity, and internal space standards; and,
 - whether the proposal makes adequate provision for car parking.

Reasons

Character and appearance

5. The appeal site is located within the Meads CA. As such I have had regard to the duty to pay special attention to the desirability of preserving or enhancing its character or appearance.
6. The significance of the CA lies, in part, by the prevalence of substantial paired or detached family villas, which the Conservation Area Appraisal² advises were built mainly between 1890 and 1900. Such buildings are mainly three to four-storeys high, with front gardens and largely rectangular rear gardens. They are largely built from red brick with hanging tiles to the upper floors. The properties along the side of Milnthorpe Road upon which the appeal site is located conform to these general characteristics. Despite having individual design detailing, they share a similar eaves and ridge heights, a strong front building line, are elevated above street level, and often accessed via steps. Together the buildings along this side of the road form a strong regular pattern of development which contribute positively to the quality and visual appearance of the area.
7. The siting of the proposed dwelling would conform to the general building line on the side of the road upon which the appeal site is located, however due to its' narrow width and 2 storey height, it would be of a significantly smaller scale and massing than nearby properties and would not be accessed by the characteristic steps found on them.
8. Moreover, it would significantly reduce the openness between the dwellings on this side of Milnthorpe Road and would be sited on a much smaller plot size than nearby development, such that it would appear as an incongruous and cramped form of development within the streetscene. This would harmfully interrupt the pleasant regular rhythm of development on the appeal site's side of Milnthorpe Road.
9. I note that the appellants have sought to design the dwelling as a coach house which they consider would have been present on the site, and that similar materials and architectural detailing found in the locality would be utilised, However, these considerations do not lead me away from my previous findings of harm.
10. In principle the demolition of the garage would enhance the character and appearance of the area, however this is not the full extent of the development proposal, and as such this benefit would not occur.

² Eastbourne Borough Council - Meads Conservation Area Appraisal – April 2012

11. Whilst there has been some support for the proposal, in terms of its design and location within the CA, this does not alter my findings above that the new dwelling would not successfully integrate with the established design, pattern and form of development nearby.
12. For the above reasons I conclude that the proposal would be harmful to the character and appearance of the Meads CA and its significance as a designated heritage asset. The CA's character or appearance would be neither preserved or enhanced, in conflict with the statutory test set out in section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990. Moreover, there would be conflict with saved policies UHT1, UHT4, UHT15 of the Borough Plan³ and policies B2, C11, D10 and D10A of the Core Strategy⁴. Amongst other things these policies seek to ensure that development reflects local character and protects the historic environment from inappropriate development, and to prevent unacceptable harm to visual amenity.
13. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting, and that this should have a clear and convincing justification. Whilst in this case I have found the harm to be less than substantial, the harm must nevertheless be given considerable importance and weight, and should be weighed against the public benefits of the proposal, in accordance with Framework paragraph 202.
14. The construction of a dwelling would make a small contribution towards the Council's housing supply at a time when it is unable to demonstrate a 5-year supply of deliverable housing sites. In addition, there would be short-term economic benefits associated with its construction. In the longer-term, its occupation would increase the local labour pool in a sustainable location and from which access can be secured via public transport. However, being only a single dwelling, the public benefits of the proposal would be small. The limited public benefits identified are not in this case sufficient to outweigh the harm that I have identified to the significance of the designated heritage asset. Accordingly, as well as the development plan policies cited above, the proposal would conflict with the conserving and enhancing the historic environment aims of the Framework.

Living conditions

15. The proposed dwelling would have a raised rear balcony and a front courtyard area. It would also have roof lights within the roof planes addressing the two neighbouring residential properties. Both of these neighbouring properties have windows within the side elevations closest to the appeal site. The outlook from which are over the appeal site.

Future occupiers

16. Notwithstanding the proposal to erect privacy screening around the first-floor rear terrace of the proposed dwelling, from several elevated and non-obscurely glazed

³ Eastbourne Borough Plan 2001-2011 (Adopted September 2003)

⁴ Eastbourne Borough Council Eastbourne Core Strategy Local Plan February 2013

windows within the side elevation of 12 Milnthorpe Road (number 12), it would be possible to closely and directly overlook the two main areas of outdoor space within the proposed development at the front and rear. Given the above, and in the absence of any compelling evidence to demonstrate how this level of overlooking could be reduced or prevented, I conclude that future users of the courtyard garden and rear terrace would not benefit from a reasonable level of privacy within these spaces.

17. First-floor accommodation within the proposed development would be provided in part, within the roof space. Although the margins of the rooms would have restricted height, the amount of first floor accommodation which exceeds 1.5m would be significant. The proposed use of the restricted height sections of the building for storage, when combined with the provision of greater than 2m heights to the central sections of the bedrooms and landing, would prevent the accommodation from being cramped. Consequently, at first floor level, a satisfactory standard and quality of internal space would be provided.
18. There is adequate external space within the appeal site for refuse storage, which is remote from either the courtyard garden or terrace, and as such the external storage of refuse need not cause any unacceptable adverse odour level for future users of the outdoor spaces. In addition, designated on-site car parking provision has been identified which is separate from the courtyard garden. Given that vehicle movements and activity levels associated with such movements would be controlled by future occupiers, they would have the ability to prevent levels of movement and activity which would harm their own enjoyment of the courtyard garden.
19. Although not directly opposing, and at different heights, and despite the appellant advising that two side windows in number 10 Milnthorpe Road (number 10) serve a stairwell and a lobby, at close range, it would be possible to look into the bedroom rooflights from the 2 windows in the side elevation of number 10. Furthermore, and whilst again not directly opposing, from windows within the first and second floor of the side elevation of number 12 it would be possible to overlook the rooflight serving the stairwell and landing of the proposed dwelling. The level of overlooking which would result would be to the detriment of the living conditions of future occupiers in terms of internal privacy levels. However, these concerns could be overcome by an appropriately worded condition requiring the rooflights to be obscurely glazed and fixed shut.
20. For the above reasons I conclude that suitable living conditions for future occupiers of the new dwelling would not be provided in terms of privacy within their outside spaces. Accordingly, the proposed development would conflict with policy B2 the Core Strategy which seeks to ensure that development protects the residential and environmental amenity of future residents. Furthermore, it would conflict with the requirement of paragraph 130 of the Framework which requires development to provide a high standard of amenity for future users.
21. Within the decision notice the Council refer to policy D10a of the Core Strategy in the context of the living conditions reason for refusal. However, that policy relates to design and makes no connection between design and living conditions. Therefore, this policy is not determinative to this main issue.

Nearby occupiers

22. Notwithstanding the appellants' comments regarding habitable rooms within numbers 10 and 12, I note that many of the windows are not obscurely glazed. It

would be possible therefore for future occupiers of the proposed development to directly, and at close proximity, look into private rooms within these properties from the stairwell and bedrooms of the proposed dwelling. This would be to the detriment of the privacy of the occupiers of both of these properties. However, this concern could be overcome by the imposition of a condition requiring the rooflights to be obscurely glazed and fixed shut.

23. The appeal site is within a built up predominantly residential area. It has not been demonstrated that the use of the front courtyard garden would generate a level of sound or general activity which would be materially greater than would result from the continued use of the site as a garage or for off-street car-parking provision. Nor, has it been demonstrated that any such sound or activity levels would exceed those usually encountered with a residential area.
24. Consequently, the proposed development would not result in any unacceptable harmful effects upon the living conditions of occupiers of numbers 10 and 12, with particular regard to privacy, sound and activity levels, in accordance with Policy B2 the Core Strategy which seeks to ensure that development protects the residential and environmental amenity of residents. There would also be no conflict with the Framework in this regard.

Car Parking

25. Having regard to ward car ownership levels, the Council advise that a single off-street car parking space is required to serve a 2-bedroom dwelling in this location. Such provision is met within the appeal scheme.
26. Whilst noting the Council's concern in respect of car parking provision for the flats within number 10, I am advised that the occupiers of number 10 are not afforded use of the of the appeal site. Even if the proposal resulted in the loss of off-street parking for the occupiers of number 10, there would be a high probability on the basis of my observations and on the evidence before me that safe on-street car parking spaces nearby could be used by those vehicles potentially displaced by the proposed development.
27. Therefore, there is no reasonable basis to conclude that the proposed development would add to parking stress within the locality.
28. For the reasons set out above the appeal proposal makes adequate provision for car parking. As such I find no conflict with the requirements of policies D8 or D10A of the Core Strategy which seek to promote sustainable travel and to ensure that new development is accessible to all. Nor would it conflict with saved policies UHT 1 or TR11 of the Borough Plan which require that parking provision reflect accessibility and give paramount importance to the needs of pedestrians, cyclists and public transport. Furthermore, there would be no conflict with paragraphs 110, 111 or 112 of the Framework, which advise that development should provide safe and suitable access to the site for all users and give priority first to pedestrian and cycle movements and second to access to high quality public transport.

Planning Balance

29. The Council have indicated that they do not have a 5-year supply of deliverable housing sites. In such circumstances paragraph 11d) of the Framework should be applied which sets out that permission should be granted unless certain circumstances apply, including where the policies of the Framework that

protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 includes designated heritage assets. Given my finding that the development would lead to harm to the Meads CA, the presumption given by paragraph 11d) of the Framework would not be triggered in this case.

30. The site is within a reasonable walking distance of the Meads Village shops local shopping centre and public transport connections, and as such it is well located in relation to services and facilities. In addition, there would be short-term economic benefits associated with its construction. In the longer-term, its occupation would increase the local labour pool in a sustainable location. Being only a single dwelling, these benefits are attributed limited weight. That it would help to address the Council's shortfall in housing delivery moderate weight is attributed.
31. Against these benefits is the harm that would be caused to a designated heritage asset. I accord this harm significant weight. Furthermore, the proposed development would result in significant harm to the living conditions which could be enjoyed by future occupiers of the proposed property with particular regard to privacy in outdoor spaces. I accord this substantial weight.
32. Overall, I find that the adverse impacts of the proposed development would outweigh the benefits when assessed against the development plan as a whole. There are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

Conclusion

33. For the reasons given above, I conclude that the appeal should be dismissed.

V Simpson

INSPECTOR