



Appeal Decision

Site visit made on 9 November 2022

by A. Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/B1415/W/21/3287169

Land Adjacent to 1 Westfield Lane, St Leonards-on-Sea TN37 7NE

- 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 Apothecary Developments Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00507, dated 18 May 2021, was refused by notice dated 24 September 2021.
 - The development proposed is described on the application form as the 'proposed construction of one detached dwelling with garage and a pair of semi-detached dwellings'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area, including on the Area of Outstanding Natural Beauty;
 - the effect of the proposed development on the living conditions of the occupants of 1 Westfield Lane, with particular regard to privacy, outlook, noise and disturbance; and
 - the effect of the proposed development on protected trees and Ancient Woodland

Reasons

Character and appearance, including Area of Outstanding Natural Beauty

3. The appeal site comprises a parcel of land accessed from Westfield Lane. It is bounded on its western side by the A21, separated by mature landscaping. The site adjoins 1 Westfield Lane, a detached dwelling set back from the lane behind a front garden and driveway.
4. Properties along Westfield Lane are generally of a similar scale and appearance. In particular, they sit within large garden plots fronting onto established roads. There is some subtle variation in the detailed design of dwellings and, in some cases nearby, in the use of materials.
5. The proposed development would include the erection a detached dwelling near the front of the site and a pair of semi-detached dwellings near the rear of the

- site. A vehicular access would be created to the west of No 1, connecting the new properties to Westfield Lane.
6. Due to intervening boundary landscaping, the topography of the site, gradually sloping away from Westfield Lane, and the overall scale of the proposed development, it would not be readily visible from much of Westfield Lane or the A21. However, glimpsed views would be possible through breaks in landscaping. Nevertheless, the proposed development would be readily visible from the site entrance and footpath to the south of the site, as well as from the private vantage point of No 1.
 7. The proposed dwellings would have a footprint, roof profile and scale that would assimilate to an acceptable standard with the surrounding area. The proposed mix of materials, which largely includes brick and plain tiles, with some weatherboarding to the semi-detached dwellings, would generally be in keeping with the surrounding properties. A suitable condition could be included if the appeal were to be allowed to deal with the detail of this matter.
 8. Notwithstanding this, the siting of the proposed pair of semi-detached properties would not reflect the prevailing layout or character of the surrounding area. Although some examples of properties which feature access routes running between them exist, together with dwellings positioned beyond established building lines, these are not a predominant feature of the area. The surrounding layout is typically one in which properties sit within large garden plots arranged in a traditional manner fronting established roads. Irrespective of amenity space standards or separation distances, the proposed development, taken as a whole, would appear cramped and awkward in this corner plot. The siting of the proposed detached garage would be in keeping with the surrounding area, in which garages of various forms are visible.
 9. Consequently, the proposed development would form a discordant and incongruous feature, out of keeping with the established pattern, rhythm and grain of development along Westfield Lane.
 10. The site is located close to, but outside of, the High Weald Area of Outstanding Natural Beauty. Areas of Outstanding Natural Beauty (AONBs) are designated for the purposes of conserving and enhancing natural beauty. Section 85(1) of the Countryside and Rights of Way Act 2000 (as amended) places a duty upon me to have regard to these purposes in this decision. Supporting this objective, paragraph 176 of the National Planning Policy Framework (the Framework) sets out how great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
 11. The surrounding area has a rural character, largely comprising agricultural land and woodland. Although the appeal site contributes to the rural character of the surrounding area to some extent through its undeveloped and verdant nature, it makes only a very limited contribution to the landscape character of the wider AONB. Given the self-contained nature of the site and developed nature of Westfield Lane, the proposed development of the site would have a neutral effect on the landscape character of the AONB.
 12. Consequently, although the proposed development would have a neutral effect on the landscape character of the AONB, it would harm the character and appearance of the surrounding area, contrary to the relevant provisions of Policies DM1, DM3 and HN9 of the Development Management Plan (DMP, 2015)

and Policy EN7 of the Hastings Planning Strategy (PS, 2014), which in summary seek to ensure high quality design in development. This is in a similar vein to the relevant provisions of the National Design Guide (2019) insofar as good design is concerned.

Living Conditions – outlook, privacy, noise and disturbance

13. The main direction of outlook from the rear facing windows of No 1, is currently down through its deep rear garden and towards mature trees and landscaping within the site and beyond.
14. A separation distance of approximately 28 metres would exist between the proposed semi-detached properties and the rear elevation of No 1. As a result, the proposed development would undoubtedly bring built form closer to the rear elevation of No 1. It would be visible from within the rear facing rooms and rear garden. However, the occupiers of No 1 would retain uninterrupted outlook over their own garden and mature landscaping beyond. Moreover, the topography of the site is such that the new dwellings would be sited at lower level than No 1.
15. As such, whilst the occupiers of No 1 would experience a slight change in their relationship with the appeal site, the separation distance between properties would be reasonable. Accordingly, overdominance and loss of outlook would not result from the proposed development.
16. In respect of privacy, the proposed development would introduce first floor windows within the front elevation. At present, the occupants of No 1 benefit from privacy from the north by reason of there being no built form in that direction. The proposed development would be angled towards the proposed access road but would allow views from upper floor towards No 1, which features habitable rooms in its rear elevation and a rear garden. As such, and irrespective of the precise separation distance here, the occupants of No 1 would experience a loss of privacy as a result of the proposed development.
17. In respect of noise and disturbance, the proposed development would be accessed via a new vehicular passage that would run along the side of No 1. A driveway would serve the proposed detached dwelling and parking spaces and a turning head would serve the semi-detached properties. This would be in close proximity to both a habitable room and the retained rear garden of No 1.
18. The access would serve only three dwellings, and would therefore unlikely result in a significant levels of trips. Nevertheless, the positions of the access, parking spaces and turning head are such that the starting, manoeuvring and passing of cars would take place close to the side of No 1, including habitable rooms which would face onto it, and its rear garden. Such activity, however minimal, would result in a greater level of disturbance than is currently the case. This would be to the detriment of the living conditions of the occupiers of No 1. The appellant contends that landscaping would assist in mitigating this mitigate effect. However, I have no evidence before me to suggest that this would sufficiently mitigate against noise and disturbance, even if it limited views of passing vehicles from side-facing windows.
19. For the above reasons, I conclude that the proposed development would harm the living conditions of the occupants of 1 Westfield Lane, contrary to the relevant provisions of DMP Policies DM1 and DM3, which in summary seek to

protect the living conditions of neighbours. This is in a similar vein to the objectives of the National Planning Policy Framework insofar as living conditions are concerned.

Protected trees and ancient woodland

20. A number of mature trees exist within the appeal site and the site is subject to a group Tree Preservation Order (TPO).
21. Trees labelled T8 and T9 within the submitted details are located near the front of the site, adjacent to the proposed detached dwelling. These are large Pine and Sweet Chestnut trees which are highly visible along the A21, Westfield Lane and private vantage points. They contribute significantly to the verdancy of the site and street scene and are of high amenity value. The trees would be retained as part of the proposed works and would be positioned with the garden area of the new detached dwelling.
22. Within the appellant's arboricultural assessment, it is set out that it is possible to retain and protect the above trees as part of the proposed development. I am satisfied that this is the case based on the evidence before me, with adequate precautions and methods proposed to protect both the trees and root protection areas. Appropriate protections could be secured via condition were the scheme otherwise acceptable.
23. I acknowledge the concerns raised in respect of the position of the trees to the new dwelling, including in respect of shading. However, the area is characterised by spacious plots with established landscaping, punctuated by mature trees. These contribute to a baseline 'sylvan' character. Whilst I accept that, in theory, trees close to dwellings may impede living conditions, in this instance individuals electing to reside here would be aware of that surrounding context and, in all likelihood, place some considerable value upon it. As such, and given the protections in the TPO, there is limited potential for indirect pressure to prune/fell trees to arise in the future.
24. One Alder tree, labelled T1 and which is categorised C with reference to BS5837:2012 Tree Quality Assessment (Cat Grade), is proposed to be removed irrespective of any proposed development due to its poor health. In addition, one group of trees (Cypress) are proposed to be removed in order to accommodate the proposed development. These are also categorised C and are positioned to the front of the site. Given the limited scale and prominence of the group, and the health of T1, that is an assessment with which I agree. Moreover, evidence has been provided to indicate that the Council's tree officer did not object to the proposed development and that it would not be considered to have a significant adverse impact on existing trees on the site. I have no reason to disagree with these findings. In my view, their contribution to the area could be suitably compensated for by replacements, secured via condition, in the event that the appeal was allowed.
25. Notwithstanding the trees located within the appeal site, ancient woodland exists to the north of the site. The Framework sets out, at paragraph 180 c) that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused. That is unless there are wholly exceptional reasons, and a suitable compensation strategy exists. Ancient woodland is defined in the Framework as

an area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites.

26. Footnote 63 of the Framework, whilst only setting out examples and not being an exhaustive list, helps to demonstrate the nature or type of developments that would be considered as wholly exceptional. This includes nationally significant infrastructure projects where the public benefit would clearly outweigh the loss or deterioration of habitat. Guidance¹ recommends that for ancient woodland there should be a buffer zone of at least 15 metres provided between the boundary of the woodland and the proposed development to avoid potential root damage. Although I note the appellant's offer of a condition to remove permitted development rights in this respect and to provide a buffer within the site, I have insufficient substantive evidence before me to indicate whether or not a buffer of the type set out within Natural England's guidance exists, or could be provided here and consequently there is uncertainty as to the impact of the proposed development on the ancient woodland.
27. I have also had regard to the evidence relating to the nature of the woodland concerned in terms of flora and fauna, set out within the preliminary ecological appraisal. However, this relates only to the site and not to the ancient woodland. In this respect, I have carefully considered the appellant's claim, and associated evidence, that the site itself has a limited biodiversity value. Notwithstanding this and despite there being no objection from the Council's ecologist to the proposed scheme, I have insufficient substantive evidence before me that indicates the value and potential effect of development on the nearby ancient woodland.
28. I conclude that whilst I have identified no harm in respect to the trees on the appeal site, the submission fails to demonstrate that there would be no harm to ancient woodland as a result of the proposed development. As such, the proposed development would be contrary to the relevant provisions of DMP Policies DM1, DM3 and HN10 and PS Policies EN3 and EN4. This is in a similar vein to the objectives of the Framework insofar as the protection of trees and ancient woodland is concerned.

Other Matters

29. I acknowledge the economic, and social and environmental benefits of the scheme. This includes providing a contribution to housing supply in the borough through the windfall development of three three-bed family dwellings, providing employment, local spend and vitality to the community during construction and occupation. I also note the benefits of making use of a small site in a sustainable location, within the development boundary and near to bus stops and amenities and that the council would generate tax receipts upon occupation.
30. I, too, note the proposed use of renewable energy sources, energy and water efficiency measures, sustainable drainage systems and enhancements to biodiversity and landscaping, including the retention of mature trees.
31. Nevertheless, these benefits would inevitably be limited due to the scale of the scheme and would not therefore outweigh the harm that I have identified

¹Natural England and Forestry Commission: Ancient woodland, ancient trees and veteran trees: advice for making planning decisions

above and the resulting conflict with the development plan. Similarly, that the Council have accepted the principle of development is not reason to allow an unacceptable scheme.

32. Hastings Borough Council cannot presently demonstrate a five year land supply of deliverable housing sites. This means that the policies which are most important for determining the proposal are out of date in accordance with paragraph 11.d) of the Framework. However, bullet (i) of paragraph 11.d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including habitats sites, provide a clear reason for refusing the development. As I have explained, there would be harm to the ancient woodland. This provides a clear reason for refusing the proposed development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

33. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

A. Price

INSPECTOR