



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: 16 December 2022

Appeal Ref: APP/B1415/W/22/3297705

Land Adjacent to Sussex Road, Sussex Road, St Leonards on Sea, East Sussex TN38 0BS

- 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 Gallium Homes Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/19/00887, dated 5 November 2019, was refused by notice dated 29 October 2021.
 - The development proposed is the construction of 15 dwellings together with associated parking area.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Lewis & Co Planning against Hastings Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. At the appeal stage, amended plans with a revised site layout were submitted. Whilst an appeal should not be used to evolve a scheme, this predominantly illustrates updates to the southern part of the site, reducing the built form along this boundary. The number of units proposed would remain the same. The Council has been provided with the opportunity to comment on the plans at appeal, and I have taken them into account.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area, including heritage assets;
 - the effect of the proposed development on the living conditions of occupants of neighbouring properties, with particular regard to daylight, sunlight, outlook and privacy; and
 - whether the proposed development would provide satisfactory living conditions for future occupants, with particular regard to daylight, sunlight, outlook and privacy.

Reasons

Character and appearance, including heritage assets

5. The appeal site comprises a parcel of land positioned between Marina and Caves Road. It is accessed via Sussex Road. The site is currently disused and is occupied by an area of hardstanding and, on one side, a row of garages.
6. Properties of a varied scale and appearance exist within the surrounding area. These are predominantly in residential use. It is generally the case that properties of a greater scale, both in terms of footprint and height, front onto principal roads (Marina and Sussex Road) with properties of a generally smaller scale lining secondary roads (part of Caves Road).
7. The appeal site falls within Grosvenor Gardens Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of the CA lies, insofar as the appeal is concerned, in its arrangement of grand buildings fronting Marina and the seafront, with a backdrop formed of a steep cliff, upon which are pairs of ornate semi-detached properties.
8. The buildings forming 111-116 are Grade II listed buildings and are located adjacent to the appeal site. These are three-storey buildings finished in stucco and slate with ornate cast iron detailing. The properties are most clearly viewed from Marina. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving those listed buildings or their settings, or any features of special or architectural historic interest. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
9. I accept that the proposed development has been designed to incorporate some features of the surrounding area. This includes the use of materials and detailing. The proposed development would also make use of a derelict site which does not contribute positively to the significance of the CA and would effectively reinstate a northern building line along Caves Road, infilling the 'gap' in the urban fabric here.
10. Nevertheless, the scale, siting and design of the proposed development would fail to reflect or respect the local context or urban grain of the surrounding area. In particular, Caves Road is a narrow, secondary street which runs in parallel with the principal road of Marina, and to some extent Sussex Road. Properties fronting Marina and Sussex Road are generally of a greater scale and presence. The existing properties along Caves Road are more modest in their scale and plot size. Although evidence has been presented to demonstrate that buildings once lined Caves Road at this point, there is no indication that those buildings were of a plot width or scale similar to that proposed. Instead, the proposed development along Caves Road would appear as a single, large building, set close to the rear of the listed buildings.
11. Notwithstanding that the Council's conservation officer did not object to the proposed development, for the above reasons I consider that the proposal would harm the character and appearance, and hence the significance, of the

CA. The significance to the setting of the listed buildings would be harmed by the proposed development and would fail to be preserved.

12. Paragraph 202 of the Framework states that harm to a heritage asset might be defined as 'substantial' or 'less than substantial'. Whilst harmful, I consider the proposed development to give rise to 'less than substantial' harm. In line with the requirements of the Framework, this harm must be weighed against any public benefits.
13. There are clear benefits to the scheme from the perspective of contributing to housing supply within the borough, as well as the social and economic benefits this would bring during both construction (employment) and the bringing about of trade to nearby services and facilities upon occupation. I also note that the site is located in a reasonably sustainable location, near to existing services. However, these benefits are reasonably limited and would not, in my view, outweigh the harm I have identified above.
14. Consequently, the proposed development, by reason of its scale and siting, would harm the character and appearance of the surrounding area. It would fail to preserve or enhance that of the CA or the setting of the nearby listed buildings. As such, the proposed development would be in conflict with the relevant provisions of Policies DM1 and HN1 of the Hastings Development Management Plan (LP, 2015) and Policies SC1 and SC2 of the Hastings Planning Strategy (PS, 2014). These policies, in summary, seek to promote high quality design in development which responds to key characteristics of the area, including heritage assets. This is in a similar vein to the objectives of the Framework, insofar as good design is concerned.

Living conditions of neighbouring occupants

15. A number of windows exist within the rear elevation of Nos 111-114. Some of these appear to serve non-habitable rooms, fitted with obscured glazing or positioned within stairwells. Others are clear glazed and directly face the appeal site. Several clear glazed windows at 1-3 Sussex Road also face onto the site.
16. A daylight, sunlight and overshadowing assessment was submitted in support of the proposed development. The assessment uses the vertical sky component test and has regard to the Building Research Establishment's (BRE) '*Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*'. The assessment indicates that the adjacent windows serving properties along Marina and Sussex Road, insofar as the proposed development is concerned, would meet the criteria of the above guidance. In respect of overshadowing, it is indicated that the rear outdoor areas of Nos 111-114, being those most sensitive to change, are overshadowed by the existing properties. The level of sunlight to these areas would not be unacceptably affected by the proposed development. No outdoor areas linked to the Sussex Road properties sit directly adjacent to the site.
17. Based on the evidence before me, and my observations on site, I have no reason to doubt the conclusions of the submitted assessment. I am satisfied that the assessment demonstrates that the proposed development would not harm natural light levels to neighbouring units.
18. The main direction of outlook from the rear facing windows of properties backing onto the site, is currently over their short rear curtilages and through

the site, towards the cliff face. That of 1-3 Sussex Road is westwards through the site.

19. A limited separation distance would exist between the proposed development, at its nearest point and the rear elevation of Nos 113-114. As a result, the proposed development would undoubtedly bring built form close to the rear elevation these established properties. The resulting outlook from these rear facing windows would therefore be impacted and occupiers would likely experience an unacceptable sense of enclosure as a result of the proposed development. The separation distance between the proposed development and Nos 111-112 would be greater, allowing reasonable outlook from rear facing windows over the open area of the development, albeit occupants would experience a slightly greater sense of enclosure.
20. Notwithstanding the setback and the part single-storey nature of the proposed building relative to Nos 2 and 3 Sussex Road, outlook here would be significantly compromised.
21. In respect of privacy, the proposed development would introduce four storeys of windows within the proposed south facing elevation. At present, the occupants of 111-114 Marina benefit from reasonable privacy from the north by reason of there being limited built form in that direction. The proposed development would allow views from upper floor towards windows serving habitable rooms within No 111-114. As such, and irrespective of the precise separation distance here, the occupants of Nos 111-114 would experience an unacceptable loss of privacy as a result of the proposed development. I acknowledge the proposed use of condition to ensure that privacy screens are included in certain south-facing balcony locations. However, this would likely result in a poor standard of accommodation for the future occupiers of the proposed development and, in any case, would not overcome the impact of rear facing windows. Privacy to the occupants of properties fronting Sussex Road would be acceptable by reason of the lack of east facing windows within the northern building together with the reasonable separation distance between the established buildings and the southern block.
22. I am not convinced that the amended plans submitted with a revised site layout would satisfactorily overcome these issues.
23. Consequently, the proposed development would harm the living conditions of the occupants of neighbouring properties, with particular regard to privacy and outlook, contrary to the relevant provision of LP Policies DM1 and DM3, and PS Policy DS1, which in summary seek a good standard of amenity for occupants. This is in a similar vein to the objectives of the Framework, insofar as living conditions are concerned.

Standard of accommodation for future occupiers

24. The proposed development would comprise two blocks containing a total of 15 residential flats. A number of these would be dual aspect. Where single aspect, flats would not be north facing. Each flat would be provided with an area of outdoor space in the form of a balcony.
25. From the evidence before me, all flats would meet national space standards and I have no evidence to suggest that levels of daylight and sunlight would be unacceptable.

26. Outlook from the rear of Flat F1 would be limited by reason of the position of the southern block relative to its rear elevation. However, this unit would be served by multiple windows, including to the north. As such I find the level of outlook provided to be satisfactory. In respect of privacy, some flats would feature balconies in close proximity to their neighbour. Privacy screening to the sides of balconies could be conditioned in the event that the appeal was allowed to satisfactorily deal with this close relationship without compromising overall standards of accommodation.
27. Although I note the Council's reference to the quality of communal amenity space, I am satisfied that this would be satisfactory for an urban location such as this, particularly where the scheme provides units which would unlikely accommodate families.
28. Consequently, the proposed standard of accommodation for future occupants would be satisfactory, in accordance with the relevant provisions of LP Policies DM1 and DM3, and PS Policy DS1, which in summary seek a good standard of amenity for occupants. This is in a similar vein to the objectives of the Framework, insofar as living conditions are concerned.

Other Matters

29. In respect of affordable housing provision, a financial viability assessment was submitted with the application in support of the proposal which, at the time, included provision for 4 affordable units. At appeal stage, a revised viability assessment was provided. This sets out that the scheme would be unviable and could not support the provision of affordable housing.
30. The viability evidence in respect of costs and land value between the parties is widely divergent. Despite my concerns in that regard, I have no basis to question the appellant's updated assessments or their conclusions. Nevertheless, even were a S106 provided on this basis, it would not overcome the harm in respect of the other main issues.
31. I note the comments made in respect of delays in processing the original application, that the proposed development would meet a number of other planning policy objectives, and that there were no specialist officer objections. I also note the economic benefits of the proposed development, including the ability for the Council to raise additional council tax receipts.
32. Nevertheless, none of these matters change my conclusion on the main issue or outweigh the harm I have identified and the conflict with the development plan. The lack of objections from third parties or some specialist officers, the proposal's accordance with various other local policies and Framework provisions, and the Council's ability to raise tax receipts do not lead me to a different conclusion.
33. 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 heritage assets, provide a clear reason for refusing the development.

34. Although I consider that the standard of accommodation provided to be satisfactory and consider matters relating to affordable housing could be overcome, the proposed development would have a harmful effect on the character and appearance of the CA and setting of listed buildings. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

35. 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