



Appeal Decision

Site visit made on 9 January 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 1 February 2023

Appeal Ref: APP/B1415/W/22/3300773

Land adjacent to Tyrone Wildman House, Tile Barn Road, St Leonards on Sea

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 Oliver or Prestige Homes (South East) Ltd against the decision of Hastings Borough Council.

The application Ref HS/FA/21/00920, dated 29 September 2021, was refused by notice dated 17 December 2021.

The development proposed is residential development - pair semi-detached dwellings.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of the appeal are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposed development would provide acceptable living conditions for future occupiers, with regard to the provision of private external space; and,
 - whether sufficient information has been submitted with respect to land stability or any remediation measures.

Reasons

Character and appearance

3. The surrounding area is generally characterised by wide grass verges, with tall properties set back from the highway, this combines to create an open and spacious setting. Tyrone Wildman House contributes well to the setting of the area, as it reflects these characteristics and signifies the transition from commercial development to a more close-knit pattern of residential development further away from the appeal site.
4. It is not disputed by either party that the site was in a poor condition and not well maintained, prior to its current use for access to and the storage of materials for the construction of the neighbouring development to the east of Tyrone Wildman House. Notwithstanding the condition of the site, it provides a valuable break between Tyrone Wildman House and the commercial development, and positively contributes to the open character of the area.

5. Despite there being a number of other green spaces in the surrounding area, the loss of this space would have a detrimental effect on the spacious and verdant character of the area as it would remove an important gap in development.
6. Given the scale of the proposed dwellings, the implementation of a soft landscaping scheme surrounding the properties would not enhance the existing verdant character, when compared to the existing site. The topography of the site means the existing site is unlikely to be used as a formal amenity space. Nevertheless, it still contributes to the spacious setting of the street scene.
7. Although there is a dispute over the amount of separation between the proposed development and neighbouring properties, it is accepted that the appeal site narrows. Whilst the amount of hardstanding and built form proposed is comparatively less than neighbouring sites, the width of the development at the narrowing part of the site would mean there would only be modest separation from neighbouring development. The significant height of the proposed development reflects the neighbouring properties as well as the changing ground levels across the site and ensures there would be an efficient use of this land. However, the height combined with the modest separation from neighbouring properties would make the dwellings appear cramped and an incongruous feature within the wider pattern of development.
8. Although the proposal would be largely screened from wider views, it would still be visible from Gresley Road and Tile Barn Road and within neighbouring commercial developments.
9. The Council acknowledges that the detailed design and materials of the houses would not be out of keeping with the surroundings, as the dwellings are similar to neighbouring properties. However, the proposal would still appear cramped given the size of the site and separation from the neighbouring development.
10. I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the area. The appeal scheme is therefore contrary to Policy DM1 of the Shaping Hastings, Hastings Local Plan, Development Management Plan, September 2015, (DMP) and Policy SC1 of the Shaping Hastings, Hastings Local Plan, The Hastings Planning Strategy 2011-2028, February 2014, (PS) which require the proposal to protect and enhance the local character and require a high quality design which adds to the sense of place. The appeal scheme is also contrary to the guidance within paragraph 130 of the National Planning Policy Framework (the Framework) which requires decisions to ensure developments are sympathetic to the local character; and, the National Design Guide where it advises well-designed places are integrated into their surroundings to ensure they relate well to them.

Living conditions

11. The proposed garden areas would be directly overlooked by several windows in the side elevations of the neighbouring commercial property and Tyrone Wildman House. The elevated position of the commercial property would in particular allow views over the rear gardens. Whilst some level of overlooking of the rear gardens would be accepted and expected, especially in a hilly location, the proposed rear gardens would be directly overlooked by a significant number of windows. As such, the future occupiers would only be provided very limited privacy within their rear gardens.

12. It has been put to me that the extent of overlooking from the neighbouring commercial property would be reduced, given people would not be present in the building during traditional leisure times when future occupiers may want to use their gardens. However, I have not been presented with evidence of the operating hours of the neighbouring business and whether this is restricted by planning condition. I can therefore only give limited weight to the impact of the commercial property being empty at evenings and weekends on the extent of which the rear gardens are overlooked.
13. The appeal scheme is materially different from the five recently approved houses on Lancaster Road. Those houses back on to an elevation of the neighbouring commercial building that does not have any windows. Also, given the orientation of the properties, views of their rear gardens from flats within Tyrone Wildman House would be restricted. Additionally, occupiers of the flats would not expect the same level of privacy as a dwellinghouse, as the external spaces are shared.
14. I conclude that the proposed development would fail to provide acceptable living conditions for future occupiers of the proposed dwelling as it would not benefit from sufficient private external space. The appeal scheme is therefore contrary to Policy DM3 of the DMP which states that permission will be given for the development where appropriate levels of private external space are included. The appeal scheme is also contrary to the guidance within paragraph 130 of the Framework which requires decisions to ensure developments create places with a high standard of amenity for existing and future users.

Information relating to land stability

15. Although no land stability issues have been found on neighbouring sites, there is no visual evidence of contamination or land instability, and the Council has not requested this information for steeper sites, that does not mean land stability issues do not exist on the appeal site.
16. The SuDS Decision Support Tool for Small Scale Development document submitted with the planning application states, "*Ground stability problems may be present or anticipated*" and, "*It is recommended that an assessment of the ground conditions and associated hazards assessment be undertaken by a suitably qualified professional*". I do not have any evidence to address this concern raised within that document.
17. The need to submit further information could not be conditioned as it needs to be demonstrated that a remediation scheme would be possible if land instability exists.
18. The conduct of the Council during the determination of the planning application is outside the scope of my assessment on the acceptability of the appeal scheme. Also, the validation of an application does not mean a local planning authority has sufficient information to determine an application.
19. I conclude that insufficient information was submitted in relation to land stability and any remediation measures. The appeal scheme is therefore contrary to Policy DM5 of the DMP which indicates that planning permission will not be granted unless assessments of existing ground conditions are undertaken and submitted.

Other Matters

20. The lack of objection from neighbouring residents and consultees does not lead me to alter my judgement on the acceptability of the proposals.

Planning Balance

21. It is acknowledged that the Council cannot demonstrate a five year housing land supply. As such paragraph 11d) of the Framework is engaged. On the evidence before me, there are no specific policies in the Framework that provide a clear reason why the proposed development should be refused. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits.
22. The appeal scheme is in an accessible location where the principle of residential development is accepted, the proposed scheme would provide an active use for the site which was previously unmanaged and is said to attract fly-tipping. Also, the provision of two dwellings would help address the shortfall in housing. The proposed dwellings would also include climate change mitigation measures. These weigh in favour of the scheme. The appeal scheme therefore complies with paragraphs 120, 124 and 154 of the Framework, which require substantial weight to be given to the value of using suitable brownfield land within settlements for home; decisions should support development that makes efficient use of land; and, new developments should be planned in ways that can help reduce greenhouse gas emissions.
23. The proposal includes appropriate facilities for refuse storage, off-street parking, cycle parking, soft and hard landscaping, and there are no concerns in relation to ecology and drainage; the scheme also complies with the Nationally Described Space Standard. The appellant has also provided an appropriate site waste management scheme. These are all considered neutral factors.
24. As identified above the proposal would have a harmful effect on the character and appearance of the area as well as the living conditions of future occupiers.
25. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. The presumption in favour of sustainable development therefore does not apply.
26. There is also conflict with the development plan in relation to the lack of sufficient information submitted in relation to land stability. I have found the proposals would be contrary to DMP policies DM1, DM3 and DM5 and PS Policy SC1. These policies are generally consistent with the relevant aims of the Framework, and I attached substantial weight to them.

Conclusion

27. Therefore, for the reasons given above and having considered the development plan as a whole and all other material considerations including the Framework, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR