
Appeal Decision

Site visit made on 26 January 2022

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Appeal Ref: APP/B1415/W/22/3303204

Land at 19 The Byeway, Hastings, TN34 2AY

- 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 Christopher Davison for Davison Oxley Homes Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/22/00205, dated 23 March 2022, was refused by notice dated 1 June 2022.
 - The development proposed is described as proposed chalet style dwelling to replace existing detached garage together with alteration to front elevation of existing dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a chalet style dwelling to replace existing detached garage together with alteration to front elevation of existing dwelling. On land at 19 The Byeway, Hastings, TN34 2AY in accordance with the terms of the application, Ref HS/FA/22/00205, dated 23 March 2022, subject to the conditions set out in the schedule attached to this decision.

Preliminary matter

2. In their statement the council has confirmed that it has withdrawn the second reason for refusal. The appeal has been determined on this basis.

Main Issue

3. The main issue is the effect of the proposal on the character of the area.

Reasons

4. The Byeway sits parallel to Elphinstone Road and the two roads are separated by an area of woodland planting that runs from Langham Road to beyond Frairs Way. On the opposite side of the Elphinstone Road is a grass verge within the highway and a row of trees beyond the pavement. This planting together with the well treed wider setting to the appeal site contributes to verdant character and appearance of the local area.
5. The Byeway is a small cul-de-sac which comprises a diverse range of bungalows and chalet bungalows, which occupy an elevated position on land that rises to the west and north. The varied heights and designs of the dwellings are accentuated by the changing ground levels. The majority of the dwellings have similar front building lines and project close to their side boundaries. They also

- have similar sized front gardens which are used for a combination of parking and soft landscaping.
6. Conversely, at the southern end of the road the existing dwellings sit at an angle to the road and their tapered gardens result in narrow frontages. This reflects its position at the end of the cul-de-sac. The appeal site currently includes a modest sized bungalow served by two long driveways, which share a wide crossover. The driveways do not include on-site turning facilities, which is reflective of other properties in The Byeway.
 7. The easternmost driveway on the appeal site is particularly long. It runs alongside the eastern boundary of the plot and serves a double garage which is sited close to the rear boundary of the plot. Both the driveway and the garage are visually hard and utilitarian in appearance, although their appearance is softened by the tall evergreen boundary hedge and the woodland strip beyond the hedge. This driveway is separated from the existing dwelling by a triangular shaped area of soft planting.
 8. Together and amongst other things policy DM1 of the Hastings Local Plan Development Management Plan 2015 (DMP), and Policy SC(i) of the Hastings Planning Strategy 2014 (PS), require good standards of design, high quality distinctive architecture and the efficient use of resources. New development should protect and enhance local character and add to the sense of place.
 9. Paragraph 130 of the National Planning Policy Framework (Framework), similarly seeks to ensure that development is sympathetic to local character and maintains a strong sense of place. It should provide a high standard of amenity for existing and future users.
 10. The proposed dwelling would be sited within the existing driveway, just to the front of the existing garage, which would be removed. The dwelling would be set back several metres from the northern edge of the existing bungalow. It would comprise a modest sized chalet bungalow with 45° hipped gables to the front and rear and dormer windows facing towards Elphinstone Road. The smaller gable detail on the front elevation would visually break up and add interest to the appearance of the proposed dwelling. In addition, the type of external materials to be used in the construction of the proposed dwelling would respect the palette of materials used elsewhere in The Byeway.
 11. The proposed dwelling would be sited in excess of 4.7 metres from the adjacent projecting wing of the existing dwelling and its roof would be hipped away from the existing dwelling. In addition, the proposed dwelling would sit some 1.2 metres lower than the existing bungalow. As a result, although the proposed dwelling would be taller than the existing bungalow, the main bulk of the dwelling would be lower and the difference in height would be comparable to heights differences between other dwellings within The Byeway.
 12. Whilst the resultant plot sizes would be smaller than elsewhere in The Byeway, the gap between the proposed dwelling and the existing bungalow would be generous and would contribute to the spaciousness of the development when viewed from within street scene. The frontage of the proposed plot would be narrow, it would reflect the tapering of gardens around the end of the cul-de-sac and the depth of the setback of the dwelling from the road would be comparable to other dwellings within The Byeway.

13. To the front of the proposed dwelling the evergreen boundary hedge would be retained and the woodland planted area beyond would remain visible. On the opposite side of the proposed dwelling would be an area of new hedging and planting and immediately to the front of the dwelling the concrete driveway would be replaced with a permeable surface. As a consequence of its roof design, levels changes and the separation distance between the proposed and existing dwellings, the proposed development would appear spacious on the plot and within the street scene. Collectively these factors would result in the proposed dwelling having an active frontage and visually soft setting.
14. Due to its proximity to the woodland strip the proposed dwelling would be visible from Elphinstone Road through and above the existing planting. However, the dwelling would not intrude into this strip and there are numerous glimpses of dwellings within the woodland planting along Elphinstone Road.
15. For these reasons the proposed dwelling would respect and reinforce the character and appearance of The Byeway. The scheme is sympathetic to local character and maintains a strong sense of place, whilst making efficient use of this accessible residential site.
16. I conclude on the main issue that the proposal would respect the character of the area. Accordingly, it would comply with DMP Policy DM1, PS Policy SC(i) and paragraph 130 of the Framework.

Other considerations and conditions

17. The proposed dwelling would be sited to the north of 2 Langham Road (No.2), some 10 metres from the boundary and 24 metres from the dwelling at No.2. Accordingly, notwithstanding its elevated position the proposed dwelling would not be visually overbearing or result in a material loss of daylight or sunlight within the rear garden or dwelling at No.2.
18. Due to its proximity and elevated position, the proposed rear first floor bathroom window could lead to direct and unacceptable overlooking of the garden and towards the dwelling at No.2. Whilst the submitted drawings state that the window would be obscure glazed, the level of obscurity and whether the lower part of the window would be openable is not stated. However, as suggested by the council, a condition which controls the level of obscurity and prevents the bottom part of the window from opening would satisfactorily address this issue.
19. Concern has been expressed that any future extensions to the dwelling could harm the living conditions of the occupiers of the adjacent dwellings due to proximity and overlooking. The imposition of a condition which removes permitted development rights relating to extensions would satisfactorily address this concern. Similarly, as suggested by the council, a condition that secures appropriate boundary landscaping and screening would prevent direct inter-looking at ground floor level.
20. The proposed dwelling would be modest in size and located at the entrance to The Byeway. As such there is no reason why the occupation of the proposed dwelling would result in excessive levels of noise or disturbance for local residents. Whilst it is noted that two rather than three on-site parking spaces are proposed the Highway Authority has raised no objections because parking

along The Bayway is unrestricted. In this instance I have no reason to disagree with this view.

21. I agree with the council that the Revised Ecology Appraisal, submitted by the appellant satisfactorily addresses the concerns raised by the council and local residents concerning the possible impact of the development on wildlife habitats. This is provided the measures set out in the Preliminary Ecological Assessment (EA/101221) dated September 2021 and the Revised Ecological Appraisal dated July 2022 are fully adhered to. Similarly, the proposal should not result in material harm to any existing trees subject to the measures set out in the Tree survey Arboricultural Impact Assessment & Tree Protection Plan (AR/101221) prepared by The Mayhew Consultancy Ltd, dated March 2022. As suggested by the council, these are matters that can be dealt with by condition.
22. Regarding foul and surface water drainage and management, the council's delegated report states that a sewer runs through the site and that the site is within an area of constraint which relates to groundwater flooding. Details of the sewer are shown on the submitted drawings, although a copy of the overbuild agreement with Southern Water is not provided. The submitted SuDS report states that ground instability problems are likely present; infiltration is potentially limited; and that soakage tests should be undertaken to determine infiltration potential. The SuDS report refers to the use of rainwater harvesting and permeable pavements and provides typical diagrams for both.
23. Having regard to the above constraints and in view of the limited surface water drainage details shown on the submitted drawings, the foul and surface water drainage condition suggested by the council is both necessary and reasonable. It would ensure that the proposed development is satisfactorily drained and would not increase groundwater flood risk. It would also ensure that the development complies with DMP Policy DM5, which seeks to protect human health and water quality.
24. Finally, the council has suggested the imposition of conditions relating to a Construction Environment Management Plan; restricted hours of working during the construction period; soft and hard landscaping; the provision of the proposed parking areas; the provision of refuse and cycle storage facilities; climate change mitigation measures and adherence to the submitted drawings.
25. The above conditions are all necessary to protect the living conditions of existing and proposed residents, to protect existing wildlife and trees, to ensure the proposal respects the character and appearance of the site and its surroundings; in the interests of highway safety, to ensure the development is satisfactorily drained; to help mitigate against climate change; for the avoidance of doubt and in the interests of proper planning. However, the wording of some of the conditions suggested by the council has been modified and two of the landscaping conditions have been amalgamated. This is in the interests of consistency, clarity and to avoid duplication.
26. Both the council and the appellant have been consulted on the final wording of the suggested conditions. The council has raised no concerns and when the reasoning behind the bathroom window glazing and drainage conditions was provided the appellant's agent confirmed that they had no further comments.

Planning Balance

27. The council has confirmed that it cannot demonstrate a five year supply of deliverable housing land. The proposed increase in the number of dwellings on the site would make a very modest contribution to the supply of homes in the area. Notwithstanding this, as I have found that no harm would result from the proposal, there is no need to address this matter further and to undertake the planning balancing exercise referred to in the Framework.

Conclusion

28. For the reasons given above and having regard to all other matters raised, including the third party representations, I conclude that the appeal should be allowed.

Elizabeth Lawrence

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 6771/22/1/D, 6771/22/2, 6771/22/3/B, 6771/22/4, 6771/22/5, 6771/22/LBP, 6771/EX/1/A, 6771/EX/2, 6771/EX/3.
- 3) No works of demolition shall be undertaken until a Demolition and Construction Method Statement (DCMS) has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction periods. The DCMS shall provide for:
 - The sequence of demolition phases
 - Measures to control the emission of dust and dirt during each phase of demolition and construction measures to limit noise disturbance during demolition and construction
 - Method of removing rubble and spoil from the site
 - The arrangements for deliveries associated with all demolition and construction works, loading/ unloading of plant & materials
 - Storage of plant and materials used in demolition and construction
 - Wheel washing facilities
 - A scheme for recycling/disposing of waste resulting from demolition works
 - Details of public engagement both prior to and during construction works to ensure minimal disruption to adjoining residents.
 - Details of how any restoration of damage caused to the highway [including vehicle crossovers and grass verges] is to be carried out.
- 4) No development shall take place until temporary protective fences and other measures to safeguard the trees and hedges to be retained on the site have been erected in accordance with the details contained in the Tree Survey

Arboricultural Impact Assessment & Tree Protection Plan (AR/101221) prepared by The Mayhew Consultancy Ltd, and submitted as part of this planning application and to the satisfaction of the Local Planning Authority. All such fences shall be kept in a sound, upright and complete condition until the development has been completed or the Local Planning Authority confirm in writing that the works have been sufficiently completed for the fencing to be removed.

- 5) All ecological measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecology Assessment (EA/101221) September 2021 and the Revised Ecological Appraisal (July 2022) as already submitted and agreed in principle with the Local Planning Authority.
- 6) The construction of the development hereby permitted shall not commence until details of the proposed means of foul sewerage and surface water disposal/management have been submitted to and approved in writing by the Local Planning Authority. The designed system must take into account design standards of those responsible for maintenance, including details of who will be responsible for managing all aspects of the surface water drainage system, including piped drains and evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.
 - (i) Development shall be carried out in accordance with the approved details and no occupation of the dwelling hereby permitted shall occur until those works have been completed.
 - (ii) No occupation of the dwelling hereby permitted shall occur until the Local Planning Authority has confirmed in writing that it is satisfied, that the necessary drainage infrastructure capacity is available to adequately service the development.
- 8) Prior to commencement of any development above ground level, full details of the soft and hard landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved prior to the occupation of the dwelling hereby permitted or within the time scales agreed by the Local Planning Authority. These details shall include, but not be restricted to the following;
 - A proposed soft landscaping and planting plan,
 - A schedule of all plants, noting species, plant sizes, proposed numbers and densities (where appropriate) together with an implementation programme;
 - Finished levels or contours;
 - Means of enclosure/boundary treatment along the side and rear boundaries of the curtilage to the dwelling hereby permitted;
 - Details of the hard landscaping materials for the new parking area and patio along with method for dealing with water run-off;
 - Proposed and existing functional services above and below ground (eg drains, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same location.

All trees produced abroad but purchased for transplanting shall spend at least one full growing season on a UK nursery and be subjected to a pest and disease control programme. Evidence of this control programme, together with an audit trail of when any trees were imported, their origin and how long they have been in the nursery will be supplied to the Local Planning Authority prior to the commencement of any tree planting.

- 9) All planting seeding or turfing comprised in the approved Soft Landscaping Scheme shall be carried out in accordance with the approved details prior to the occupation of any part of the dwelling hereby permitted, or with the written agreement of the Local Planning Authority, in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner.
- 10) No development shall take place above damp proof course level until full details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 11) The dwelling hereby permitted shall not be first occupied until the parking and manoeuvring areas have been provided in accordance with the approved plan (6771/22/3/B) unless otherwise approved in writing by the Local Planning Authority in consultation with the Highway Authority. The parking areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
- 12) The dwelling hereby permitted shall not be occupied until details for refuse storage have been submitted to and approved in writing by the Local Planning Authority. If the refuse bins or storage area is located within a building, suitable ventilation and sound proofing, where appropriate, shall be included within the details. Details shall also include refuse bin collection points, where relevant. No part of the development shall be occupied until all of the approved details have been implemented. The refuse store and bin collection point shall thereafter be retained in perpetuity.
- 13) Prior to the occupation of the dwelling hereby permitted, details of cycle storage shall be submitted to and approved in writing by the Planning Authority and fully installed. The areas shall be thereafter be retained for that use and shall not be used other than for the parking of cycles.
- 14) The dwelling hereby permitted shall not be occupied until the first floor bathroom window on the rear elevation of the dwelling has been fitted with obscure glass to a minimum level of obscurity equivalent to Pilkington Texture Glass Level 3, or similar equivalent and is permanently fixed shut and non-opening below 1.7 metres from finished floor level of the bathroom. Once installed, the windows shall be permanently maintained in that condition.
- 15) With the exception of internal works the building works required to carry out the development hereby permitted must only be carried out within the following times:-
08.00 - 18.00 hours Monday to Friday
08.00 - 13.00 hours on Saturdays

No working on Sundays or Public Holidays.

- 16) Prior to the commencement of works above ground, details of appropriate climate change mitigation and adaptation measures as required by Policy SC3 and in accordance with the hierarchy of Policy SC4 of the Hastings Planning Strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 17) Notwithstanding the provisions of the Town and Country Planning [General Permitted Development] Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations to the dwelling hereby approved, permitted by Classes AA, B & C of Part 1 of Schedule 2 or AD of Part 20 of Schedule 2 of the Order shall be carried out without the prior written consent of the Local Planning Authority.