



Appeal Decision

Site visit made on 8 February 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/B1415/W/22/3291151

Land at rear of 23 Martineau Lane, Hastings TN35 5DS

- 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 J Pocknell against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00712, dated 26 July 2021, was refused by notice dated 15 November 2021.
 - The development proposed is erection of two to three storey detached dwelling (revision to HS/FA/17/00648) (part retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two to three storey detached dwelling at land at rear of 23 Martineau Lane, Hastings TN35 5DS in accordance with the terms of the application, ref. HS/FA/21/00712, dated 26 July 2021, and the plans submitted with it, subject to the conditions within the attached schedule.

Applications for costs

2. An application for costs was made by Mr J Pocknell against Hastings Borough Council. The cost application is the subject of a separate decision.

Preliminary Matters

3. It is not disputed by the Council and the Appellant that planning permission ref. HS/FA/17/00468 has been commenced and a hard landscaping scheme which re-contours land surrounding the property has been approved as part of a discharge of condition application, ref. HS/CD/18/00197, and cannot be revoked.
4. I understand that the property present on site is the subject of an enforcement case, which has been put on hold pending the outcome of this appeal. The application subject to this appeal is considered as a new application.
5. Following my site visit it was not clear whether the proposed development as shown on the application plans has been fully constructed. My assessment of the acceptability of the proposal is therefore based on the plans before the Council at the time of the planning application. I will therefore refer to the proposed development throughout my decision, although certain aspects may already be constructed.

Main Issue

6. The main issue of the appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

7. Martineau Lane and Mill Lane are both relatively narrow roads. There is a variety of property sizes in the area, these properties are often set back from the road and surrounded by relatively large driveways and/or gardens. The proposed dwelling would be particularly prominent in wider views from Mill Lane and Martineau Lane due to the surrounding topography and the height of the property. However, the relationship between the proposed dwelling and the road would be similar to other properties in the area, which are often tall and some are set above the narrow roads.
8. The proposed recontouring of the land is relatively minor when compared with the ground levels approved under the discharge of condition approval, ref. HS/CD/18/00197. Whilst the recontouring of the land around the property would make the property appear taller when viewed from Mill Lane, the prominence of the building from wider views would not be harmfully affected as the lower level would be largely screened by surrounding development and the boundary wall. The visual effect of the recontouring of the land would therefore be localised and largely constrained to views from Mill Lane. The proposed landscaping along the boundary and close to the proposed dwelling would further screen the property.
9. When viewed from the High Weald Area of Outstanding Natural Beauty (AONB) the proposed dwelling would be seen as a large dwelling surrounded by a large garden, similar to other properties in the area. The appeal site encroaches within the AONB, but this area is proposed to be largely soft landscaped. The recontouring of the land would have little effect on the appearance of the proposed dwelling when viewed from the AONB as it is located to the front and side of the building away from the AONB. It has also been put to me that the insertion of a window would break up a relatively blank façade, softening the appearance of the building. Given the above, there would not be a harmful effect on the setting of the AONB as the proposed dwelling would be in keeping with similar properties in the area.
10. The proposed development would not have a harmful effect on the character and appearance of the area. The appeal scheme therefore complies with Policy DM1 of the Shaping Hastings, Hastings Local Plan, Development Management Plan, adopted September 2015 and EN7 of the Shaping Hastings, Hastings Local Plan, The Hastings Planning Strategy, 2011-2028, adopted February 2014. These policies require proposals to reach a good design and protect and enhance local character; and protect the town's landscape including the AONB.

Other Matters

11. There is a detailed planning history associated with the appeal site and a significant number of comments have been made by interested parties regarding the validity of the perceived fallback position relating to the implementation of planning permission ref. HS/FA/17/00468 and ground levels approved as part of the discharge of conditions approval ref. HS/CD/18/00197. The main parties agree that the fallback position is valid and I have not been provided with substantive evidence that leads me to conclude that fallback position is not valid.

12. The conduct of the Council during the determination of various planning applications is outside of the scope of my assessment on the acceptability of the scheme.
13. It has been put to me that there has been intentional unauthorised development on the site. Whilst this is a material consideration, I have found that the proposed development is acceptable for the reasons given above. Therefore, even if there has been intentional unauthorised development it does not alter my assessment on the acceptability of the appeal scheme. Whilst similar in nature to previous applications on the site, this appeal scheme is a new application and as such it is not subject to the one retrospective application limit.
14. It has been put to me that allowing this appeal would undermine confidence in the planning system and encourage developers to build unauthorised developments. Given my decision considers the proposed scheme on the plans alone, I do not consider this would be the case. Likewise, a decision on whether or not to undertake enforcement action is a matter for the Council, this includes the presence of the retaining wall. The need for appropriate building control consents for existing development is also not a determining factor in this appeal.
15. I have not been provided with substantive evidence that the proposed drainage scheme could not be implemented; that land stability concerns persist or that the proposal would lead to highway safety concerns. Also, I consider that the conclusions of the Preliminary Ecological Appraisal and Arboricultural Report to be valid and I have not been provided with sufficient information to come to an alternative conclusion. I have also not been provided with sufficient evidence to demonstrate that the correct landowner notices were not served at the time of submitting the application.
16. Whilst a similar scheme was previously recommended for refusal by Council members, that was subject to judgement of the Council and that scheme was materially different as it didn't include a soft landscaping scheme.

Conditions

17. In the interest of certainty, conditions specifying timescales and approved plans are required. To ensure that the development is in keeping with the character and appearance of the surrounding areas, conditions specifying external materials and the landscaping scheme are also required.
18. To ensure there is appropriate foul sewerage and surface water drainage arrangements in place, a condition specifying these systems to be installed prior to the occupation of the dwelling is required. Similarly, to ensure highway safety, a condition requiring junction works to Martineau Lane and Mill Lane is required.
19. A condition restricting specific permitted development rights is not required. It would not be reasonable to restrict these rights to protect the setting of the AONB, when they are available to occupiers of other properties within the AONB. There is no unique reason why these rights should be restricted to this property.

Conclusion

20. The proposed development complies with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh this.
21. Therefore, for the reasons given above I conclude that the appeal is allowed, and planning permission is granted.

J Hobbs

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Landscape and External Details ref. 1634/LS2 Rev J
 - Drainage Drawings Site Plan ref. 5520/A1/01G
 - Junction Improvement ref. 5520/A2/01
 - Site and Block Plans ref. 1634/02 Rev L
 - Plans and Elevations ref. 1634/01 Rev L
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing ref. 1634/01 Rev L.
- 4) Prior to the occupation of the dwelling, the junction works between Mill Lane and Martineau Lane shall be carried out in accordance with drawing ref. 5520/A2/01 and shall be retained thereafter.
- 5) Prior to the occupation of the dwelling, the foul sewerage and surface water disposal/management system shall be installed in accordance with drawing ref. 5520/A1/01G and shall be retained thereafter.
- 6) Prior to the occupation of the dwelling, all landscaping works shall be carried out in accordance with drawing ref. 1634/LS2 Rev J.

All planting, seeding or turfing detailed in the approved landscaping scheme shall be carried within the first planting and seeding seasons, following the occupation of the building. If within a period of 5 years from the completion of the development, a tree is uprooted or destroyed or dies, another tree of the same species and size as that originally planted shall be planted in the same location.

The landscaping scheme shall be retained thereafter.