



Appeal Decision

Site visit made on 20 March 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2023

Appeal Ref: APP/D3830/W/21/3289527

Garages to rear of 34-56 America Lane, Haywards Heath

- 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 Rayfords LLP against the decision of Mid Sussex District Council.
 - The application Ref DM/21/2129, dated 27 May 2021, was refused by notice dated 11 November 2021.
 - The development proposed is the demolition of existing garages and erection of 8 new dwellings (6 x one bedroom flats and 2 x two bedroom flats).
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of existing garages and erection of 8 new dwellings (6 x one bedroom flats and 2 x two bedroom flats) at the garage block to rear of 34-56 America Lane, Haywards Heath, RH16 3QB in accordance with the terms of the application, Ref DM/21/2129, dated 27 May 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have been provided with a copy of a signed Section 106 Agreement dated 31 May 2022, which commits the appellant and any successors in title to the financial contributions identified by the Council as necessary to fund infrastructure improvements essential to make the proposal acceptable. The Council has confirmed that this would address their fourth reason for refusal. Therefore, I have confined my assessment of this appeal scheme to the remaining reasons for refusal.

Main Issues

3. The main issues are the effect of the proposed development on the i) character and appearance of the area; ii) living conditions of existing neighbouring properties with specific regard to privacy; and iii) living conditions of future occupiers with specific regard to amenity space.

Reasons

Character and appearance

4. The appeal site consists of a ribbon of single storey garages to the rear of America Lane in Haywards Heath. The appeal site gradually slopes down and away towards Boston Road in the south. The surrounding area is mainly residential, albeit to the front of the site is a small parade of shops that front America Lane with flats above. Access to the site is via a utilitarian road that

bisects Boston Road and is a shared access serving the existing garages, whilst providing servicing arrangements for the ground floor commercial premises on America Lane and access to the flats above. The overall character is made up of mainly two and three storey semi-detached and terrace dwellings arranged in a tight layout.

5. The proposal would demolish the existing single storey garages and replace these with a linear two-storey flatted development consisting of 8 dwellings and associated car parking. As stated above, the surrounding area comprises a mixture of semi-detached and terraced houses which are closely arranged around the crescent of Boston Road. The urban grain of the surrounding area is relatively low level, with areas of low-density housing interspersed with some modern flatted schemes such as Fenway House located close to Haywards Heath Football Club.
6. The existing site has a linear arrangement, which limits the scope for development. Thus, the provision of a flatted scheme in a similar alignment would be appropriate in the streetscene, in my view. The appeal site is at an elevated level relative to dwellings at the rear of Boston Road, but conversely sits on a lower level relative to properties that front onto America Lane, and thus the provision of the two-storey development with pitched roofs would sit comfortably in the area in respect to height and scale.
7. The proposal would provide for denser form of development in comparison to the surrounding dwellinghouses, however the scheme has utilised the site well and would result in a positive visual relationship within the immediate street scene. Nevertheless, it is acknowledged that the amenity areas of the proposed development and the overall plot sizes appear smaller than the neighbouring properties. These properties contain suitably sized front and rear gardens, which despite providing a tight layout make a positive contribution to the surrounding area. In this context, given the proposed development fronts the access road, it would be at odds with the character of neighbouring dwellings.
8. However, given its linear nature and the existing functionality of the rear of America Lane, the proposal would not represent a poor layout or appear unduly cramped, given that it is responding to the existing suburban pattern. Given the topography levels and the separation distances between the appeal scheme and surrounding properties, the proposal would also be appropriate in this location. The materiality of the scheme is important in the area, and whilst the details are highlighted on the plans, these are matters that can be subject of a condition, to allow for further detailed design. Overall, the layout, scale, and height would respect the domestic character and appearance of the area.
9. The proposed development would sit well within the surrounding area and would be a high-quality design response to the constrained site, making efficient use of previously developed land within an appropriate location. As such, it would not harm the character or appearance of the area in accordance with Policy DP26 of the Mid Sussex District Plan (MSDP) and Policies E9 and H8 of the Haywards Heath Neighbourhood Plan (HHNP), which among other things seek a high-quality design and layout which protects local character with regard to height, scale, spacing, layout, orientation and design of buildings to make the best use of the site to accommodate development. The proposal would also be consistent with the aims and objectives of the Mid Sussex Design Guide Supplementary Planning Document (SPD) and Paragraph 130 c) of the

National Planning Policy Framework (the Framework) insofar as it requires development to be sympathetic to local character.

Living conditions of existing neighbouring properties

10. The Council are concerned that the proposal would result in a loss of privacy via the planned front windows at first floor level, given the proximity to the flatted units and their gardens in America Lane. Also, there are concerns in respect to privacy levels in the rear gardens of Boston Road from the rear facing rooflights of the proposal.
11. The upper level of the scheme would be visible from many properties in the surrounds, but as stated above, two-storeys would not be out of place in this locality. The spacing between the proposal and the properties fronting America Lane has been highlighted as approximately 18m, which is an adequate separation distance such that there would not be a sense of undue imposition or dominance. I appreciate that the two-storey scheme would be closer to the private rear areas of these units, and I accept that there could be a perception of overlooking from the proposed front windows. However, these areas already experience direct overlooking from the existing upper floor windows within America Lane itself. In this context, I do not consider that the additional openings proposed at first floor level at the front would result in significant harm.
12. With regard to the rear elevation and impact on the rear gardens at Boston Road, I accept that the views would alter as a consequence of the development. However, all the roof lights at the rear of the site serve either non-habitable rooms or are dual aspect habitable rooms, as such these could be conditioned to contain no clear glazed openings. Subject to the condition, the design of the proposed development would ensure that existing residents would not experience any loss of privacy from the upper floor. In regard to the ground floor openings at the rear, these would not present any adverse issues as they would all be mitigated by the likely boundary treatment surrounding the site.
13. For the reasons above, I conclude that the proposal would not result in harm to the living conditions of the existing occupiers of the adjoining dwellings with particular reference to overlooking. The scheme would be compliant with MSDP Policy DP26 and Principle DG45 of the Mid Sussex Design Guide SPD which amongst other things, are concerned with housing quality and protecting residential amenity in respect to overlooking and loss of privacy. The proposal is also consistent with the advice in the Framework, which amongst other things, seeks high quality design and a good standard of amenity for all existing and future occupants of buildings.
14. I also find no conflict with Principles DG46, DG47 and DG48 of the Mid Sussex Design Guide SPD, which principally relate to usable external amenity space, daylight and sunlight, and noise, air and light pollution respectively. The content of these are largely irrelevant to the specific issues relating to overlooking identified.

Living conditions for future occupiers

15. The constraints of the site prevent any private outdoor amenity provision to the front of the proposal and the Council are concerned that this lack of defensible

space, would create unsatisfactory accommodation in terms of the amenity. I acknowledge that the tight nature of the appeal site restricts the opportunity for significant amenity space, however with the exceptions of units 7 and 8, all the other units have private amenity space. The ground floor units at nos. 1, 4 and 5 have a modest rear amenity area of approximately 10m², while units 2, 3 and 6 at the first floor have the provision of modest private balconies.

16. I have been presented with no evidence that there is a minimum requirement in the Local Plan for the provision of outside amenity space. However, Policy E13 of the HHNP does provide guidance that amenity space should be commensurate with the size and type of dwelling and the character of the area. Given that the proposal is for 1-bed and 2-bed units it is unlikely that the units would be used for family accommodation. In this context, coupled with the restrictive nature of the site, the scheme would provide proportionate amenity space for most units.
17. It is acknowledged that units 7 and 8 would not benefit from any external amenity space, and no alternative compensatory measures are proposed to directly offset this shortfall. However, from my site observations I noted that there is public open space available in the area, such as Barn Cottage Recreational Ground located in a short walking distance from the appeal site, that offers practical and good outside amenity space.
18. Nevertheless, in the circumstances I conclude that there would be conflict with the pertinent elements of MSDP Policy DP26 and HHNP Policy E13 which seek to secure good quality and sufficient external amenity spaces.

Other Matters

19. I recognise that the proposal has generated public interest, with several consultation responses submitted in response to the planning application and further representations submitted at appeal. I have taken into account all of the other matters and concerns raised in the submissions by the interested parties, which include but are not limited to, the need for development, access, parking, traffic safety, drainage, and land ownership issues.
20. In terms of need, each scheme is required to be considered on its own merits and circumstances. Nevertheless, the Framework requires a significant boosting of the supply of homes and the MSDP emphasises the importance of small windfall sites in meeting housing needs. As such the proposal would make a modest but valuable contribution to the provision of housing required by Mid Sussex District Council.
21. In regard to parking and traffic safety, the scheme provides a suitable level of off-street parking and there are no parking restrictions in this section of Boston Road. As such there is little substantive evidence to suggest that the effects of the development would make the existing parking levels materially worse or that the development would have a materially harmful effect on traffic or highway safety.
22. The Council consider the concerns relating to access and drainage can be mitigated through the use of conditions. I agree and have therefore included appropriate conditions.
23. In terms of land ownership, a small section of land along the access route appears to be under a separate ownership not that of the appellant. It would

therefore be incumbent for the appellant to acquire the necessary right of access to be able to implement any permission.

24. The Council have also highlighted that the appeal site is located outside a 7km zone of influence around the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). The Council has confirmed that there would be no likely significant effects, alone or in combination, on the Ashdown Forest SPA and SAC from the proposed development and I see no reason to disagree with this conclusion.

Planning Obligations

25. The Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework state that planning obligations must only be sought where they meet all of the relevant tests.
26. The Section 106 agreement sets out the planning obligations which include additional facilities to local primary and secondary schools; a contribution to the District Councils infrastructure requirements; a contribution to local library stock; and a contribution for transport infrastructure. The legal agreement is therefore necessary to make the development policy compliant, is related directly to the development and provides a fair and reasonable contribution from the appellant related in scale and kind to the proposal.

Conditions

27. I have considered the Councils suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary for the sake of consistency, brevity, clarity and to ensure that they meet the tests in the Framework.
28. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. I have imposed a condition in respect to material specification in order to ensure an acceptable visual effect.
29. In the interests of highway safety and residential amenity, I have imposed a requirement for a Construction Management Plan (CMP) which is necessary to submit prior to the approved development commencing. I have also added hours of construction works, deliveries and no burning of construction materials within the requirements of the CMP.
30. I have imposed a condition in respect to surface water drainage and foul and surface water sewerage disposal arrangements to reduce the risk of flooding and ensure that no additional pressure is placed on the existing drainage system.
31. To ensure that any contamination on the site is dealt with adequately in the interests of the health of future occupiers, a condition requiring surveys and remediation is imposed which is necessary to submit prior to the approved development commencing. I have also added a condition pertaining to the submission of a verification report prior to occupation to ensure any necessary remediation works have been carried out.

- 32. I have attached a condition securing obscured glazing on rear rooflights to protect living conditions of neighbouring properties, from the proposed development, in terms of privacy.
- 33. I have added that the recommendations of the sustainability section within the submitted Design and Access Statement are delivered to achieve sustainability objectives.
- 34. I have also imposed a condition to ensure that there is appropriate parking provision, and a suitable car parking layout is maintained in the interests of highway safety and the living conditions of future residents.
- 35. I have not imposed a condition removing permitted development rights for alterations to the roof and for restricting outbuildings, given that the approved development comprises of a flatted scheme that would not be subject to these permitted development rights. Consequently, this suggested condition does not meet the necessity test for planning conditions.

Planning Balance and Conclusion

- 36. The appeal proposal would fail to provide adequate outdoor amenity space for all future occupiers, which are shortcomings conflicting with the aforementioned policies and bring the proposal into conflict with the development plan, when taken as a whole.
- 37. However, the appeal proposal would make reuse of an existing previously developed site in a sustainable location, providing 8 small dwellings to the local housing stock and in all other respects, providing satisfactory living conditions for future occupants whilst protecting those of neighbouring occupiers. The proposal is of a high standard of design and would not harm the character and appearance of the area.
- 38. Taking into account the thrust of the Framework to boost the supply of housing and provide increased densities where appropriate to do so, the social, environmental and economic benefits that would result from the construction of the building, despite its modest scale, are such that it indicates that a decision should be taken other than in strict accordance with the development plan. I therefore conclude that the appeal should be allowed.

Robert Naylor

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: TA 1283/01 Rev A; TA 1283/10 Rev B; TA 1283/11 Rev B; TA 1283/12 Rev A; TA 1283/13 Rev A; TA 1283/14 Rev A; TA 1283/15 Rev A; TA 1283/16 Rev A; TA 1283/17 Rev A; TA 1283/18 and TA 1283/19
- 3) No development (excluding demolition) shall take place until details and/or samples of materials and finishes to be used for the external walls and roofs of the proposed buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and/or samples.
- 4) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,
 - the anticipated number, frequency and types of vehicles used during construction,
 - the method of access and routing of vehicles during construction,
 - the timing of deliveries,
 - the construction hours,
 - the parking of vehicles by site operatives and visitors,
 - the loading and unloading of plant, materials and waste,
 - the storage of plant and materials used in construction of the development,
 - the erection and maintenance of security hoarding,
 - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
 - details of public engagement both prior to and during construction works,
 - no burning of demolition/construction waste materials shall take place on site.
- 5) No development shall take place, including any works of demolition, until details of the proposed foul and surface water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. No building shall be occupied until all the approved drainage works have been carried out in accordance with the approved details. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation

of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development should be in accordance with the approved details.

- 6) No development shall take place, including any works of demolition, until the following components of a scheme to deal with the risks associated with contamination of the site, including the identification and removal of asbestos containing materials, shall each be submitted to and approved, in writing, by the Local Planning Authority:
 - a) A preliminary risk assessment which has identified
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways, and receptors
 - potentially unacceptable risks arising from contamination at the siteand, unless otherwise agreed in writing by the Local Planning Authority,
 - b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; and, unless otherwise agreed in writing by the Local Planning Authority,
 - c) Based on the site investigation results and the detailed risk assessment (b) an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- 7) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority a verification plan by a competent person showing that the remediation scheme required and approved has been implemented fully and in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action shall be identified within the report, and thereafter maintained
- 8) The development hereby permitted shall not be occupied/brought into use until all the rear rooflights have been fitted with obscured glazing, and no part of those openings that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the openings are installed and once installed the obscured glazing shall be retained thereafter.
- 9) The development shall be carried out in accordance with the Sustainability section within the Design and Access Statement submitted as part of the application and dated May 2021. On completion of the development, an independent final report shall be prepared and submitted to the Local Planning Authority to demonstrate that the proposals in the Statement have been implemented.

- 10) No part of the development hereby permitted shall be occupied until the car parking has been constructed in accordance with the approved site plan. These spaces shall thereafter be retained at all times for their designated purpose.