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# Appeal Decision

Site visit made on 5 June 2023

**by Andrew Smith BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> June 2023**

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**Appeal Ref: APP/M2270/W/22/3311885**

**16 Westbrook Terrace, Royal Tunbridge Wells TN2 5BP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ms Meg West against the decision of Tunbridge Wells Borough Council.
  - The application Ref 22/02585/OUT, dated 25 August 2022, was refused by notice dated 24 October 2022.
  - The development proposed is outline application for 1no. dwelling.
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## Decision

1. The appeal is allowed and outline planning permission is granted for 1 no. dwelling at 16 Westbrook Terrace, Royal Tunbridge Wells TN2 5BP in accordance with the terms of the application, Ref 22/02585/OUT, dated 25 August 2022, subject to the conditions set out at the end of this Decision.

## Preliminary Matters

2. It is apparent that a new Local Plan is emerging. However, as it is my understanding that the examination process is continuing and there is nothing before me to indicate this process to be at a very advanced stage, I attach limited weight to the new Local Plan's emerging policies and shall consider the appeal on this basis.
3. The appeal proposal is for outline planning permission with all detailed matters reserved for future approval. Whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of access, appearance, landscaping, layout and scale as a guide to how the site might be developed.
4. Whilst access is a reserved matter, it is a requirement<sup>1</sup> to state the area or areas where access points to the development proposed shall be situated. It is apparent from the submitted evidence that the site would be accessed on foot via Westbrook Terrace in the approximate location of an existing pedestrian gate. I shall consider the appeal on this basis.
5. For the avoidance of doubt, with the exception of a plan<sup>2</sup> detailing the site's location and existing layout, I have treated the submitted plans<sup>3</sup> for indicative purposes only and not for determination. Indeed, should the appeal be successful, the appellant would not be tied to such plans as there could be alternative ways of developing the site.

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<sup>1</sup> of The Town and Country Planning (Development Management Procedure) (England) Order 2015

<sup>2</sup> 182533 01A

<sup>3</sup> 182533 02A; 182533 03; 182533 04; 182533 05

## **Main Issues**

6. The main issues are:

- The effect upon the character and appearance of the area; and
- Whether or not acceptable living conditions would prevail for future occupiers of the proposed dwelling, having particular regard to privacy.

## **Reasons**

### *Character and appearance*

7. The site is comprised of a parcel of residential garden land situated to the west of, and fenced off from, No 16 Westbrook Terrace (No 16). Whilst for the most part grassed, the site contains other planting, including trees and hedges. This planting tends to be located along its boundaries. To the east of the site lies two adjacent rows of terraced housing, each of two storey height. Other terraced and semi-detached houses occupy often well-vegetated plots in nearby locations northward of Westbrook Terrace. This includes to the immediate rear (north) of the appeal site, where terraced properties front Boundary Road. Meanwhile, the southern side of Westbrook Terrace is abutted by the more spacious and often well-planted rear gardens of large detached two storey properties that front Whybourne Crest. As such, a mixed yet often spacious and green residential character and appearance is identifiable local to the site. The appeal site, not least through providing well-vegetated space between neighbouring development, makes a positive contribution to this character and appearance.
8. The proposal would, to some degree, erode the spaciousness of the area. Further, in a location dominated by two-storey properties of the same era of construction with main garden spaces set to the rear, a new-build bungalow is indicatively proposed with its main area of garden inevitably positioned to the side due to the shape constraints of the site. As such, when also noting the consistent setback positions of terraced dwellings to the east and the envisaged proximity of new development to Westbrook Terrace, the proposal would not be anticipated to wholly reflect the typical composition and layout of other properties/plots in the locality.
9. Nevertheless, to the northern side of Westbrook Terrace there is no regimented pattern associated to how private garden spaces are laid out, and the appeal site's area coverage broadly conforms with the size of various adjoining and nearby plots. Moreover, even though envisaged to be set closer to Westbrook Terrace when compared to neighbouring development to the east, a single storey dwelling would be expected to have a discreet and low-key presence in a location visible from a somewhat limited range of potential vantage points.
10. Existing on-site planting is not protected and is often deciduous such that it could not be relied upon to provide continuous buffers to views in perpetuity. I have factored this into my considerations. Even so, it remains relevant that no significant tree or hedgerow removals would be directly necessitated by the indicative proposal before me. This includes with respect to a well-established hedge that runs along the site's southern edge. As such, even should existing perimeter planting ultimately be reduced in height, the site's green character, and the softening effects of the site's southern boundary treatment, would be fairly anticipated to endure long into the future post-development.

11. Thus, the proposed dwelling, if to be brought forward at single storey height and in broad accordance with the indicative plans before me, would not be experienced as an obviously discordant addition nor lead to any significant harm to the character or appearance of the area. Instead, for reasons set out above, the proposal would cause some limited harm to the character and appearance of the area. The scheme conflicts with Core Policies 4 and 5 of the Tunbridge Wells Borough Core Strategy (June 2010) (the CS) and Policy EN1 of the Tunbridge Wells Borough Local Plan (March 2006) (the LP) in so far as these policies require the Borough's locally distinctive sense of place and character to be conserved and enhanced.

*Living conditions – privacy of future occupiers*

12. To the north, the appeal site is faced by the rear of a neighbouring two-storey row of terraced properties whilst, to the east, it is addressed by the side elevation of No 16. The neighbouring row of properties to the north is served by various first floor window openings to habitable rooms. No 16, at first floor to its west-facing flank, is served by a single window opening of slimline design set beyond a single-storey side extension to that property. To the south of Westbrook Terrace, neighbouring properties are significantly distanced from the site beyond expansive, sylvan gardens.
13. The indicative floor plans and elevations that are before me demonstrate how a bungalow could be positioned upon the site in proximity to the site's eastern and northern boundaries with no north-facing openings. Such an arrangement would significantly limit the potential for sensitive overlooking opportunities to prevail. It is also important to note that the neighbouring properties to the east and north are set back from the appeal site. As such, immediate uninterrupted views over significant portions of the proposed dwelling's private garden would not be anticipated to materialise. This is especially when factoring in the indicative intention to retain and supplement existing planting to the site's perimeter.
14. It should also be noted that the site occupies an urban location where a degree of mutual overlooking is already commonplace between neighbouring occupiers. In this context, having particular regard to privacy, I am satisfied that acceptable living conditions would prevail for future occupiers of the proposed dwelling. The scheme satisfactorily accords with Policy EN1 of the LP in so far as this policy requires adequate residential amenities to be provided for future occupiers of the development.

**Other Matters**

15. Concerns have been raised that the proposal would set a precedent for other similar forms of development in the local area. However, it is my responsibility to consider the proposal before me upon its own individual merits at this particular point in time. Nevertheless, for the avoidance of doubt, given the differences between the patterns of development observable to either side of Westbrook Terrace, there is no obvious reason to consider that development at the appeal site could justify future development proposals to the immediate rear of Whybourne Crest-fronting properties.
16. The proposed dwelling, if constructed at a single storey as indicatively illustrated, would not give rise to overlooking, overshadowing, or any unacceptable loss of outlook for neighbouring occupiers. Furthermore, any

future residential use of the site could not be fairly anticipated to lead to any unacceptable noise or odours to the detriment of neighbouring living conditions.

17. My attention has been drawn to the limited parking opportunities that avail local to the site. Whilst some parking for residents of Westbrook Terrace is available at its eastern end, this area is not expansive and it is my understanding that, perhaps unsurprisingly, these spaces are often in high demand and in limited supply during peak parking periods. Other possible parking opportunities in the area are limited and often subject to restrictions. For example, along Maryland Road I observed availability to be somewhat restricted whilst, at a nearby public car park off Hawkenbury Road, set opening hours apply.
18. Even so, the site occupies a well-connected urban location with various facilities and services realistically walkable/cyclable from the site. Such facilities include close by bus stops for services to and from the centre of Tunbridge Wells. Indeed, the site's location satisfactorily promotes sustainable travel choices such that car ownership would not necessarily be essential for future occupiers. In this context, any increase in demand for parking in the locality would realistically be limited and could not be fairly anticipated to have a detrimental impact upon highway safety. Further, the Highway Authority has raised no objection to the proposal and set out that there would be no severe impact upon highway safety. This is a matter of importance as it is they who are responsible for the safety of users of the local highway network.
19. Various interested parties have questioned the ability for existing services/utilities to be connected to. However, for the purposes of my planning considerations, there is no clear reason to doubt the potential for this urban site to acquire adequate connections. For example, Southern Water have, through their consultation response, set out its requirement for a formal application for connection to the public foul sewer to be made, and confirmation of the approach to be taken to disposing of foul water from the site could be secured via condition should outline planning permission be granted. Further, I am unaware of any objection to the proposal from any relevant statutory undertaker.
20. I also note here that, should the appeal be successful, a full schedule of any energy saving/sustainable construction measures to be installed could be appropriately considered and secured at detailed planning stage once the final scheme design is known.
21. It has been alleged that the proposal would be in breach of a legal covenant that restricts house building upon the site. However, this is a civil/legal matter of no direct material relevance to the outcome of this planning appeal. It is thus unnecessary for me to explore this matter any further.

## **Planning Balance**

22. As indicated at paragraph 11 to the National Planning Policy Framework (July 2021) (the Framework), the presumption in favour of sustainable development is engaged in circumstances that encompass where the policies most important for determining a scheme are out-of-date. This includes, with respect to proposals for housing, where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites.

23. The Council has accepted that it cannot currently demonstrate a five-year supply of deliverable sites. This is despite my understanding that large building projects have been completed or approved in the area in recent times. Indeed, a current 4.49-year supply of housing land is set out in the Council's Appeal Statement. As such, the presumption in favour of sustainable development is engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
24. I have identified conflict with Core Policies 4 and 5 of the CS and Policy EN1 of the LP, which are, in broad terms, consistent with the Framework in so far as it promotes well-designed places and development sympathetic to local character. For reasons I have already set out, the proposal, in the context of these policies, would cause some limited harm to the character and appearance of the area.
25. Nevertheless, the proposal would provide one additional dwelling in a Borough where there is an identifiable housing land supply deficit. As set out in the Framework, it is a Government objective to significantly boost the supply of homes. The benefit of an additional housing unit in the well-connected urban location in question attracts considerable weight. In addition, the proposal would encourage investment in the local economy at both construction and occupation stages. Given the scale of development under consideration, these additional benefits attract limited weight.
26. Having considered the benefits and adverse impacts of the scheme before me, I conclude that the harm and associated policy conflicts that I have identified (relating purely to the scheme's character and appearance effects) would not significantly and demonstrably outweigh the proposal's benefits when assessed against the Framework's policies taken as a whole. As such, the presumption in favour of sustainable development, as set out in the Framework, applies.
27. Thus, notwithstanding the identified conflict with development plan policies, there are material considerations, including the Framework, that indicate that the proposal should be determined otherwise than in accordance with the development plan in this case. As such, the appeal should be allowed.

### **Conditions**

28. The Council has suggested several conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and have omitted others.
29. In the interests of certainty, a condition confirming the approved plan is reasonable and necessary. In the interests of promoting a high quality and safe development and protecting neighbouring living conditions, a condition requiring full details of any external lighting, of cycle and bin storage arrangements, and of a domestic sprinkler system to be installed is reasonable. I note here that there is no clear reason to consider that the proposed development would exacerbate or increase fire safety risk, nor that a fire appliance would be unable to station itself suitably close to the site if required.

30. In the interests of protecting the residential amenity of the area and highway safety, a Construction Management Plan (CMP) is reasonable and necessary to secure. This is particularly important given the absence of vehicular access to the site and the need to ensure that continuing pedestrian access along Westbrook Terrace is not prejudiced by construction activities to include the transportation of materials and equipment to the site. On the basis that such activities are properly planned and professionally executed, there is no clear reason to consider that the movements/safety of footpath users would be compromised during the construction phase of the development.
31. Similarly, due to the restrictions and constraints that apply at each of Westbrook Terrace's ends, careful thought shall need to be applied to plans for construction parking, turning, and loading/unloading. Indeed, subject to practicalities, it may be appropriate to direct parking to a location remote from Westbrook Terrace and its ends. In any event, due to merely a single dwelling being developed, construction-related vehicles and their associated movements would not be fairly anticipated to be excessive in number, and the duration of works would, realistically, be non-extensive. I also note that the Highway Authority has recommended a CMP condition and has raised no highway safety objections. I am content, therefore, that a robust CMP would be suitably securable via condition in the interests of ensuring no prejudice to highway safety or living conditions during the construction phase of development.
32. In the interests of securing biodiversity enhancement, a scheme of enhancement is reasonable and necessary to secure. Moreover, the indicative proposal before me would not necessitate any significant or widespread removal of existing planting and tree/hedge protection measures could be agreed or required by condition at detailed planning stage. In this sense, I am content that biodiversity enhancement would be possible and that no protected species, including bats, would be adversely impacted upon by the proposal (including during the scheme's construction phase). Moreover, any suggestion made that bats likely roost at the site has not been robustly substantiated. I also note that the Council has not raised concerns in this specific regard.
33. To ensure that suitable surface water and foul water drainage provisions are installed at the site, a condition to secure the submission of a drainage scheme is reasonable and necessary. In the interests of protecting the character and appearance of the area, a condition securing full details of the external facing materials to be utilised is also reasonable and necessary to impose.
34. As landscaping is a reserved matter, it is not necessary to impose a condition requiring a scheme of hard and soft landscaping to be submitted. Indeed, full landscaping details would necessarily be considered at detailed planning stage. Further, it is unclear what reserved parking and turning space the Council's suggested draft Condition 10 refers to. Moreover, the proposal's red line area does not incorporate land realistically accessible to vehicles such that a condition to this effect would be both imprecise and unenforceable.

## **Conclusion**

35. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

*Andrew Smith*

INSPECTOR

### **Schedule of Conditions**

- 1) Approval of the details of the access, layout, scale, landscaping, and appearance (hereafter called "the Reserved Matters") shall be obtained from the Local Planning Authority in writing before development commences and the development shall be carried out as approved.
- 2) Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun not later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plan: 182533 - 01(A).
- 4) No development shall take place until full details regarding the following aspects of the development have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details:
  - The detailed design of any external lighting and its siting.
  - Cycle storage to accommodate up to two bicycles, to include the location, size and external appearance.
  - Bin storage, to include the location, size and external appearance.
  - A domestic sprinkler system to defend against fire.
- 5) Prior to the commencement of any development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include the following details and be implemented in full during the construction phase of development:
  - Routing of construction/delivery vehicles and construction materials/equipment to and from the site.
  - Parking and turning areas for construction and delivery vehicles and site personnel.
  - Timing of deliveries and confirmation of working hours on site.
  - Provision of wheel washing facilities.
  - Temporary traffic management/signage.
  - Measures to manage the production of waste and to maximise the re-use of materials.
  - Measures to minimise the potential for pollution of groundwater and surface water.
  - Measures to guard against obstructions to the movement of pedestrians along Westbrook Terrace.
- 6) Prior to the commencement of site clearance, demolition or construction, a scheme to achieve biodiversity enhancement at the site, to include any relevant measures to safeguard protected species, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved measures, which shall, wherever possible, be retained in perpetuity.

- 7) Prior to the commencement of development, a scheme of surface water drainage and sewage disposal, to be designed in accordance with the principles of sustainable urban drainage, shall be submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water. The approved details shall be implemented in full and retained thereafter.
- 8) Prior to the commencement of above-ground works, written details and photographic samples, including source/manufacturer, of the materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.