



Appeal Decision

Site visit made on 20 June 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 03 August 2023.

Appeal A Ref: APP/T1410/W/21/3285809

Land at Shortdean Place, Eastbourne BN21 1SA

- 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 Ken Wilson (Woodhill Building) against the decision of Eastbourne Borough Council.
 - The application Ref: PC/200765 dated 2 March 2020, was refused by notice dated 1 May 2021.
 - The development proposed is revised application for two in number two bed detached houses in Shortdean Place, Eastbourne
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Appeal B Ref: APP/T1410/W/21/3310964

Land at Shortdean Place, Eastbourne BN21 1SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Kenneth Wilson (Woodhill Building) against Eastbourne Borough Council.
 - The application Ref: 220294 was dated 11 April 2022.
 - The development proposed is planning application April 2022 for 3 no. 2 bedroom detached houses each with on-site parking for one vehicle - two visitor parking spaces and 3 no. allocated remote garages
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Decisions

Appeal A Ref: APP/T1410/W/21/3285809

1. The appeal is allowed and planning permission is granted for two in number two bed detached houses in Shortdean Place, Eastbourne at land at Shortdean Place, Eastbourne BN21 1SA in accordance with the terms of the application Ref: PC/200765 dated 2 March 2020, subject to the conditions set out at the end of this decision letter.

Appeal B Ref: APP/T1410/W/21/3310964

2. The appeal is dismissed, and planning permission refused.

Preliminary Matters

3. Both appeals relate to different forms of residential development of the same site, one for two houses and the other for three houses. I am aware that there has been a number of proposals for residential development of this site. The

Appellant has referred to earlier outline applications at the same site which were taken to appeal. Both appeals were refused under the Refs APP/T1410/20/3248607 and APP/T1410/W/20/3253438. The Appellant indicates that the proposals before me seek to address the matters raised in the appeal decisions. Whilst I have been provided with and have taken the appeal decision into account, I have not been provided with the scheme plans, and my decision is based on the proposals before me.

4. I have amended the address in the first appeal to refer to Land at Shortdean Place, to be consistent with Appeal B. Furthermore, I consider this to be a more accurate description as the appeal site only relates to a parcel of land within Shortdean Place.
5. The Council refused permission for the first appeal before me but has not provided the Officer's report leading to that decision or a statement at the appeal stage. In respect of the second appeal before me, this is against the failure of the Council to determine the application in the prescribed timescale and there is therefore no decision notice or officer's report at the application stage. Furthermore, the Council has not provided an appeal statement in respect of this proposal.

Main Issues

6. On the basis of my site visit and the information before me, including representations from neighbours, I consider that the main issues in these appeals are:
 - a) The effect of the proposal on the character and appearance of the local area and
 - b) The effect of the proposed development on the living conditions of existing and future occupants, with particular regard to outlook, overlooking and loss of privacy.

Reasons

Issue a) Character and Appearance

7. The appeal site relates to land at the south western end of Shortdean Place, a cul de sac leading off Milton Road, with modest two storey blocks of flats set in communal space. The appeal site is generally unused and open land at the rear of Nos 71 and 73 Milton Road. There are some garages to the immediate east of the appeal site. The properties in Milton Road to the west of the site are predominantly semi-detached residential properties with some detached houses, with gardens of varying lengths. There is therefore a varied appearance to the immediate local area, but with a predominant pattern of spaciousness, particularly with the communal open space around the flats.

Appeal A

8. The two detached properties would be set on good sized plots with over 9 m between the two properties. This space between the properties would be used for tandem parking and soft landscaping. There would also be narrower margins to the side boundaries of the site.
9. The properties would be of traditional appearance over two stories and under pitched roofs, using brick with render and tiled roofs. The proposed houses

would sit comfortably within their plots in terms of the relationship of built development to open space.

10. Although the properties would be set on smaller plots than those in Milton Road, there is in my view sufficient variety in the pattern of development in the local area, including semi-detached and detached houses as well as blocks of flats that the two detached houses could be readily assimilated into the street scene. Furthermore, their spacing in relation to each other as well as in respect of the surrounding development would maintain the sense of spaciousness which is characteristic of the local area.
11. I am therefore satisfied that the proposed development of two detached dwellings would respect the character and appearance of the local area. There would be no conflict with Policies D5 and D10A of the Eastbourne Core Strategy Local Plan and Policies UHT1 and HO6 of the Eastbourne Borough Plan, as well as the National Planning Policy Framework (Framework) and in particular Section 12, all of which seek amongst other matters a high quality design which respects the local context.

Appeal B

12. The spacing between the three dwellings and between the dwellings and the side boundaries would be limited and as a result the development would appear cramped within the site and discordant with the more generous spacing of development found in the locality.
13. The cramped form of the development would be exacerbated by the parking arrangements. To achieve adequate parking to serve the development, some of the parking would extend to include part of the adjoining highway as well as three separate garages some distance from the houses themselves.
14. The combined effect of these factors would result in a cramped and overdeveloped appearance. This would detract from the much more spacious pattern of development in the surrounding area.
15. I therefore conclude that the proposed development of three detached dwellings would not respect the character and appearance of the local area. There would be conflict with Policies D5 and D10A of the Eastbourne Core Strategy Local Plan and Policies UHT1 and HO6 of the Eastbourne Borough Plan, as well as the National Planning Policy Framework (Framework) and in particular Section 12, all of which seek amongst other matters a high quality design which respects the local context.

Issue b) Living Conditions

Appeal A

16. The proposed dwellings would be two storeys with the ground floor projecting further to the rear than the upper floor. There would be habitable accommodation at both levels with windows facing to the rear. The properties in Milton Road to the rear of the appeal site are set at a higher level and again appear to have windows serving habitable rooms at the rear over both ground and first floor levels. The land then slopes down from the properties in Milton Road to the appeal site.

17. I have not been directed to any guidance produced by the Council which sets out preferred distances between existing dwellings and proposed dwellings to safeguard the amenities of both existing neighbouring residents and future residents of the proposed houses. The information provided by the Appellant indicates that there would be some 26 m between the rear windows of the neighbouring properties in Milton Road, and the first floor rear facing windows in the new houses.
18. The outlook would change from the rear facing windows and rear gardens of the houses in Milton Road with the introduction of the new dwellings, but I am satisfied that the new houses would be sited at a sufficient distance and at a lower level, that they would not be overbearing or introduce a sense of enclosure; they would not therefore harm the outlook for the existing residents in the existing properties. Although the properties in Milton Road are set at a higher level, I also consider that the incoming residents of the new houses, would benefit from an acceptable outlook from the rear facing windows and rear garden areas, given the distances to the properties in Milton Road.
19. I am also satisfied that the distances between the rear facing windows in the existing properties and in the proposed dwellings would be sufficient to ensure that there would be no material harm for either the existing residents or the incoming residents of the new houses, in terms of overlooking and loss of privacy. There would be some overlooking of parts of rear gardens but this is not an unusual situation in suburban areas. In addition, the boundary treatments would be the subject of conditions to ensure that they assisted in reducing any opportunity for overlooking, particularly from the gardens of the new houses towards the properties in Milton Road.
20. The houses would be closer to the side boundaries of gardens to houses in Milton Road, but these properties benefit from very long rear gardens. Given the length of the gardens and the distance to the houses, I am satisfied that, although the outlook from within parts of the rear gardens would change, there would be no material harm to the living conditions of these neighbours. Furthermore, the windows in the side elevations at first floor of the new houses are indicated to be in obscure glass and conditions would be imposed to ensure the use of obscure glass so that there would be no overlooking and loss of privacy.
21. Concerns have been raised by local residents regarding overshadowing and loss of light. I have no technical information before me in this regard but consider that the distances between the existing and proposed properties would not result in any material loss of light or overshadowing which would justify a refusal of permission.
22. Although smaller than some of the surrounding gardens, I consider that the garden sizes would be functional and adequate to serve the size of the houses proposed.
23. I am therefore satisfied that the proposed development under Appeal A would not materially harm the living conditions of either the existing residents in Milton Road or the incoming residents of the new houses, with particular regard to outlook and overlooking and loss of privacy. There would be no conflict with Policy B2 of the Eastbourne Core Strategy Local Plan and Policy HO20 of the Eastbourne Borough Plan as well as the Framework and in particular Paragraph

130, all of which, amongst other matters, seek a high quality of design which respect the amenities of existing and future occupants.

Appeal B

24. There is limited information provided with Appeal B, particularly with regard to the potential distances between the rear of the proposed houses and existing houses in Milton Road. Although it is not clear, it would appear that the three houses would need to be set deeper into the site, to enable a parking space to be created in front of two of the dwellings, which would then reduce the length of the rear gardens to serve the new properties. Furthermore, the submitted plan with the elevations refers to the proposed development of the two houses, rather than the three which relates to this proposal.
25. Whilst my findings in respect of Appeal A would be partly applicable to Appeal B, in the absence of more precise and clearer information, I cannot be certain that the living conditions of both the existing residents in Milton Road and the incoming residents to the new dwellings would not be materially harmed. Furthermore, the outlook from the rear of the properties in Milton Road would be to a more solid mass of development with limited spacing between the proposed housing, compared with the proposal under Appeal A.
26. I am not therefore satisfied under Appeal B that there would be no material harm to the living conditions of both the existing residents and incoming residents, with particular regard to overlooking and loss of privacy as well as outlook. This would conflict with Policy B2 of the Eastbourne Core Strategy Local Plan and Policy HO20 of the Eastbourne Borough Plan as well as the Framework and in particular Paragraph 130, all of which, amongst other matters, seek a high quality of design which respect the amenities of existing and future occupants.

Other Considerations

27. I have taken into account the representations raised by local residents, a number of these matters are addressed under my two main issues. The status of the existing site is not agreed and I have insufficient information before me to address whether the land would be properly regarded as *previously developed land* but there is nothing before me to indicate that it is protected green space. I do not consider that the small scale of the developments proposed would lead to any highway and parking concerns although I have found that the parking arrangements proposed under Appeal B would not respect the character and appearance of the local area. Concerns relating to drainage can be addressed by condition.
28. A number of concerns have been raised about the amount of housing development being undertaken in and around Eastbourne, but my consideration must necessarily relate to the planning merits of the schemes before me.
29. A number of the comments raise matters which are not directly planning related and my decision is solely based on its planning merits.

Planning Balance

30. There are a number of references in the Appellant's submission to a local housing crisis but the Council's position in respect of its five year housing land supply has not been set out. I have noted that at the time of the previous

appeal decision for the same site in 2020, the Council could demonstrate less than 2 years of a housing land supply, but I have no information as to how this might have changed in the intervening period. In respect of both Appeals A and B and when judged against some of the core planning principles the proposal would perform well in that they would be generally well located, where access to facilities and services is likely to be greatest. There would be modest attendant socio-economic benefits related to the provision of the new houses, both at the construction stage and through the activities of future occupants.

Appeal A

31. In respect of Appeal A and as I have already found no harm from the development, there is no need for me to address this matter further and to undertake a planning balance exercise.

Appeal B

32. In respect of Appeal B, I have found that the proposal would not respect the character and appearance of the local area and I cannot be satisfied that the living conditions of the existing neighbours and future residents of the new dwellings would not be materially harmed. Even if the Council were unable to demonstrate a 5 year supply of deliverable housing sites, and Paragraph 11 d) of the Framework were engaged, when assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conditions

(Appeal A only)

33. In terms of conditions, the Council has not proposed any conditions it would wish to see imposed. This is a full application for planning permission but nonetheless I consider that further details are required in terms of hard and soft landscaping and boundary treatments, to protect the character and appearance of the local area as well as the amenities of existing and future occupants. To protect the character and appearance of the local area, details of all external materials are also required.
34. Details of cycling and refuse stores as well as electric charging points are required to be submitted and implemented as well as further details of the access arrangements for the two houses, to ensure a satisfactory development incorporating sustainability measures. The access and car parking spaces are required to be in place prior to occupation of the dwellings to ensure that there are no highway or pedestrian safety issues.
35. In the interests of the amenities of surrounding residents and to ensure highway safety, a construction environmental management plan is required. Drainage details have not been specified and these require to be submitted and approved and then appropriately managed to minimise the risk of flooding.
36. In the particular circumstances of this case and given the relationship with neighbouring properties, I consider that permitted development rights should be removed for future extensions and alterations including additional windows, to

enable any such proposals to be considered on their planning merits. Although shown on the approved plans, I have included a condition to require the first floor windows in the side elevations to be in obscure glass and non openable below 1.7 m above the finished floor level of the room they are in, given the proximity of the proposed houses to the side boundaries.

37. In order to be effective, it is my view that the conditions relating to the construction environment management plan and drainage require to be pre-commencement conditions. In accordance with Section 100ZA (5) of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, I have therefore requested and received the Appellant's written agreement to the imposition of these conditions. Although the Appellant will not have had sight of all of the other conditions, they are in my view standard conditions to be expected, and I am therefore satisfied that neither the Appellant nor any other party will be prejudiced from their imposition.

Conclusion

Appeal A

38. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

Appeal B

39. For the reasons given above and having regard to all other matters raised, I conclude that the scheme fails to accord with the development plan taken as a whole, and there are no material considerations, including the Framework, that indicate a decision other than in accordance with the development plan. Therefore, this appeal should be dismissed and planning permission refused.

L J Evans

INSPECTOR

Schedule of Conditions: Appeal A Ref: APP/T1410/W/21/3285809

(Conditions 1 – 9 inclusive)

- 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: Drawing No 2r; Drawing No 4; Drawing No 8b; Drawing No 01f; Drawing No 3f.
- 3) Written details of all facing materials, including details of windows and solar panels, and samples if requested, used in the external surfaces of the development, hereby approved, shall be submitted to and approved in writing by the Local Planning Authority prior to any construction above slab level and shall thereafter be implemented in accordance with the details approved.

- 4) Written details of proposed hard and soft landscaping together with all boundary treatments and biodiversity enhancement measures for the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority prior to any construction above slab level. The landscaping and biodiversity enhancement measures shall be undertaken in accordance with the approved details in the first planting season after the completion or first occupation of the development whichever is the sooner, and thereafter be retained and maintained in accordance with the approved details.
- 5) Prior to the commencement of the development hereby permitted, a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details as appropriate and shall include, but not be restricted to, the following matters:
- the anticipated number, frequency and types of vehicles used during construction;
 - the method of access and egress and routing of vehicles during construction;
 - the parking of vehicles by site operatives and visitors;
 - the loading, unloading and storage of plant, materials and waste;
 - the times of any deliveries related to the development,
 - the erection and maintenance of security hoarding;
 - details of wheel washing, or any other measures to mitigate the impact of construction upon the public highway
 - details of public engagement both prior to and during construction works;
 - hours of construction;
 - details of all mitigating measures to ensure protection of neighbouring occupants from environmental pollution;
 - assurance that no burning of material will take place on site; and

Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period.

- 6) Prior to the commencement of the development hereby permitted, a Surface Water Drainage Scheme shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme shall include the following:
- a) Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be limited to 10 l/s for all rainfall events, including those with a 1 in 100 (plus climate change) annual probability of occurrence.

- b) The details of the outfall of the proposed drainage system and how it connects into the sewer shall be submitted as part of a detailed design including cross sections and invert levels.
- c) The detailed design shall include information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely.
- d) The detailed design of the surface water drainage features shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. If this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system should be provided.
- e) a Management Plan for the future management of the surface water drainage system

The implementation of the surface water drainage scheme shall thereafter be carried out in accordance with the approved details prior to the first occupation of the dwellings hereby approved and then retained and maintained in accordance with the approved Management Plan.

- 7) Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted, further details shall be submitted and approved in writing by the Local Planning Authority of:
 - a) The access arrangements for each house and car parking details;
 - b) Covered and secure cycle store;
 - c) Covered refuse and recycling store;
 - d) Electric charging points

The details shall be implemented as approved prior to first occupation of the development hereby permitted, and thereafter retained and maintained.

- 8) Prior to first occupation of the development hereby permitted, the windows in the side elevation at first floor level in both houses hereby permitted shall be in obscure glass and non-openable below 1.7m of the finished floor level of the room they shall be installed. They shall thereafter be retained and maintained as installed.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement or extension, window, dormer window, roof light or door other than those expressly authorised by this permission shall be constructed without planning permission obtained from the Local Planning Authority to the dwellings hereby approved.