



Appeal Decision

Site visit made on 4 April 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd August 2023

Appeal Ref: APP/D3830/W/22/3301392

96A Railway Approach, East Grinstead, West Sussex RH19 1BP

- 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 Steve Hatswell against the decision of Mid Sussex District Council.
 - The application Ref DM/22/0843, dated 13 March 2022, was refused by notice dated 5 May 2022.
 - The development proposed is a two storey, one bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The address in the heading above has been taken from the application form, albeit that the reference to West Sussex has been made after East Grinstead rather than preceding as shown on the application form.
3. The description of development in the planning application form contains a typographical error referring to "tow storey" rather than "two storey" as contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted, consulted upon, determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the area;
 - The living conditions of the nearby occupier at No 92B Railway Approach in respect to overbearing and outlook effects;
 - The living conditions of future occupiers with regard to amenity space; and
 - The integrity of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

Reasons

Character and appearance

5. The appeal site is located to the rear of 96A Railway Approach and accessed via a small pedestrian walkway. The site is undulating, sloping down and away from front to back. The area is well screened by established vegetation and adjoins St. Leonards Park residential estate. The surrounding area is mainly mixed use, being close to East Grinstead railway station and East Grinstead town centre which provides a variety of retail and commercial facilities alongside residential accommodation. Many of the developments that front Railway Approach and London Road consist of commercial units at ground floor with residential units above, alongside other denser forms of flatted development. As such, dwellings with limited amenity space are a feature of the surrounding character.
6. The proposal is for a contemporary two-storey dwellinghouse and associated amenity space. The proposed unit would be set some distance behind the front building line of the adjacent properties of Nos. 92, 92B, 94 and 96 Railway Approach, however it would be located amongst other modest built forms, notably at 92B and the single storey garages at the rear of the flatted development in Glen Vue. The properties on the appeal side of Railway Approach do not follow a rigid built line. The adjacent properties have no discernible rhythm or pattern, including the purpose-built estate at St. Leonards Park, which provides a more clustered appearance in terms of built form. Furthermore, there are nearby examples of properties in back land positions similar to that proposed under the current appeal. These include the adjoining site at no. 92 Railway Approach, along with the dwelling at the rear of 'Thai Siam', neither which front onto the main road.
7. Consequently, the appeal development would not be out of keeping with the established built form of development. Whilst the proposal is two-storey, it would be positioned in an undulating piece of land which slopes away from Railway Approach to the north. The topography, back land position and extensive established green vegetation could comfortably accommodate the proposal, providing adequate screening of the site, thus mitigating any views from public vantage points. Furthermore, the more contemporary form of design, the use of the sedum roof, vertical cladding and hurdle fencing would soften its appearance, blending it into its surrounds.
8. Overall, the design, layout, scale, massing and materials of the proposed development would not be out of keeping with the area's sloping terrain and mix of buildings and uses. For these reasons, the proposed development would have an acceptable impact upon the character and appearance of the area. It would accord with Policy DP26 of the Mid Sussex District Plan (MSDP) adopted March 2018 and Policy EG3 of the East Grinstead Neighbourhood Plan (EGNP) 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 nearby occupier

9. The Council have found that there would be no impacts on the living conditions of the nearby residents at St. Leonards Park, the properties on Glen Vue or residents at Nos 4 and 8 Glenside, and I have no evidence to disagree with this assessment.
10. In regard to the impacts on the upper floor flat at No 92B, the proposal would be set in close proximity to the rear windows serving the flat at first floor level, and thus would provide views predominantly of the sedum roof. Given that the proposal would be of a modest height and scale, set away from the boundary and at a topographically lower level, this would reduce the visual impact of the proposal, such that it would not be considered significantly dominant or overbearing.
11. From my site observations there is a prevalence of reasonably tight relations between buildings in the vicinity, and given the town centre location, this provides an established and distinct townscape, as such any outlook would be one of a built-up environment. It is acknowledged that any increase in height from the existing site would clearly have an impact on outlook for this neighbour. However, given the existing tightly arranged developments in the surrounding area, this is to be expected within an urban setting such as this.
12. I have noted the occupant of 92B has referred to being registered disabled, but have been provided with little more detail than this. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that disability constitutes a relevant protected characteristic for the purposes of PSED.
13. Nevertheless, I do not consider that the proposed development would be significantly overbearing or would result in a significant reduction in outlook, and so would not cause significant harm to the living conditions of the nearby occupier at No 92B Railway Approach. In this regard it would comply with MSDP Policy DP26 which amongst other things seeks new development to be well designed and reflect distinctive character whilst not causing significant harm to the amenities of existing nearby residents and future occupants including impact on outlook.

Living conditions of future occupiers

14. The proposed development would meet with the minimum internal space requirements for new dwellings contained in the Government's Nationally Described Space Standard, March 2015 (NDSS). However, MSDP Policy DP26 among other things, requires new development to provide high quality design and defined public and private realms for the occupiers of both the existing and new developments. In addition, the Framework expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards.
15. The constraints of the site prevent any private outdoor amenity space provision at the rear, however the proposal provides approximately 20m² of amenity space located at the front of the site instead. The amenity area whilst not

traditional in its location, would provide an adequate level of outdoor living space, providing space for tables and chairs, washing lines and other domestic paraphernalia to be accommodated here. Given that the proposal is for a 1-bedroom dwelling, it is unlikely to be used for family accommodation. In this context, coupled with the restrictive nature of the site, the scheme would provide proportionate amenity space for the unit, in an area where private amenity space is limited.

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, and whilst modest, the space does not appear to be either cramped or unusable. Furthermore, given its layout, any overlooking of the proposed garden between the appeal site and the surrounding properties would be minimal, thus protecting privacy.
17. As such, I conclude that the appeal proposal would not conflict with the pertinent elements of MSDP Policy DP26 and the guidance contained in Principle DG45 of the SPD which among other things seek to secure good quality and sufficient external amenity spaces, whilst avoiding direct overlooking of private amenity space from habitable rooms in neighbouring properties. The proposal would also accord with the Framework, which amongst other things, seeks high quality design and a good standard of amenity for all existing and future occupants of buildings.

Integrity of the Ashdown Forest SPA and SAC

18. Policy DP17 of the MSDP highlights that mitigation measures are necessary to counteract the effects of a potential increase in recreational pressure and are required for developments resulting in a net increase in dwellings within a 7km Zone of Influence (ZoI) of the Ashdown Forest SPA and SAC. The appeal site is located within the 7km ZoI. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA and SAC, either alone or in combination with other plans and projects.
19. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me as the competent authority.
20. The Ashdown Forest SPA was designated in 1996 covering an area of 3,207 hectares. Located in the High Weald of East Sussex, within Wealden District, and together with the nearby Wealden Heaths SPA and Thames Basin Heath SPA, the Ashdown Forest SPA forms part of a complex of heathlands that support breeding bird populations of European importance, in particular the Nightjar and Dartford Warbler. In 2005 the further designation as the Ashdown Forest SAC was included which covers 2,700 hectares. The Ashdown Forest SAC contains one of the largest single continuous blocks of lowland heath in South-East England with Northern Atlantic wet heaths with *Erica tetralix*, European dry heaths and Great Crested Newts.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

21. The evidence shows that the SPA and SAC are under significant pressure from an increase in population nearby and a consequent increase in public access to the SPA and SAC for recreational purposes, including dog-walking. This increased disturbance, would be harmful to the protected Dartford Warbler and Nightjar breeding populations and to the heathland habitat from increased local pollutant sources like road traffic emissions as a result of urban development.
22. There would be a likelihood of future occupiers visiting the SPA and the SAC. Natural England has advised that the proposed development would be likely to result in recreational disturbance to the bird populations and heathland habitat. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
23. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA or SAC. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a tariff based Strategic Access Management and Monitoring Strategy (SAMM) along with a Suitable Alternative Natural Greenspace (SANG) strategy, as set out in the Ashdown Forest SPA SAMM Tariff Guidance, updated October 2019 and the East Court & Ashplats Wood SANG Tariff adopted October 2014 respectively.
24. The guidance identifies that mitigation could take the form of management of recreational activities, access/visitor management and habitat management. I note that the appellant has submitted a signed Unilateral Undertaking (UU) which has been accepted by the Council and Natural England (NE). This would provide a financial contribution of £1,170.00 towards SANG to attract people away from the Ashdown Forest SPA and SAC and thus reduce pressure on them. The UU would also provide £886.00 toward SAMM to reduce the impact of visitors to these areas. NE have confirmed that they are satisfied that the proposed financial contributions towards SAMM and SANG to mitigate the effect on Ashdown Forest SAC and SPA is sufficient to avoid an adverse impact to the integrity of the European Sites and relevant features.
25. However, even if I was to accept this as mitigation, the planning obligation is flawed. The separate land registry entry shows Stephen Ashley Hatswell and Amanda Elizabeth Hatswell of Harwood House, Harwoods Lane East Grinstead RH19 4NQ to be the registered owners of the site. This is different to the corresponding information provided on the application form, the appeal form and on the obligation itself, as Station Approach does not appear to be a street in East Grinstead. Consequently, I am not satisfied that the intended mitigation would be secure, and I therefore give it no weight in my determination.
26. Given this I cannot be certain that the UU would be effective in mitigating harm to the Ashdown Forest SPA and SAC. As such, it would be contrary to DP17 of the MSDP, which seeks to ensure the integrity of the SPA and SAC are protected through the demonstration that adequate measures are put in place to avoid or mitigate any potential adverse effects.

Conclusion

27. The proposal would have an acceptable effect on the character and appearance of the area and an adequate and proportionate effect on the living conditions of nearby and future occupiers. However, the unacceptable harm that would be caused to the integrity of the Ashdown Forest SPA and SAC would outweigh this.

28. For the reasons given above, the appeal is dismissed.

Robert Naylor

INSPECTOR