



Appeal Decision

Site visit made on 18 July 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/B1415/W/22/3306683

**Land rear of Ashbrooke Lodge, 268 Sedlescombe Road North, Hastings
TN37 7JL**

- 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 Gillam against the decision of Hastings Borough Council.
- The application Ref HS/FA/21/00574, dated 8 June 2021, was refused by notice dated 11 March 2022.
- The development proposed is the erection of two chalet bungalows and associated hard and soft landscaping.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:
 - i) the living conditions of existing residents at 39 and 40 Wadhurst Close with specific regard to outlook and privacy;
 - ii) foul and surface water drainage;
 - iii) the character and appearance of the area;
 - iv) the living conditions of future occupants with specific regard to noise and disturbance; and
 - v) biodiversity.

Reasons

Living conditions of existing residents

3. The existing properties most effected by the proposal are 39 and 40 Wadhurst Close, which adjoin the appeal site at the rear. Given the sloped topography, the proposed dwellings are located in an elevated position in respect to these properties.
4. With regard to No 40, there is an existing dormer window in the flank elevation at roof level that overlooks the appeal site, however I have little information in respect to what room this would serve and whether it is habitable. As such, I have adopted a precautionary approach.
5. It is acknowledged that the proposal has been designed in order that there would be no windows in the flank elevations that face No 40, in order to mitigate overlooking and loss of privacy between the dwellings.

6. However, this design would result in a large blank wall and gabled roof with a stark appearance in close proximity to the dormer window and garden at No 40, providing a substantial increase in height and mass in an elevated position. Whilst I note the proposal would be sunk into the slope, the proposed relationship would nevertheless provide an oppressive presence, looming over the boundary, resulting in a poor outlook. The presence of a new dwelling in this location would be overbearing in its relationship with No 40, due to a heightened sense of enclosure and the dominance of the proposal, to the detriment of their living conditions.
7. In regard to the effects on No 39, the proposal is angled away from the flank boundary of this property, albeit the "front" elevation of Plot 2 would face the garden area of No 39. As with the relationship with No 40, the elevated position coupled with the increase in height and mass in this location would have a significant impact on the outlook at No 39 by enclosing their views, particularly from the garden.
8. Furthermore, the increase in the number of windows at the upper floor would also provide views of this garden area. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the close relationship between the proposal and this property would create an unacceptable degree of overlooking and a loss of privacy harmful to their living conditions.
9. For the reasons above, the proposal would unacceptably harm the living conditions of the adjoining occupiers at 39 and 40 Wadhurst Close, due to overlooking and the impact on outlook. Therefore, the proposal would conflict with the objectives of Policy DM3 of the Hastings Local Plan Development Management Plan (DMP), adopted September 2015, which seeks, among other things, for developments to avoid any adverse impact on the amenity of neighbouring properties. It would also be contrary to Paragraph 130 f) of the National Planning Policy Framework (the Framework) which also seeks a good standard of amenity for all existing occupants of buildings.

Foul and surface water drainage

10. Policy SC7 of the Hastings Local Plan – The Hastings Planning Strategy 2011-2028 (HPS), adopted February 2014, indicates that all development proposals will need to be flood resistant or resilient, and that surface water run-off should be managed appropriately. The policy further indicates that the risk of flooding can be reduced through the use of Sustainable Drainage Systems (SuDS). As part of the appeal the appellant has submitted additional information in respect to the foul and surface water drainage, including a SuDS Decision Support Tool for Small Scale Development (SDST) assessment.
11. The Council's concerns in respect to the foul water drainage associated with the proposal, related to a blockage to the existing system as identified by Southern Water (SW). However, from the evidence before me, it appears that the blockage to the public sewer system has been removed to the satisfaction of SW, thus allowing for a foul water connection from the proposal to the existing system. I have been presented with no substantive evidence to reach a contrary view, and subject to appropriate conditions foul water disposal could be dealt with appropriately.
12. In respect to surface water drainage, the appellant has indicated that the provision of an infiltration trench and removal of excessive clay soil could

provide suitable SuDS mitigation measures to ensure the development is flood resilient. However, the SDST assessment raises concerns in respect to groundwater and the ability to implement SuDS measures that require excavation and/or infiltration, suggesting that further information and soakage testing in accordance with BRE365 to determine the actual infiltration potential is required.

13. As such, without the appropriate soakage testing there is insufficient information in respect to surface water management to ensure that the development would be either appropriately flood resistant or resilient. Consequently, I must adopt a precautionary approach, and conclude that the development would be at risk from flooding.
14. I acknowledge that conditions could be used to ensure that otherwise unacceptable development could be made acceptable, for example on receipt of further detailed technical information. However, given the lack of assessment in respect to soakage testing, and in light of the uncertainty surrounding the infiltration potential in accordance with BRE365 at the appeal site, I cannot be sure that conditions would be sufficient to make the development acceptable and remedy any flooding impacts so that permission can be granted.
15. Consequently, there is insufficient information supplied in relation to surface water drainage contrary to HPS Policy SC7, which amongst other things, indicates that the adaptation of all developments to reduce the risk of flooding will be sought through a variety of suitable measures, including the use of SuDS. However, as I have found that foul water could be appropriately disposed of, the proposal accords with DMP Policy DM6 which relates to pollution and environmental hazards.

Character and appearance

16. The appeal site is located at the rear of 268 Sedlescombe Road North in Hastings, which is a predominantly residential area characterised by two-storey detached and semi-detached dwellings, some of which have been converted into flats. The front of the site is occupied by a traditional and attractive property currently under conversion into flats¹, which are also under the ownership of the appellant. The topography slopes down from Sedlescombe Road North at the front of the site to the properties located in Wadhurst Close at the rear. Access to the appeal site is via a driveway that would serve the approved flatted development, which has parking areas to both the front and rear. The appeal proposal would provide two detached chalet style bungalows with associated parking and landscaping.
17. The proposal would be located in the space between the rear gardens of the converted flatted development and the existing properties located in Wadhurst Close where the vernacular differs, providing smaller units located within quiet cul-de-sacs. The proposed dwellings have been designed to resemble the properties in Wadhurst Close, which also includes chalet bungalows with high gabled roofs.
18. It is acknowledged that the proposal would provide a more modern interpretation given the extensive use of glazing particularly at the front gabled roof level. Nevertheless, its rear and transitional location, means that the

¹ Hastings Borough Council Planning Ref: HS/FA/18/00639

proposal would be largely hidden from public view. As a result, given the scale, bulk and mass would be similar to the nearby properties in Wadhurst Close, the proposal would not result in a significantly harmful effect on the surrounding street scene.

19. The proposed dwellings are stepped back from the site boundaries avoiding an appearance of being unduly squeezed into the available plot, which is adequate to accommodate the dwellings with reasonable space around them. Two parking spaces would be provided per dwelling with an additional visitor space, and the access is via the established driveway previously approved, and thus forms part of the pattern of development in the locality. As such, given the location and relationship with the properties located in Wadhurst Close nearby, the development would satisfactorily integrate into its surroundings. Furthermore, a landscaping scheme could be conditioned to further soften the appearance from the street scene.
20. Accordingly, the proposed development would not have an adverse impact on the character and appearance of the area and would accord with the requirements of DMP Policy DM1, which amongst other things, seeks to protect and enhance local character and provide new development that is appropriate to its location including height, scale, and form. The proposal would also accord with the provisions of the National Design Guide 2019 and the Framework which amongst other things, also seek to secure high quality design.

Living conditions of future occupiers

21. Concerns have been raised that the close relationship between the proposed dwellings and the parking spaces, the driveway and the associated turning area, would result in additional vehicle movements along the driveway near to the proposed dwellings resulting in noise and disturbance to future occupiers.
22. The provision of two additional units, would not significantly increase the number of journeys, given the approved flattened development and its associated vehicle movements nearby. Furthermore, such arrangements are not uncommon in new housing developments where increased densities are sought. Whilst I accept that the proposal may lead to some additional movements, these are likely to be spread out over the course of the day. I am not therefore persuaded that they would be so frequent as to cause demonstrable harm to living conditions of future occupiers through noise or disturbance.
23. For these reasons, I conclude that the proposal would be acceptable in terms of its effect on the living conditions of future occupants. Consequently, I find no conflict with the relevant sections of DMP Policies DM1 and DM3 and the Framework which collectively seek new development to achieve a good living standard for future users, amongst other things.

Biodiversity

24. A Preliminary Ecological Appraisal (PEA) has identified that the appeal site has some potential for bats to be roosting in the mature trees on the southern boundary, which are to be removed as part of the proposal. The PEA recommended that these trees should be surveyed prior to their felling in order to ensure that no roosting bats were present.

25. As part of the appeal the appellant has commissioned a Bat Tree Assessment Summary² (BTAS) which assessed all the trees on site. The BTAS concluded the site had low potential for roosting bats and no further survey work or precautionary methods were required. Furthermore, bat boxes are to be incorporated within the design of the proposal.
26. The PEA and BTAS are adequate appraisals that have been prepared by appropriately qualified persons, and I have therefore given these assessments significant weight. Furthermore, in the absence of any substantiated evidence to the contrary, and given the contents of the PEA and BTAS, I am satisfied that sufficient information in regard to proposed mitigation and enhancement measures has been provided and can be secured.
27. Consequently, subject to the imposition of appropriate planning conditions, the proposed development would provide adequate mitigation for protected species, and therefore accords with DMP Policy HN8 e) and the relevant section of HPS Policy EN3 which amongst other things, seek measures for the protection and management of ecology.

Planning balance

28. Both parties agree that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, as set out in Footnote 8 of the Framework, Paragraph 11 d) ii. should be applied. This directs that the relevant development plan policies which are most important for determining the application should be considered out-of-date, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. Paragraph 130 of the Framework requires, among other objectives, to create places that deliver a high standard of amenity for existing and future users. The proposed development would fail to meet these objectives as I have found harm to the living conditions of the existing residents at 39 and 40 Wadhurst Close and this conflict carries significant weight. Furthermore, I have found that there is insufficient information in respect to surface water drainage to lead me to conclude that the development would not be at risk from flooding, which also attracts significant weight.
30. Nevertheless, the Framework highlights the Government's objective to significantly boost the supply of housing. I note the benefits identified by the appellant in providing two new dwellings in a relatively sustainable location towards the Council's housing stock and given the small site, these could be brought forward relatively quickly. The proposal would also provide benefits such as employment opportunities during the construction phase and the benefits that future residents could bring in accessing and supporting local services. Whilst I recognise these benefits, given its small scale the proposed development would make only a modest contribution to the Councils housing undersupply, and accordingly I attach only limited weight to the benefits it would provide.
31. Given my findings, the adverse impacts of allowing this appeal would significantly and demonstrably outweigh the benefits, when assessed against

² JWK Wildlife Surveys dated 11th August 2022 (Ref: JK/2258.AshbrookeLodge.PBRA)

the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this case.

Conclusion

32. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

Robert Naylor

INSPECTOR