



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/23/3316067

28-31, Courthouse Street, Hastings, East Sussex, TN34 3BA

- 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 David O'Shaughnessy against the decision of Hastings Borough Council.
- The application Ref HS/FA/22/00804, dated 23 September 2022, was refused by notice dated 29 November 2022.
- The development proposed is described as "Construction of 2 bedroomed/3 person house and car park space on a bomb/brownfield area."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of their appeal submissions, the appellant provided revised drawings¹ in respect to the red and blue lines on the site plans, a revised ground floor plan, an indicative long section and a southeast elevation of No 29 (shop and flats). The appeal process should not be used to evolve a scheme, and these plans were not before the Council at the time of their submission. Therefore, I cannot be satisfied that the Council or third parties, have had sufficient and fair opportunity to comment on them. In order to avoid prejudice to these parties, I have assessed the scheme on the same information as the Council and upon which notification took place.

Main Issues

3. The main issues of this appeal are the effect of the proposal on:
 - i) the character and appearance of the Old Town Conservation Area (OTCA) and neighbouring listed buildings;
 - ii) the living conditions of nearby residents with specific regard to 29/31 Courthouse Street;
 - iii) the living conditions of future occupiers with specific regard to residential standards and overlooking; and
 - iv) parking standards and highway safety.

¹ Drawing numbers: DRWG 2B/3P/10, DRWG 2B/3P/11, DRWG 2B/3P/04 PART and DRWG Q/P/3

Reasons

Character and appearance

4. The appeal site forms a gap in the built environment located between the rear of 29/31 Courthouse Street and the rear of 87 and 88 All Saints Street in Hastings. The site is currently occupied by several small single storey structures and a small hardstanding area bounded by Harris fencing. The main character of the area has a traditional seaside town feel, with commercial units providing local facilities at the ground floor level with residential units located in the upper floors. The appeal site is located in the OTCA and is also located within the setting of designated heritage assets, 84-85 All Saints Street, 87 All Saints Street, 88 All Saints Street and 18 Courthouse Street which are all Grade II listed buildings.
5. As such, I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest. Also, I have a statutory duty under section 72(1) of the Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
6. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
7. Paragraph 130 c) of the Framework indicates that new development should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change. The Council consider that the contemporary design is out of keeping in the area thus appearing overly prominent and incongruous within the streetscene.
8. The appeal site fronts Courthouse Street forming part of a narrow access between The Bourne and All Saints Street. The surrounding area is made up of several larger distinctive local buildings including the Grade II Listed properties at 84-85, 87 and 88 All Saints Street and 18 Courthouse Street, which are good examples of a historic architectural style, associated with the old seaside town of Hastings. Consequently, the surrounding properties, particularly those located in All Saints Street, form a modest group of buildings with an enclosed feel that contributes positively to the significance of the OTCA. The rows of similarly designed buildings are a dominant feature and it is recognised that as a shared and unifying feature these make a significant contribution to the group value present in the area. Hence the appeal site has a sensitive setting.
9. Given the appeal site occupies a gap between its larger neighbours and consists of unremarkable and somewhat utilitarian single storey structures, it currently does not positively contribute to the urban grain or the distinctive traditional seaside town vernacular of the local buildings. As such the appeal site has a neutral impact on the OTCA. The proposal would provide a modern

two-storey dwellinghouse which would infill the existing gap. It is acknowledged the detailing to the front of the dwelling would provide a contemporary appearance, which could provide visual interest within the existing traditional built forms. I would further acknowledge that just because a design is different from the prevailing character, does not necessarily make it harmful. However, the proportions of the proposal and in particular the ridge and eaves levels are unrepresentative of the surrounding area and historic environment.

10. Given its proximity and relationship to the Grade II Listed Buildings the design, scale and proportions of the proposed development would represent a harmful juxtaposition in the local traditional vernacular and not provide a respectful response to these properties. In this context the design would not be sympathetic and would cause harm to the traditional character of the OTCA, which also forms the setting of the listed buildings. Hence the proposal would materially harm the significance of the listed buildings and their setting.
11. For the above reasons, I conclude that the proposed development would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the OTCA and the setting of the Grade II listed buildings. The proposal would therefore be contrary to Policies HN1 and DM1 of the Hastings Local Plan Development Management Plan (DMP), adopted September 2015, and Policies EN1 and SC1 of the Hastings Local Plan – The Hastings Planning Strategy 2011-2028 (HPS), adopted February 2014, which, amongst other things requires high quality distinctive architecture and urban design to add to local character and sense of place, including an understanding and appreciation of the historic environment which sustains and enhances the significance of the heritage assets. Nor would it accord with the guidance of the Framework nor the principles of the National Design Guide 2019 which seeks to conserve and enhance the historic environment, ensuring new development is responsive to local history, culture and heritage.
12. Given it would be relatively localised, the harm I have identified to the significance of the heritage assets would be less than substantial. Paragraph 202 of the Framework advises where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
13. I have had regard to the public benefits of the appeal scheme, which would provide a modest contribution to the supply of housing as well as housing choice in Hastings. The proposal would result in some small social and economic benefits, including the support future occupiers would give to local businesses and services. Furthermore, it would promote the reuse of an underutilised plot of land, would provide eco-friendly enhancements such as solar panels, and benefit from a relatively accessible location. To these benefits I apportion modest weight given the limited scale and nature of the proposed development. However, the appeal scheme would fail to preserve the setting of the designated heritage assets, to which I must attach importance and great weight. Accordingly, the public benefits would not outweigh the less than substantial harm that would be caused to the significance of the heritage assets identified above.

Living conditions of nearby residents

14. The existing property at 29/31 Courthouse Street contains flats at the upper floor levels. These units contain several windows to the rear overlooking the appeal site at close quarters, including a bay window at the first-floor level and two windows at the second-floor level. I have no information before me in respect to the layout of the existing units at the upper floors and whether or not these windows serve habitable rooms. As such, I have adopted a precautionary approach.
15. It is unlikely the rear rooms at Nos 29/31 would receive additional light or outlook from a separate room or window, given that they are not dual aspect units as there are no windows in the northern flank elevation. It is acknowledged that the proposal has been set back away from the rear windows, however any increase in height and mass in this location would have a significant impact on the outlook and light experienced in the existing flats, with particular reference to the bay window at the first-floor level by enclosing its views.
16. Furthermore, given the rear of the proposal would be utilised as a private garden area, the existing rear windows at Nos 29/31 would also provide unobscured views to this area. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the extremely close relationship would create unacceptable overlooking from the appeal site into these windows and vice versa.
17. The appellant indicates that these windows would be altered following internal alterations to the flats, which are also under the control of the appellant. The appellant suggest that these windows will be fixed shut and fitted with obscured glazing to prevent overlooking or loss of privacy to the garden area of the proposal. However, I have been presented with little substantive information in respect to these alterations nor whether these rooms would subsequently serve habitable rooms or not. Therefore, I have given this suggestion only limited weight.
18. Furthermore, Nos 29/31 is located outside the red line boundary and any works to these units would not form part of the appeal site. Even if I was to accept the alterations to Nos 29/31 did form part of the appeal before me, I cannot be certain of which rooms these windows serve and whether or not they are habitable. The use of obscure glazing to habitable rooms, when there are no other windows serving a room, would result in a less than satisfactory arrangement for existing occupiers. Given this lack of information, a condition securing the works to the windows at Nos 29/31 as part of any approval, as suggested by the appellant would not be appropriate in my opinion.
19. For the reasons above, the proposal would unacceptably harm the living conditions of the adjoining occupiers of 29/31 Courthouse Street, due to the sense of enclosure, overlooking and the impact on outlook. Therefore, the proposal would conflict with the objectives of DMP Policy DM3 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 Framework which, amongst other things, also seeks a good standard of amenity for all existing occupants of buildings.

Living conditions of future occupiers

20. The Government's nationally described space standard (NDSS), March 2015 contains the minimum internal space requirements for new dwellings. These requirements are also applied in a local context within DMP Policy DM3. Under these requirements a 2-bedroom 3-person dwelling laid out over two-storeys requires 66m² in the DMP and 70m² in the NDSS as the minimum standards. The NDSS further highlights that a double bedroom must have a floor area of at least 11.5m².
21. Both parties agree the proposal would exceed the NDSS minimum gross internal floor area of 70m² for the proposed dwelling. However, where there is dispute, is in respect to the proposed room sizes. The Council contends that the double bedroom would not meet the minimum requirements of 11.5m² in terms of floor area for a double bedroom as set out in the NDSS. The appellant contends that the internal design is intended to provide a bedroom suite, thus the floor area should include the shower room, the lobby and the built in wardrobe.
22. The NDSS states that a built-in wardrobe counts towards the Gross Internal Area and bedroom floor area requirements, however there is no reference to the inclusion of an en-suite bathroom. Given that the en-suite is separated by a door and serves a separate and an alternative function to that of the bedroom, in my view it could not reasonably be described as forming part of the bedroom. Taking the above into account, the double bedroom would not meet the required space standards. Given that these figures are minimum standards which are intended to act as a benchmark for high design quality, the shortfall in floorspace is not appropriate. Consequently, it would provide oppressively confined and unsuitable living conditions for future occupiers.
23. The Council consider the provision of the rear garden space is commensurate with the surrounding area and I would concur with this assessment. However, there are concerns in respect to overlooking into this area from neighbouring properties. The aforementioned rear windows at 29/31 Courthouse Street are located in an elevated position in close proximity to the rear of the proposal and taken together with the openness of the rear garden area, would provide increased overlooking from a higher vantage point. Consequently, this provides a greater loss of privacy to the detriment of any future occupiers living conditions.
24. The garden of the proposal is also overlooked by the upper floor windows at the rear of 87 All Saints Street, although I have not been provided with details in respect to what rooms these windows serve. The appellant highlights that these rear windows will have some overlooking of the proposed garden area, but it would be limited given the presence of the boundary wall and acute viewing angles. Nevertheless, the upper floor windows at No 87 would still provide a perception of overlooking and loss of privacy experienced at the proposal.
25. In relation to this main issue, the living conditions of future occupiers would be unsuitable due to inadequate internal space and an increased level of actual and perceived overlooking from nearby residents resulting in an area of amenity space which would not have an acceptable level of privacy. As such, the proposal would conflict with the objectives of the DMP Policy DM3 which seeks, among other things, to achieve a good living standard for future users of proposed development. It would also be contrary to the Framework which,

amongst other things, also seeks a good standard of amenity for all existing and future occupants of buildings.

Parking standards and highway safety

26. The proposal results in the loss of an area that the Council considers has previously provided parking for the commercial use at the ground floor of No 29/31. The Council consider that this would result in an unacceptable impact on Courthouse Street and All Saints Street in terms of the free flow of traffic and highway safety and would result in an increase in on-street parking. I have no evidence that the site has been utilised as a formal off-street car parking area, nor that the area is used for off-street parking associated with the adjoining properties. Therefore, this matter would be neutral in the overall planning balance.
27. The East Sussex County Council Highways Minor Planning Application Guidance - Proposed Development (MPAG) sets out the minimum parking standards for new development. From the plans before me, it would not be possible to provide a space which would meet the required parking space standards. Therefore, I have considered the appeal on the basis that the proposed development would not benefit from an off road parking space and therefore increase demand for parking on the street. Due to the presence of double yellow lines, opportunities for off-street parking are limited within the vicinity of the site.
28. Whilst it has been put to me that the area is only lightly trafficked, with low traffic speeds, there is insufficient evidence before me to demonstrate that this is the case. However, even if I were to accept this was the case it would not overcome my concerns that a lack of appropriate parking would be detrimental to highway safety. Increased parking demand in instances of limited supply may lead to additional congestion as drivers seek parking spaces, or park illegally, which would be detrimental to highway safety. There is no evidence to suggest that such circumstances could be avoided by the appeal proposal.
29. I therefore conclude that the proposed development would have a potentially harmful impact on highway safety and would conflict with the relevant sections of DMP Policies DM3 and DM4 d), nor the Manual for Streets 2019 and the objectives of the Framework which together seek to set out the need for developments to meet parking standards. The lack of appropriate parking would also lead to inappropriate parking within the vicinity of the site harmful to highway safety.

Other Matters

30. The appellant draws my attention to other properties that have undercroft parking in the local vicinity. I have also had regard to these properties during my site observations. However, I have been presented with little substantive evidence relating to their planning history or any planning policy in place at the time when these dwellings were built, thus I am unable to directly compare these examples. Furthermore, these limited examples do not provide an overriding influence over the character of the area. In my view, the character, prominence, and scale of development of each site also varies, along with how they relate to the OTCA and the street scene. I have therefore dealt with the appeal proposal on its individual merits.

Planning Balance

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
32. I have found the proposed development would harm character and appearance of the area and would provide less than substantial harm to the significance of the heritage assets identified above. The scheme would also provide harm in respect to the living conditions of nearby residents, living conditions for future occupiers and would negatively impact on highway safety, which attract substantial weight against the scheme.
33. It is common ground between the parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Consequently, in the context of paragraph 11 of the Framework this could engage the presumption in favour of sustainable development. However, following my findings on the first main issue above, and taking account of footnote 7 of paragraph 11 of the Framework, the application of policies in the Framework that concern designated heritage assets provides a clear reason for refusing the development proposed. Hence, paragraph 11 d) i. of the Framework applies and the proposal would not benefit from the presumption in favour of sustainable development.
34. I have found the development would offer potential benefits in terms of providing a new dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have also considered that the proposal would allow for family accommodation. I have attached significant weight to these factors in favour of the proposal.
35. Taking all of the above into account, in applying paragraph 11 d) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.

Conclusion

36. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR