



Appeal Decision

Site visit made on 12 June 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2023

Appeal Ref: APP/T1410/W/22/3290505

Sedgemoor, 2 Mill Road, Eastbourne BN21 2LY

- 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 Brett Kitchener against Eastbourne Borough Council.
 - The application Ref PC/210339, is dated 9 April 2021.
 - The development proposed was originally described as 'demolition of the existing building and redevelopment of the site to provide 14 flats with associated off street car parking'.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 27 June 2023

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing building and redevelopment of the site to provide 13 flats with associated off street car parking at Sedgemoor, 2 Mill Road, Eastbourne BN21 2LY in accordance with the terms of the application, Ref PC/210339, dated 9 April 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. During the Council's consideration of the application the proposed development was revised and reduced to 13 flats (the proposal). The proposal is the subject of the appellant's appeal and the Council has given appropriate notification of the appeal. I have, therefore, determined the appeal on this basis and altered the description of development accordingly in my decision above.
3. During the appeal, the appellant submitted by counterpart an executed planning obligation in the form of a section 106 legal agreement (the s106). It relates to affordable housing, to local employment initiatives including a training plan and to transport initiatives for a car club, travel plan, traffic regulation order and allocated car parking spaces.

Background and Main Issues

4. At a meeting of the Council's planning committee on 19 October 2021, officers recommended to members that planning permission be granted for the proposal, subject to conditions and a planning obligation for the matters now contained in the s106. The committee resolved to defer the application, as it was entitled to, and instructed officers to seek further amendments but the appellant lodged the appeal, as he was entitled to do so. The Council has

provided the minutes of this meeting, which outline members' concerns. It did not submit an appeal statement or clarify what its substantive reasons for refusal would have been.

5. Considering this background, and the evidence before me, the main issues in this appeal are:
 - the effect of the height of the proposed building on the living conditions of the occupants of neighbouring residential properties having regard to outlook, natural light and privacy; and
 - whether it would include enough on-site car parking spaces.

Reasons

Living conditions

6. No.2 Mill Road is a large, detached house (the house) on a large corner plot in a residential area of Eastbourne. It was last in use as a care home with No.4 Mill Road, which remains in this use, but is now vacant. The house would be demolished and the site redeveloped with a block of 13 flats (the building).
7. The size of the house and its position in one corner of the site has appreciable visual and spatial presence. Living accommodation is over three storeys with windows in each elevation – two conventional ground and first floors and a second floor in the hipped and gabled roof. The height and fenestration of the house already has an influence on the living conditions of occupants of neighbouring residential properties including, as I saw, from relevant windows of the house and the external fire escape staircase. The building would, in part, be taller than the house and occupy more of the site. Flats would be over four storeys – three conventional floors (ground¹, first and second) and part of a second floor and all of a third floor in the hipped and gabled roof. There would be windows and (facing or side on) balconies in each elevation.
8. Many local residents are concerned that the building, including its height, would be visible from their properties and, for some, be on a 'skyline'. The potential effect of development on private views is not usually a planning consideration as private individuals do not have a right to a view. Even if development significantly changes a view from a private property, including by replacing what exists or adding to the built-up nature of a site, this is not normally a consideration on which planning permission can be refused, unless there is harm to living conditions.

No.61 Watts Lane

9. This detached house and garden is side on to Mill Road, facing Watts Lane with a main front and rear aspect that is not towards the site. The building would be in line of sight from some side facing windows and part of the garden. However, this house and most of the garden is set back from Mill Road and the building line along Mill Road would be maintained. The wide gap would ensure the building did not overwhelm or appear overbearing in views from No.61 and sited to the northeast, it would not overshadow No.61. While there might be a perception of overlooking from front facing upper floor windows and balconies, this part of the building would be on level ground with No.61 and too distant to

¹ Which the appellant calls 'entrance' level

cause actual unacceptable overlooking. Intervening garden roadside trees at both properties would also have a varying mitigating effect depending on the time of the year. A condition could ensure that these trees on the site were retained and protected during demolition and construction works.

No.4 Mill Road

10. This property has a main front and rear aspect which is not towards the site. The building would be level with it so not affect front windows or a forecourt. A side elevation would be close to No.4 but with a similar eave height at the front and similar depth at the rear, whereas this part of No.4 is mainly a wide flat roof side extension with upper floors set well back from the boundary. This significant gap, allied to the plane of the building's roof slope receding away from the boundary, would not restrict views from side or rear facing upper floor windows of No.4 or cause any significant overshadowing of these windows. The garden of No.4 is long and wide with a mainly open aspect so this part of the building would not overwhelm or be overbearing in views from most of the garden, nor would it be overshadowed to a significant extent even though the building would be to the south.
11. Most of the closest upper floor side windows would be rooflights with no significant downward views towards No.4 or the garden. A condition could ensure that an en-suite bathroom window in flat 5 was obscured glazed with a top only opening fanlight². A bedroom window in this flat and a kitchen window in flat 4 would maintain a status quo of two windows equivalent to this part of the house and neither would be for main habitable rooms. Narrow slot glazing in the corner of a bedroom in flat 5 would give no significant normal view out.
12. Views from rear facing windows in the northwest half of the building closest to the garden of No.4 would be limited by an acute angle. Balconies would give greater opportunity for more direct views over the garden as well as side or backward views towards rear windows in No.4, including angled bay windows. However, a condition could ensure that privacy screens for flats (1, 9 and 12) were incorporated to control actual overlooking and lessen the perception of overlooking. Other rear balconies would be stepped too far away from No.4 to cause actual or perceived overlooking.

No.1A Ashburnham Road

13. The plot of No.1A is next to a majority of the northeast boundary of the site on lower ground but this chalet bungalow faces Ashburnham Road with a main aspect to the front and rear, not towards the site. An upper floor end elevation window is obscured glazed with a narrow top opening fanlight so views from it would not be materially affected by the building. The southeast half of the rear elevation of the building would be close to the shallow rear garden of No.1A and restrict an upward perpendicular sideways view. However, this narrow part of the building would also step down in height, so not overwhelm or be overbearing in this view, with views in other directions from the garden unaffected. Sited to the southwest, even if the tallest part of the building overshadowed the garden of No.1A this would be during the middle of the day or times of the year when the sun was low in the sky so not unduly oppressive.

² Flat numbers as shown in the submitted floor plans

14. Rear facing windows and balconies in the northwest side of the building would be stepped back too far, or at an angle, to overlook No.1A or its garden. Rear facing windows in the closer southeast side at entrance level would be restricted behind high level apertures in a wall. A condition could ensure that satisfactory details for balcony privacy screens for flats (3, 5 and 6) were incorporated. This would control actual overlooking as well as lessen the perception of overlooking, including from a narrow rear facing window behind a balcony in flat 3.

No.1 Ashburnham Road and No.2 Ashburnham Gardens

15. The house at No.1 faces Ashburnham Road but its main aspect, including windows and garden to the rear is upwards towards the site, as is the house next to it at No.2 Ashburnham Gardens. The shorter garden of No.1 is terminated by the plot of No.1A, mostly behind the side and roof of the chalet bungalow, and the end would be more than 25m from the closest part of the rear elevation of the building. Though the far end of the rear garden of No.2 abuts the site, it would still be about 12m from the closest part of the building and this garden is approximately 30m long. Consequently, while the building would be seen on the elevated site, it would be too far away to restrict even perpendicular views from rear facing windows of these houses or from most of both gardens.
16. This significant spatial separation would also ensure the building did not overwhelm or appear overbearing in these views and not cause overshadowing, other than potentially the far end of the garden at No.2 for the same reasons and to a similar limited extent as at No.1A. Additionally, the rear facing windows in the building would not cause unacceptable overlooking of windows in these houses or the garden of No.1 or most of the garden of No.2 because of the intervening distance. The end of the garden at No.2 is also screened by tall planting in it along the boundary with the site. This would also be the case for actual or perceived overlooking from rear facing balconies, albeit that the privacy screens referred to above would address both concerns.

Merewood Court

17. The southeast side elevation of the building would face the block of flats at Merewood Court on the opposite side of Ashburnham Road and be in direct line of sight of windows in some of these flats. However, there would be an approximately 25m separation distance so the building would not overwhelm or be overbearing in these views and not restrict angled views to either side or over it. Nor would it be so close that these windows would be significantly overlooked by occupants in the building, including from balconies, and the main external communal amenity space is further away on the south side of this block of flats. The building would be northwest of these flats so not cause overshadowing and the intervening garden roadside trees would have a similar mitigating effect as explained above. Those forming a dense row on the site could also be retained by a condition.

Other properties

18. The occupants of some other nearby residential properties in Mill Lane, Watts Lane, The Quadrant, Carew Road, Ashburnham Road and Ashburnham Gardens would see the building to a greater or lesser extent. However, these properties (or any others) are visually or spatially too distant from the site or

orientated away from it for the internal or external living conditions of occupants to be adversely affected by the height of the building.

19. Taking all the above into account, I find that the height of the proposed building would not cause harm to the living conditions of the occupants of neighbouring residential properties having regard to outlook, natural light and privacy. Consequently, the proposal complies with saved Policy HO20 of the Eastbourne Borough Local Plan, September 2007 (the BLP) and Policy B2 of the Eastbourne Core Strategy Local Plan, February 2013 (the CSLP). These policies include that development should protect the residential amenity of existing residents and not cause unacceptable loss of outlook, privacy by overlooking or light by overshadowing.

On-site car parking spaces

20. There would be 13 on-site car parking spaces, including 2 accessible spaces. The s106 would ensure an allocated space for each of the three and four-bedroom flats and 8 unallocated spaces for the one and two-bedroom flats. Future occupants or visitors could use these spaces and a condition could ensure they were provided and thereafter maintained for parking, so reduce the likelihood of on-street parking. This number of on-site car parking spaces is within the Council's relevant adopted maximum standard and acceptable to the Highway Authority.
21. Many nearby properties have off-street car parking, including care homes and blocks of flats. There are double yellow lines around road junctions but on-street car parking is otherwise not controlled. Albeit a snapshot, while many of these spaces were in use, many were available close to the site. These would be practical for future occupants, if necessary, or for transient visitors including deliveries. There is no objective evidence that such use would permanently displace or unduly inconvenience local resident on-street parking or impede road traffic.
22. Additionally, there would be 26 secure and sheltered occupant cycle parking spaces and 6 secure visitor cycle spaces. The site is within convenient walking or cycling distance of daily or weekly facilities and services in and around the Old Town area of Eastbourne. Bus stops are located close to the site and Eastbourne train station is within walking or cycling distance. This public transport has local and regional services including to Brighton and Hastings. Through the s106 the appellant's travel plan would encourage occupants or visitors to use these alternative modes of travel. The s106 also includes a financial contribution for the Council's 'car club' and road markings for a car club space on the highway near the site (for car hire or share by those who do not have their own car).
23. The availability of on-site and off-site car parking and these other travel modes would be for future occupants to consider. There is no objective evidence that the accessible location of the site would not reduce the need for occupants or visitors to travel by car or be less reliant on a car. I am therefore satisfied that the proposal would include enough on-site car parking spaces. Consequently, it complies with BLP Policy TR11 which requires development to comply with maximum parking standards, with provision reflecting local public transport, cycle and pedestrian accessibility, traffic conditions and the availability of public parking elsewhere.

Other Matters

Affordable housing

24. There is no dispute that the proposal should ordinarily make 40% provision for affordable housing (AH). The appellant has suggested that no AH provision on-site or by financial contribution for provision off-site can be made. This is based on his viability assessment for 14 flats prepared over two years ago in April 2021.
25. The main parties agree that independent review of a new viability assessment is required, including up-to-date income and expenditure figures. This would establish whether the AH financial contribution in the s106 for provision off-site should be paid in whole, in part or at all. Nonetheless, this new assessment is not before me, nor any justification for why AH provision on-site is not a possible outcome entertained in the s106, which is otherwise the preferred means of delivering AH in CSLP Policy D5³, the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). In any event, the s106 defers payment of any financial contribution until after a grant of planning permission.
26. On-site AH provision, off-site AH provision by financial contribution or no AH provision are all within the scope of CSLP Policy D5, the Framework and PPG. However, given the absence of a new assessment and the terms of the s106, I cannot be certain that the proposal would, in fact, make AH provision or by what means. Consequently, AH is not a benefit in this appeal and is a matter for the main parties.

The s106

27. The s106 also aims to secure a significant proportion of construction work is awarded to local small or medium sized businesses and promotes opportunity for local employment and training. The Council has provided details and reasoned justification for all the provisions sought in the s106, including insofar as it seeks to deal with AH. On this basis, I am satisfied that the s106 is necessary, related directly to the development and fairly related in scale and kind. As such it accords with the provisions of Regulation 122 of the CIL Regulations 2010 and the Framework tests for planning obligations.

Other representations

28. Many local residents have other concerns, including about the character or appearance of the area and trees and vehicular access and traffic.
29. The local area includes large Victorian or Edwardian residential properties, such as the house and No.4 next to it. There is no evidence that any are a statutory or locally listed building or that the site is in a conservation area or in the setting of a conservation area. These would be means by which the Council could, should it wish, seek to preserve such heritage assets but are not matters within the remit of this appeal. The council's development plan and the Framework does not preclude demolition of buildings and redevelopment of sites. The Council would be able to consider the individual planning merits of any similar proposal in the local area, including its potential cumulative effect. Albeit some by conversion and extension of large houses, there are other large

³ Also endorsed in the Council's Affordable Housing Supplementary Planning Document, November 2017

- blocks of flats next to or near the site including accommodation in roofs and over four floors or storeys so these form part of the established context.
30. Using a contemporary aesthetic, the main public elevations of the building (facing Mill Road and Ashburnham Road) would reflect important intrinsic traditional design features of the house and others nearby. This includes a gabled form which varies in width or height and a stepped roof profile. Though some parts would be wider, deeper or taller than the house, the additional footprint, scale and massing would not be discordant on this wide corner plot, nor overly protrude further upwards. Part of the garden and the individual or row of trees on the site would be retained next to both roads, as well as the distinctive boundary wall, which is taller along Ashburnham Road. Conditions could ensure high quality external materials were used and to protect these trees during demolition and construction works.
31. Overall, the building would be noticed as a change on the site and in the local area, including, in part, in some longer distance public views from lower ground to the north. But in my view, the proposal would not unduly dominate or detract from the Mill Road or Ashburnham Road streetscenes or be incompatible in the local area.
32. Although onto the slope of Ashburnham Road, the vehicular access would be a significant distance (about 40m) from the crossroad junction with Mill Road, Watts Road and Carew Road. Albeit a snapshot, taken with the light traffic levels I saw along the reasonably wide Ashburnham Road and generally lower vehicle speeds on the approach to or out of this junction, even with vehicles parked in this road there would be satisfactory visibility for vehicles or cyclists exiting the access or passing it. The pavement is quite wide and it is unlikely that pedestrians would be walking tight along its back edge, so would have sufficient appreciation of slow-moving vehicles or cyclists exiting the access which would be quite wide and include a small splay on one side with part of the boundary wall reduced in height to 1m. Deliveries and refuse collection would be from in front of the site in Mill Lane.
33. While there would be an increase in vehicle trips compared to use of the house as a care home, the number and frequency of vehicle movements would be very low over a typical day. On Ashburnham Road visibility to the east at the junction is restricted in part 'over the shoulder' and is near the T-junction with St Annes Road. However, these are quite wide roads and the double yellow lines maintain satisfactory visibility on the approach to and away from the junction. Some disruption to traffic, parking and the public highway during construction works is unavoidable but it would be for a temporary period. A condition could require a management plan to ensure safe and efficient operation of the highway network, including for children and older or disabled persons. The Highway Authority did not object to the proposed means of access or to traffic generation, including for highway safety reasons.

Conditions

34. I have had regard to the conditions suggested by the Council and the main parties' comments on these, the relevant tests in the Framework and advice in PPG. Where required, I have modified wording in the interests of clarity.
35. I have received written confirmation that the appellant does not object to the pre-commencement of development conditions relating to management of

demolition and construction works, tree and water protection measures, an updated ecology report, details of surface water drainage and for samples of external surfacing materials. These are important aspects of the proposal including for the reasons set out earlier and, as appropriate, to ensure no harm to human health from contamination or flooding and to protect ecology at the site and achieve biodiversity net gain. There is therefore a clear justification to secure these details before any development commenced. I have imposed a condition relating to glazing of an en-suite bathroom window for the reasons set out earlier above. It is also necessary to attach conditions to specify the standard implementation time limit and the approved plans to provide certainty.

36. In addition to the conditions already outlined earlier above, conditions are necessary to ensure that approved surface water drainage works and biodiversity mitigation is carried out. Conditions are also justified to mitigate the effects of climate change by providing electric vehicle charging points to facilitate this mode of travel and for water and energy efficiency measures. A condition is also reasonable to make sure appropriate provision is made for refuse and recycling storage and collection at the site for future occupants.

Planning Balance and Conclusion

37. Subject to conditions the proposal would accord with the development plan. There are no other material considerations which suggest that the decision should be taken other than in accordance with the development plan.
38. Consequently, for the reasons given above the proposal is acceptable and the appeal therefore succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (11)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

MILL-EX-1	Site location plan
MILL-PR-7C	Proposed block plan
MILL-PR-1D	Entrance and 1 st floor plans, SW front elevation plan
MILL-PR-2D	2 nd and 3 rd floor plans, NW and SE side elevation plans
MILL-PR-3D	Area schedules
MILL-PR-4D	Underground/entrance level car park plan and NE rear elevation plan
MILL-PR-5D	Comparison elevation and tile details plan

MILL-PR-6D	Roof plan
MILL-PR-8D	Sections plan
MILL-PR-9D	Context elevation plan
CMP-MILL-01	Demolition plan
CMP-MILL-02	Construction phase plan
21/0302	Landscape masterplan

- 3) No development or site preparation, including any ground and demolition works, shall commence until a Demolition Construction and Environmental Management Plan (DCEMP) shall have been submitted to and approved in writing by the local planning authority. The DCEMP shall include details of:
- a) Sequence and schedule of demolition phases;
 - b) Anticipated number, frequency and types of vehicles to be used;
 - c) Method of access and egress and routing of vehicles;
 - d) Parking of vehicles by site operatives and visitors;
 - e) Loading and unloading of plant, materials and waste;
 - f) Method of demolition and removing materials from the site, including special measures for any hazardous material and a waste minimisation statement, including procedure for dealing with contaminants;
 - g) Times of deliveries, which should avoid peak travel times;
 - h) Storage, plant and materials;
 - i) Erection and maintenance of any security hoarding;
 - j) Provision and operation of wheel washing facilities or any other works required to mitigate impact on the public highway (including temporary Traffic Regulation Orders);
 - k) Measures to manage impact on local air quality;
 - l) Confirmation of no burning of materials on the site;
 - m) Operating hours;
 - n) Anticipated timescale for completing the works;
 - o) Measures to manage flood risk during construction; and
 - p) Public notification, including site notices with contact details.

The approved DCEMP shall be implemented and adhered to throughout the demolition and construction period.

- 4) No development or site preparation, including any ground and demolition works, shall commence until tree protection measures shall have been implemented in accordance with the approved Arboricultural Report, dated 30 March 2021, by ACS (Trees) and shall comply with the provisions of BS5837 Trees in relation to construction 1990 and BS 3998 Recommendations for tree works 1989. The tree protection measures shall be carried out and retained for the duration of the demolition and construction period.
- 5) No development or site preparation, including any ground and demolition works, shall commence until details of measures to protect drinking water sources from contamination during construction, and for the lifetime of the development, shall have been submitted to and approved in writing by the local planning authority, following the agreement of the Environment Agency. The development shall be carried out and maintained thereafter in accordance with the approved details.

- 6) No development shall commence until an updated preliminary ecological appraisal and bat survey, including any recommended mitigation measures and requisite details thereof, shall have been submitted to and approved in writing by the local planning authority.
- 7) No development shall commence until a surface water drainage scheme and maintenance and management plan (the scheme) shall have been submitted to and approved in writing by the local planning authority. The scheme shall be supported by an assessment of the potential of the site to dispose of surface water by means of a sustainable drainage system. Surface water run off to the surface water sewer network shall be limited to a rate agreed with Southern Water and shall incorporate any required mitigation measures. The approved scheme shall be carried out, or be supervised, by an accredited person, being a person who is an Incorporated (IEng) or Chartered (CEng) Civil Engineer with the Institute of Civil Engineers (ICE) or Chartered Institute of Water and Environmental Management (CIWEM).
- 8) No development shall commence until details of all facing materials to be used in the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) Prior to the completion or first occupation of the development hereby permitted, whichever is the sooner, details of the treatment of all parts of the site not covered by buildings shall have been submitted to and approved in writing by the local planning authority. The site shall be hard landscaped in accordance with the approved details prior to first occupation of the development and soft landscaped in accordance with the approved details in the first planting season following completion or first occupation of the development, whichever is the sooner. The details shall include:
 - a) A scaled plan showing all hard and soft landscaping, including trees and other vegetation to be retained (as shown in the approved plans) and planting of trees and plants;
 - b) All hard surfaces;
 - c) All boundary treatments;
 - d) A schedule of sizes, species and numbers of all proposed trees/plants; and
 - e) Sufficient specification to ensure successful establishment and survival of new planting.

Any new tree(s) that die(s) is/are removed, become(s) severely damaged or diseased shall be replaced, and any new planting (other than trees) which die, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Replacement planting shall be in accordance with the approved details or other details that shall have been submitted to and approved in writing by the local planning authority.
- 10) No part of the development hereby permitted shall be first occupied until:

- a) A completion statement by an accredited person (as defined in condition 7), including a photographic record of the works, for the scheme approved under condition 7, shall have been submitted to and approved in writing by the local planning authority;
 - b) Details of balcony privacy screening shall have been submitted to and approved by the local planning authority and implemented in accordance with the approved details, and shall be retained thereafter;
 - c) Details of electric charging facilities, including their number, specification and location, shall have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details, and shall be retained thereafter; and
 - d) Details of sustainability measures, including water efficiency, energy preservation and renewable energy provision, shall have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details, and shall be retained thereafter.
- 11) No part of the development hereby permitted shall be first occupied until:
- a) Any mitigation measures in the updated preliminary ecological appraisal and bat survey approved by condition 6, including bird boxes, shall have been implemented.
 - b) The car parking area shall have been provided in accordance with the approved plans. This area shall thereafter be retained for this use and shall not be used other than to park motor vehicles;
 - c) The secure and/or covered cycle parking shall have been provided in accordance with the approved plans. These facilities shall thereafter be retained for this use and shall not be used other than to park cycles;
 - d) The vehicular access serving the development shall have been constructed in accordance with the approved plans;
 - e) The enclosed refuse and recycling storage facilities shall have been provided in accordance with the approved plans. These facilities shall thereafter be retained solely for the storage of refuse and recycling; and
 - f) Flat 5, as annotated in the approved plans, shall have been fitted with obscured glass which has been rendered obscured as part of its manufacturing process to Pilkington glass classification 5 (or equivalent glass supplied by an alternative manufacturer), of which the cill of the only opening section shall be 1.7m above finished floor level. This window shall be retained to this specification thereafter.