



Appeal Decision

Site visit made on 8 November 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22ND November 2023

Appeal Ref: APP/C1435/W/22/3311241

Garden land to the rear of Jasmine Cottage & Numbers 1,2,3 Highlands Avenue, Uckfield, TN22 5TD

(Grid Ref Easting: 547635, Grid Ref Northing: 120026)

- 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 Mark Ridley (Oakhurst Construction) against the decision of Wealden District Council.
 - The application Ref WD/2022/0686/F, dated 11 March 2022, was refused by notice dated 8 September 2022.
 - The development proposed is the development of 4 x 4 bedroom dwellings incorporating new vehicular access from Eastbourne Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development and site address from the Council's decision notice and appellant's appeal forms as they more clearly identify the site and the extent of the proposed development.

Main Issues

3. The main issues are the effect of the proposed development on a) the character and appearance of the area; and b) the living conditions of future residents.

Reasons

Character and Appearance

4. The appeal site comprises parts of the rear gardens of four dwellings which all back on to Eastbourne Road. Eastbourne Road in the vicinity of the appeal site benefits from the extensive mature trees and vegetation within the highway verge and many of the gardens along either side of the road. Whilst clearly within a suburban area, this planting nonetheless provides something of a natural screen to either side of the road. Houses are still evident along the route, although where they are more visible, they generally either sit below road level or are well set back from the road. This helps to minimise their effect on the prevailing verdant and spacious character.
5. The proposal would involve the removal of a section of the existing planting along the appeal site's boundary with Eastbourne Road, to enable a single point of access to the site. A bin store would be located adjacent to the access but the remaining boundary planting alongside Eastbourne Road would be retained.

6. The houses would be set back from the site frontage in order to allow vehicular access and parking to the front of the houses. Although designed to appear as two storey dwellings, the houses would have accommodation within the roof space. In order to achieve the second-floor accommodation without using a roof dormer, the dwellings would each have a sizeable roof that would give the buildings something of a vertical emphasis. They would appear to have a greater overall height than other houses in the vicinity.
7. Notwithstanding the boundary planting, the positioning of the houses or the use of materials that are found locally, the houses would be evident from the new site entrance. They would also be seen at certain points when travelling along Eastbourne Road, particularly during the autumn and winter months when the site's natural screening would be less abundant. Their prominence would be heightened by the absence of other housing immediately adjacent on this side of Eastbourne Road and the set down positioning of the buildings on the opposite side of the road.
8. I accept that such a visual impact would be localised and transitory but many views would be more than fleeting. The location of the site means that many passing vehicles would either be reducing their speed as they approach the 30 mph sign on Eastbourne Road adjacent to the site or slowing down or stopping as they turn into Goldcrest Drive. Similarly, vehicles exiting Goldcrest Drive would not be travelling quickly past the site.
9. The upper storeys of the houses would have clear separation but at ground floor, Houses 1 and 2 would be close to one another and similarly Houses 3 and 4 would have little separation between them. This spread of development offers relatively little visual relief or allows for the provision of soft landscaping between buildings. This would be in contrast to the more generous separation found to the sides of other buildings within the vicinity. Moreover, while access and parking provision to the front of the site might not be significantly more extensive than to other sites nearby, these features would nevertheless further increase the apparent coverage of the site by built form.
10. The density of the development in purely numerical terms would not in itself necessarily be unacceptable, it is the intense form of development on the site overall which is at odds with the distinctive spacious and verdant character of this part of Eastbourne Road and which causes harm to the character and appearance of the locality.
11. For all these reasons, the proposal would conflict with Policy EN27 of the Wealden Local Plan 1998, Spatial Planning Objective SPO13 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013. These seek, amongst other things, to permit high quality development that respects the character of adjoining development and, where appropriate, promotes local distinctiveness.
12. The proposal would also conflict with a key aim of the National Planning Policy Framework (the Framework) to create well-designed places, and so ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting.

Living Conditions

13. In a residential area such as this, there will be a degree of mutual overlooking. Indeed, on my site visit I noted that some of the existing dwellings and gardens offered some views of neighbouring rear gardens. However, unlike the proposed gardens, the existing ones have a fairly consistent gradient and are extensive in their length. As such, this arrangement does not generally lend itself to excessive overlooking of different parts of neighbouring gardens. In contrast, the split-level nature of the proposed gardens means that the patio areas in particular would be easily overlooked from the higher parts of the adjoining new gardens.
14. Furthermore, the existing houses would sit above and have views directly overlooking the proposed rear gardens. For example, for House 2 the rear of the proposed garden would be relatively close to the rear elevation of the existing dwelling (No.1 Highlands Avenue). In another instance, the existing balcony to the rear of No. 4 Highlands Avenue would have views into the rear garden of House 4.
15. Whilst the development provides more than the minimum amount of garden space required, that space is not of a sufficiently high quality to prevent future occupants from being overlooked to an unacceptable degree. The level of overlooking would not be reflective of the area and would be harmful to the living conditions of future occupants.
16. The proposal would not accord with Policy EN27 of the Wealden Local Plan 1998; Spatial Planning Objective SPO13 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013 which, amongst other things, encourages high quality developments and environments that safeguard such matters as the privacy of future occupants.
17. The development would also conflict with an objective of the Framework, which similarly seeks to ensure developments achieve quality living conditions for occupiers.

Other Matters

18. The proposed development would be within 7km of the Ashdown Forest Special Protection Area (SPA), which is home to populations of breeding Dartford Warbler and Nightjar. There would be a likelihood of future occupiers of the houses visiting the Forest. Therefore, either alone or in combination with other projects, the proposal would be likely to have significant effects through recreational disturbance on the bird populations and their habitats.
19. The appellant is willing to enter into a legal obligation to secure what the Council considers to be the necessary mitigation measures. However, no obligation was submitted with the appeal and only recently was a request received for an extension of time to allow the obligation to be completed.
20. The 'Procedural Guide: Planning appeals – England' requires the appellant, in cases such as this appeal, to submit an executed and certified copy of any planning obligations at the time of making the appeal. It explains that the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances.

21. There is nothing before me to indicate that there exist any very exceptional circumstances that warrant the decision being delayed. Furthermore, as I am dismissing the appeal for other reasons a completed obligation would not alter the outcome of the appeal. In such circumstances there is no need for me to consider further the implications of the proposals on the integrity of the SPA or the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended).
22. There are various standards and requirements to which the proposal is said to comply, including the access and parking arrangements, provision of bin and cycle stores, the size of the houses, rooms and garden areas. Similarly, it is noted that there is no objection in relation to the proposed tree works. However, these factors represent a lack of harm and would no doubt be a requirement of the development plan. Accordingly, they are neutral factors in the planning balance.

Planning Balance

23. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, Paragraph 11 d) of the Framework is engaged. However, the application of policies in the Framework that protect areas or assets of particular importance (in this case the Ashdown Forest SPA) provide a clear reason for refusing the development proposed. The presumption in favour of sustainable development therefore does not apply in this case.
24. Even if the presumption under Paragraph 11 d) ii did apply to the proposal, I have found the development to be harmful to the character and appearance of the area, and to the living conditions of future occupiers. The need to achieve well-designed places and ensure that development is sympathetic to local character as well as ensuring it provides a high standard of amenity to future users is perennial and in direct compliance with the Framework.
25. The development is in a relatively sustainable location and does result in a modest increase in the number of dwellings in the area. The development therefore gains support from Paragraph 69 of the Framework, which recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. There would also be economic benefits although these would be relatively modest, and some would be temporary.
26. Ordinarily, given that the Council does not have a five year supply of housing land these benefits would attract significant weight. However, in this case, the harms that I have found significantly compromise the numerical benefit to the housing supply. Furthermore, as the proposal does not safeguard or improve the environment or ensure healthy living conditions, the development cannot be said to make effective use of the land. For the same reasons the development does not meet the social and environmental objectives of sustainable development.
27. Therefore, even if the so called 'tilted balance' was engaged, the adverse impacts of the development significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, in any event, the presumption in favour of sustainable development does not apply.

Conclusion

28. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with the development plan as a whole. The material considerations, including the aforementioned potential benefits of the proposal do not carry sufficient weight to outweigh the harm, nor do they indicate that the appeal should be determined other than in accordance with the development plan. Therefore, the appeal should be dismissed.

Stewart Glassar

INSPECTOR