



Appeal Decision

Site visit made on 27 October 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/C1435/W/22/3310350

30 Sycamore Court, Uckfield, East Sussex TN22 1TY

- 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 Philip Gowing (Gowing Developments Ltd) against the decision of Wealden District Council.
 - The application Ref WD/2022/1465/F, dated 31 May 2022, was refused by notice dated 28 September 2022.
 - The development proposed is described as a 'proposed new 2 bedroom single storey dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for a proposed new 2 bedroom single storey dwelling at 30 Sycamore Court, Uckfield, East Sussex TN22 1TY in accordance with the terms of the application, Ref WD/2022/1465/F, dated 31 May 2022, and the plans submitted with it, subject to the conditions in the schedule below.

Preliminary Matters

2. A Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 has been provided by the appellant as part of the appeal process. The signed Deed is dated 19 May 2023 and I have had regard to this completed Planning Obligation when considering the appeal.
3. The Council's statement of case refers to preparation of a new Local Plan, but indicates that this remains at an early stage. No emerging policies have been brought to my attention and I have considered the appeal based on the adopted development plan.
4. A revised version of the National Planning Policy Framework (the Framework) came into force in December 2023, and I have taken its provisions into account. The main parties have had the opportunity to comment on whether the revisions to the Framework have relevance to their cases.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area,
 - whether satisfactory living conditions would be provided for future occupiers, with particular regard to the availability of outdoor amenity space, and

- the effect on the integrity of the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

Character and Appearance

6. The appeal site is an existing garden on a corner plot, to the side of a semi-detached dwelling. It is within an estate of mainly two storey housing arranged around a series of cul-de-sacs. The surrounding dwellings are generally of conventional two storey form, with sloping roofs to a simple gabled design. However, the appeal site also adjoins a series of school buildings across Downsview Crescent, most of which have flat roofs.
7. The proposed design would be in marked contrast to the surrounding dwellings, being a single storey, flat roofed building, on a rather unusual triangular footprint. The unconventional site layout responds to site conditions, namely avoidance of an existing sewer pipe. Nevertheless, the design would appear rather contrived, and the architectural detailing would have little in common with the surrounding housing. Notwithstanding the flat roofed school buildings nearby, the dwelling would look incongruous in relation to the more conventionally detailed housing on neighbouring sites.
8. The dwelling would also be in a prominent location, on a corner site adjacent to a through route and the school buildings. It would be on the higher part of the sloping site. However, it would be set into the slope and its overall height would remain significantly lower than either of the neighbouring dwellings.
9. There are several small green spaces within the estate and the Council explains that it was originally designed with an open plan layout. For that reason, permitted development rights for boundary structures to enclose front gardens were removed. However, there is well-established vegetation around several front and side gardens which has introduced a greater level of enclosure in several locations. In particular, the appeal site is enclosed by a substantial evergreen hedge along the boundary with Downsview Crescent.
10. While this may be a departure from the open plan layout as originally conceived, the hedge is now a well-established feature which provides a significant level of enclosure around the site. The dwelling would furthermore be modest in scale and set into the sloping site, as described above. It would be set back from the highway boundary, with much of the frontage to Downsview Crescent being retained as garden land. Therefore, given the particular characteristics of the appeal site and the proposed layout and scale of the dwelling, the proposal would not materially erode an open or undeveloped area which contributes to the wider character of the estate. On that basis, it would not be contrary to Policy EN18 of the Wealden Local Plan 1998 (WLP).
11. Nevertheless, I find that the proposal would not integrate well with the surrounding housing, due to its contrasting form and detailing. The degree of harm would be mitigated by the boundary screening, the low overall height of the building and the retention of garden land along the site frontage. However, even when these factors are taken into account, I conclude that there would be a moderate level of harm to the character and appearance of the area.

12. For that reason, the proposal would conflict with relevant requirements of Policy ENV27 of the WLP and Spatial Planning Objective SPO13 of the Core Strategy 2013¹ and relevant paragraphs of the Framework. These policies, amongst other things, require that new development should respect the character of adjoining development and promote local distinctiveness through good design.

Living Conditions for Future Occupiers

13. In the WLP, Policy EN27 requires that adequate provision is made for garden space, and in the Core Strategy SPO13 refers to provision of quality living environments. Neither policy specifies any specific garden standards, although there are numerical guidelines in the Wealden Design Guide² (WDG). The Framework advocates good design, which includes, in paragraph 135, creating places which promote well-being, with a high standard of amenity for future users. However, this does not prevent the adoption of less conventional layouts, provided appropriate living conditions can still be provided.
14. The appellant states that the size of the proposed garden would accord with guidelines in the WDG, and I have been presented with no evidence to the contrary. However, it would be almost entirely located on the more public side of the dwelling, next to the road. There would be no space for a garden at the rear, where a higher degree of privacy would conventionally be available.
15. The WDG highlights that standards of privacy vary between front and rear gardens and sets out various requirements for garden layout. However, it also says that application of rigid standards should be avoided and recognises that landscaping can be used to help define private space.
16. Since the main elevation of the proposed dwelling would be approximately 8 to 9 metres from Downsview Crescent, the garden area would not be particularly narrow or restricted. It would be capable of providing a usable outdoor amenity space, proportionate to the modest scale of the dwelling.
17. As described above, the existing boundary hedge has established a high degree of enclosure, which could be maintained, or reinstated through an alternative form of soft landscaping. I saw during my site visit that the appeal site is already used as a garden. The area is not currently overlooked by passing traffic or pedestrians, and privacy could be maintained by future occupiers.
18. Given the effectiveness of the soft landscaping, there is no clear requirement to enclose the garden with walls or fences, which could be less appropriate to the estate layout. Furthermore, these would require planning permission in their own right, since permitted development rights have been removed. Therefore, any future proposals for hard boundary treatment could be regulated as appropriate by the Council.
19. For the above reasons, I conclude that the proposal would provide satisfactory living conditions for future occupiers, with particular regard to the availability of outdoor amenity space. This aspect of the development would not conflict with relevant requirements in WLP Policy EN27, Core Strategy Spatial Planning

¹ Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan adopted February 2013

² Wealden Design Guide Supplementary Planning Document, November 2008

Objective SPO13 or relevant requirements in the Framework, as summarised above.

Ashdown Forest

20. The appeal site is within 7km of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC); European Sites subject to the provisions of the Conservation of Habitats and Species Regulations 2017.

Special Area of Conservation

21. The qualifying features underpinning the SAC designation are the presence of lowland heath habitat including both European dry heath and Northern Atlantic wet heath and a population of great crested newts. The conservation objectives are maintenance and restoration of qualifying habitats.
22. Atmospheric pollution arising from increased traffic flows is potentially harmful to the heathland habitat, which is sensitive to changes in air quality. However, the Council's evidence, as set out in the Officer Report, is that the single dwelling proposed would not, either alone or in combination with other development, breach any threshold above which air pollution would have a likely significant effect on the qualifying features of the SAC. This is based on technical evidence associated with the higher level of growth which was proposed in a now abortive new Local Plan, which was concluded not to require mitigation of adverse effects arising from air pollution. In addition, ongoing air quality monitoring is described as demonstrating a generally improving trend.
23. In response to consultation on this appeal, Natural England, in its capacity as Statutory Nature Conservation Body, has raised no concerns regarding the effect of the proposal on the SAC. Neither have I been presented with any other evidence that an alternative conclusion would be appropriate. Therefore, adopting the precautionary principle, on the basis of the evidence I have before me there is nothing to indicate that the proposed development would result in likely significant effects on the SAC, either alone or in combination.

Special Protection Area

24. With regard to the SPA, the qualifying features for which the site is designated are a concentration of ground nesting birds, particularly Dartford Warbler and European Nightjar. Recreational activity presents a threat to their habitat, as a consequence of trampling, erosion and disturbance during the breeding season. Development which would increase the population likely to visit the site provides a pathway for increased disturbance, and the Council's evidence confirms that this includes new residential development within 7km of the SPA.
25. On that basis, while the proposal is for a single dwelling, the evidence indicates that it would have a likely significant effect on the qualifying features of the SPA, in combination with other development. As such, it is necessary for me, as the competent authority, to conduct an appropriate assessment in relation to the effect of granting permission on the integrity of the European Site.
26. Within the Zone of Influence, a strategic approach to avoidance and mitigation of adverse impacts arising from new residential development is in place, which is described in the Council's Ashdown Forest SPA Mitigation Zone Background Paper dated January 2019. This includes a requirement for developers of new dwellings within the Zone of Influence to make financial contributions towards

provision of Suitable Alternative Natural Green Space (SANGS), to divert recreational pressure away from the SPA. A Strategic Access Management and Monitoring Strategy (SAMMS) is in place, which provides for a coordinated approach to management of recreational effects at the European Site, with the support of Natural England. This is funded by financial contributions from developers of new housing, known as the SAMMS contribution.

27. The appellant has provided a UU which would secure payment of the required financial contributions towards SAMMS and SANGS, prior to commencement of development. The Council has confirmed that the provisions of the UU would satisfactorily address these requirements. I am likewise satisfied that the UU would be effective in securing the obligations in question and that it would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework.
28. Natural England were consulted as part of the appeal process and have confirmed that the SAMMS and SANGS contributions would mitigate the effect of the development on the SPA and would be sufficient to avoid an adverse effect on the integrity of the European Site and relevant features. Based on the evidence before me, I have reached the same conclusion. The evidence does not indicate that there would be any other adverse effects on the integrity of European Sites. I am therefore satisfied that the proposal would not adversely affect the integrity of European Sites, either alone or in combination with other development.
29. On that basis, the proposed development would not conflict with relevant requirements in Policies EN1, EN7 or EN15 of the WLP, or Core Strategy Policy WCS12. These policies, amongst other things, require that new development avoids adverse effects on the natural environment and designated sites, including the Ashdown Forest European Sites.

Other Matters

30. Since the Council has confirmed that the site does not benefit from permitted development rights for domestic outbuildings, any similarity between the proportions of the proposed dwelling and outbuildings which could be erected elsewhere is not relevant in this case. I have noted that planning permission was granted in 2020 for a new attached dwelling of a similar design to the host dwelling. However, the appellant acknowledges that this may not take place due to the presence of a sewer pipe. The proposed dwelling would also have been of an entirely different design, much more similar to those which surround the site. I have therefore given limited weight to any potential fallback position represented by this previous planning permission.
31. I have noted concerns raised about increased demand for parking and the proximity of the access to the adjacent schools. However, vehicular access to the site already exists and no substantive evidence has been presented that it presents a risk to highway safety, notwithstanding its corner location. While the access and parking area would be modified to cater for the host dwelling, any increase in traffic movements would be modest given the limited scale of the proposal. The interaction with pedestrian and vehicle movements around the site would not be dissimilar to the current situation. Adequate off-street parking is proposed for both dwellings, on land within the appellant's control, which can be secured by means of an appropriate condition.

32. The main entrance to 11 Downsvie Crescent is a glazed door in the flank elevation. This would face towards the proposed dwelling, which would be in an elevated position and therefore somewhat prominent in the outlook from this opening. However, by virtue of its single storey design and the level of boundary separation, it would not be excessively overbearing, and it would not materially affect the outlook from windows on the principal front and rear elevations. The only window on the east elevation of the proposed dwelling would be an obscure glazed bathroom window. Conditions could be imposed to prevent further modifications to glazing on this elevation and this would be sufficient to maintain an acceptable standard of privacy for the occupiers of 11 Downsvie Crescent.
33. While the proposal would result in a rather small rear garden at the host dwelling, this aspect of the development would not differ from the plans approved by the Council in 2020 for a two-storey attached dwelling. The alignment of the proposed dwelling would be similar to that of the existing single storey garage. Therefore, the rear garden of the host dwelling would not be materially more enclosed than at present, and it would continue to provide a modest private amenity space in reasonable proportion to the scale of the property.
34. Three previous appeals at the same site have been brought to my attention, all of which were dismissed. In each case, a balanced judgement was made, taking account of identified harm versus benefits, based on the evidence available to the Inspector at that time. The first is now of some age, having been determined in 2016³. In the subsequent decisions, both made in 2019⁴, the absence of mitigation of adverse effects on the European Sites was a determinative factor, providing a clear reason for refusing the development. That being the case, each of these previous decisions differs in material respects from the circumstances of this appeal. I have considered the proposal on its merits, based on the evidence currently before me.

Planning Balance

35. The Council lacks a five year supply of housing. While they disagree as to the extent of the shortfall, evidence from both parties indicates that the most recent housing supply figures remain under four years. The Council alludes to an improving direction of travel and has provided details of the 2021 Housing Action Plan which is being implemented to support delivery. However, one of the key actions highlighted is preparation of a new Local Plan. As noted above that remains at an early stage, and based on the evidence before me there is little certainty about the timescale for boosting the supply of housing by that means. Furthermore, evidence from both parties indicates that the shortfall in housing land supply is already protracted, dating back to 2016, as is confirmed in the earliest appeal decision referred to above.
36. The proposal would be harmful to the character and appearance of the area, as set out above, and would not accord with the development plan for that reason. The relevant development plan policies reflect the Framework's focus on providing well-designed development which responds to local character. While paragraph 135 of the Framework says that appropriate innovation or change should not be discouraged, in this particular case I have found that the

³ Appeal Ref: APP/C1435/W/16/3149426

⁴ Appeal Refs: APP/C1435/W/18/3217765 and APP/C1435/W/19/3220963

innovative design approach would be incongruous with the surrounding context, and therefore harmful. Nevertheless, I have kept in mind that the level of harm to the character and appearance of the area would be moderate in its extent.

37. While the proposal would contribute only one additional dwelling to the supply of housing, that dwelling would be located in one of the larger built-up areas in the District. It would be conveniently located in relation to a wide range of services and facilities within realistic walking distance, and would also have access to public transport.
38. The single storey design would offer accommodation suited to a range of potential occupiers, including older people or those with mobility problems requiring easily accessible accommodation on a single level. In this regard, the appellant has drawn my attention to evidence from the Council's 2021 Housing Needs Assessment indicating that bungalow accommodation is in high demand. The appellant also refers to a particular need for smaller properties in the District, and I have been presented with no substantive evidence to the contrary. There is, however, no evidence that the proposal would provide affordable housing as defined in the Framework, catering for those who are unable to access housing on the open market.
39. The proposal would bring forward development on a small site, which the Framework recognises in paragraph 70 can make an important contribution to meeting housing requirements, and can often be built out relatively quickly. In this particular case, the proposal would also facilitate delivery on a small site which is subject to a physical constraint preventing implementation of a previous planning permission for a new dwelling.
40. There would be some limited economic benefit arising from the construction process, spending by future occupiers, and Council income derived from the provision of new dwellings. However, this would be at a very modest level, given the small scale of the proposal.
41. I have found that the proposal would provide acceptable living conditions for future occupiers, and it would not adversely affect the integrity of European Sites. However, these are neutral factors which weigh neither for nor against the proposal.
42. While the numerical contribution to the supply of housing would be small, the proposal would also deliver a number of qualitative benefits as outlined above. When considered collectively, against the backdrop of a protracted housing land supply shortfall, these weigh significantly in favour of the proposal.
43. That being the case, the moderate harm arising from the proposal does not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposed development benefits from the presumption in favour of sustainable development, as defined in paragraph 11 of the Framework and Policy WCS14 of the Core Strategy, and I conclude that planning permission should be granted.

Conditions

44. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. I have amended some of them for consistency and clarity.
45. In response to the provisions of the Council's Housing Action Plan, I have modified the required timescale for implementation from the standard three years to eighteen months from the date of this decision. This was recommended in the conditions provided with the Council's Statement of Case and therefore the appellant has had the opportunity to raise any concerns about the proposed implementation period.
46. I have imposed conditions specifying the approved plans and use of the external materials specified in the application, to provide certainty.
47. While the drawings confirm that the proposed dwelling would be cut into the sloping land, they do not precisely detail the intended finished floor levels in relation to the sloping ground. Therefore, a condition to secure these details prior to commencement of the development is necessary to ensure that the relationship between the proposed dwelling and the adjacent land and buildings is consistent with the approved drawings. The appellant has confirmed acceptance of this pre-commencement condition, in the event that the appeal is allowed.
48. Details of hard and soft landscaping are required in the interests of the character and appearance of the area. However, I have modified the trigger for approval of these details, since there is no clear justification for this to take place in advance of the commencement of groundworks.
49. Conditions to secure implementation of the access and parking arrangements before the dwelling is occupied are required in the interests of highway safety and to ensure adequate parking provision within the site.
50. In order to safeguard privacy for adjoining occupiers, the proposed east-facing window should be obscure glazed and planning control should be retained over any subsequent alterations to fenestration on the relevant boundaries. I have therefore imposed conditions to that effect.

Conclusion

51. For the above reasons, I conclude that the conflict with the development plan relating to one aspect of the proposed development is outweighed by other relevant material considerations, notably the presumption in favour of sustainable development as defined in the Framework. Therefore, the appeal should be allowed subject to the conditions set out in the schedule below.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall be begun not later than the expiration of eighteen months beginning with the date on which this permission is granted.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - AL-100b Location & Block Plan
 - AL-200a Proposed Site/Landscaping Plan
 - AL-201a Proposed Plans
 - AL-202b Proposed Elevations
 - AL-203b Existing & Proposed Roadside Elevation
 - AL-204b Proposed Site Sections
 - AL-205a Proposed Sewer Plan
- 3) The external materials, including windows, used in the construction of the development hereby approved shall be as detailed on the application form and in the Design and Access Statement dated May 2022 and shall be retained permanently as such.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed dwelling and external ground levels, in relation to existing ground levels, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 5) Prior to the first occupation of the dwelling hereby approved, a scheme of landscape proposals shall be submitted to, and approved in writing by, the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development.

All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

- 6) Prior to the first occupation of the dwelling hereby approved, the parking area shown on drawing AL-200a shall be provided, surfaced and drained in accordance with details submitted to, and approved in writing by, the Local Planning Authority and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order revoking and re-enacting that Order, shall be carried out on that area of land so shown or in such a position as to preclude vehicular access.

- 7) Prior to the first occupation of the dwelling hereby approved, details of the precise alignment of the new driveway, along with plans confirming the reinstatement of roadside kerbing, shall be submitted to, and approved in writing by, the Local Planning Authority. The driveway shall then be implemented in accordance with a timeframe to be submitted with the condition details and agreed in writing by the Local Planning Authority.
- 8) The dwelling hereby permitted shall not be occupied until the window on the east elevation has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any order revoking and re-enacting that Order with or without modification, no windows other than those expressly authorised by this permission shall be inserted within the north or east elevations of the dwelling hereby permitted without the written permission of the Local Planning Authority.

END