



Appeal Decision

Site visit made on 7 December 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal Ref: APP/L2250/W/22/3313507

12 London Road and Ebbor House, Barrack Hill, HYTHE, CT21 4DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Holbrook Griffith Development Ltd against the decision of Folkestone and Hythe District Council.
 - The application Ref 21/2470/FH, dated 13 December 2021, was refused by notice dated 15 July 2022.
 - The development proposed is Outline application for the demolition and redevelopment to provide 20 residential units incorporating access and landscaping details, with matters of appearance, layout and scale reserved for future consideration..
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline with details of access and landscaping submitted. It is clear that the Council considered the circulation routes within the site as part of the access details. Appearance, layout and scale are reserved for future approval.
3. The appellant has submitted an amended plan¹ which was not before the Council when it made its decision. It shows an amended access road to the site from London Road with the addition of a passing place. The suitability of the access was a matter of dispute between the parties. The Procedural Guide: Planning Appeals – England is clear that the appeal process should not be used to evolve a scheme and that what is considered at appeal is essentially the same scheme that was considered by the Council and interested parties. Although the revised plans would not lead to a substantially different scheme, this is nevertheless a matter that those consulted on this proposal may have wished to have the opportunity to comment on. Applying the Holborn Studios² principles, I have made my decision on the basis of the plans considered by the Council, and on which interested party's views were sought. For the avoidance of doubt, this refers to drawing no EH PL 02 Rev E.
4. The application was amended to reduce the maximum number of units from 36 to 20. The Council made its decision on this basis (net addition of 18), although this was not re-advertised to interested parties. The above description of development reflects the amendment and is that used by the parties on the decision notice and appeal form. The appellant has submitted amended plans

¹ Drawing No EH PLA 24

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

to reflect this. As these plans are indicative only, I consider there would be no prejudice to interested parties from my considering them as part of this appeal.

5. A planning obligation, dated 29 November 2023 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted which sought to address affordable housing, education contributions, public open space and play space. I will return to this in due course.
6. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.

Main Issues

7. The main issues are:

- the effect of the proposed development on the character and appearance of the area including the effect on protected trees;
- the effect of the proposed development on the living conditions of neighbouring occupiers;
- whether suitable access to the site can be achieved;
- the effect of the proposed development on land stability; and
- whether there would be suitable provision for affordable housing and open space.

Reasons

Character and Appearance

8. The appeal site consists of two dwellings and their associated gardens. Ebbor House is a large dwelling set in expansive, landscaped grounds. No 12 London Road is also a large dwelling, sited on a spacious plot which faces onto London Road. The site is bounded by the properties fronting onto London Road, Barrack Hill and Turnpike Hill, and the flatted development at Colleton Park. The properties on London Road and Barrack Hill are large dwellings set in spacious plots. The dwellings on Turnpike Hill are set in more modest plots and are separated from the site by a footpath that connects London Road to Dark Lane. The site rises from London Road towards North Road.
9. Ebbor House is atypical of the surrounding area given its expansive garden and lack of frontage to the road. However, there is development around the house and its grounds. As a result, it is an established part of the character and appearance of the area. The entire application site is the subject of Tree Preservation Order No. 5 of 2021, an area order which protects all trees. The site makes a strong positive contribution to both the character and appearance of the area due to the extensive mature tree cover.
10. The Arboricultural Impact Assessment identifies there would be the loss of some 39 of the 81 individual trees it identifies on the site, along with 6 of the 16 groups and 1 of the 5 hedges. The majority of these would be Category C

and it is proposed to retain many of the trees along the boundary to the properties on London Road, and to the footpath. While layout is to be considered at a later stage, the proposed quantum of development nonetheless gives rise to the potential for the considerable loss of trees within the site. Notwithstanding there is an area of the site without significant tree cover, including the site of the present dwelling, the loss of trees would significantly harm the verdant character and appearance of the site and the contribution it makes to the surrounding area. It would not be necessary for the development to take place for appropriate management of the trees to be carried out.

11. Although appearance, layout and scale are reserved matters, the development would be likely to come forward as the flatted development shown on the indicative plans given the proposed quantum and the access details that would be approved at this stage. Although it is indicated that the lower level of any blocks could be sited within the slope, such blocks would nonetheless be of a considerable bulk and massing which would be incongruous with the predominant pattern of two storey dwellings surrounding the site.
12. Taken together, the likely form of the proposed dwellings and the loss of the protected trees would fundamentally harmfully change the character and appearance of the site from its present verdant, suburban character to that of a more urbanised, backland development. This would be detrimental to the character and appearance of the area.
13. Long and medium distance views of the site are limited due to the topography, built form and planting in the surrounding area. Further screening would be provided through the trees that would be retained and the height of the proposed blocks could be limited by condition. However, this would not overcome the localised harm to the character and appearance of the area.
14. The site is of a particularly low density taken in isolation. Although the parties disagree as to the precise proposed density, development between 27 to 33 dwellings per hectare would be broadly typical of that commonly found in residential areas. However, I am mindful of the advice in paragraph 128 of the Framework that while planning decisions should make efficient use of land, the desirability of maintaining an area's prevailing character and the importance of securing well-designed places should be taken into account. Similarly, while the building to plot ratio can provide useful context, it is not in and of itself integral as to the acceptability or otherwise of a proposed development. There is no substantive evidence to demonstrate that the garden is unmanageable for a single dwelling.
15. Colleton Park is a substantial block of flats set over 4 floors. It is further up the incline than the appeal site. I do not have full details of how that scheme came to be approved, however the fact of a similar development adjacent would not alter my assessment of the effect of the scheme before me.
16. The proposed development would therefore have an adverse effect on the character and appearance of the area including from the loss of protected trees. It would be contrary to Core Strategy (2022) (CS) Policies SS1 and SS3 and Places and Policies Local Plan (September 2020) (LP) Policies HB1, HB10, and C1 which, taken together and insofar as they relate to this appeal, require development to preserve and respond to the character and appearance of the area, make a positive contribution to its location and surroundings and respect the massing and form of existing buildings. It would also be contrary to the

advice in paragraph 135 of the Framework which requires development to add to the overall quality of the area and be sympathetic to local character.

17. The Council has referred to LP Policy NE2 in their decision. This relates to protecting the biodiversity value of sites and as such is not directly relevant to the reasons given for refusing the application with respect to protected trees.

Living Conditions

18. The appellant has identified minimum distances that their design solutions would be from the rear gardens of the neighbouring properties on Barrack Hill. While the properties on Barrack Hill have considerable rear gardens, the siting of a potentially three or four storey building 5-10m from the boundary of those gardens would undoubtedly appear dominant and enclose the rear gardens of those properties. This would also be the case for properties which would not directly bound onto where the blocks would likely be sited but which lie further down the slope. The likely bulk and height of the proposed flats would harm the outlook from the rear gardens of those properties.
19. I cannot be certain that the site could be developed for the proposed quantum of development without having an adverse effect on the living conditions of neighbouring occupiers. It would be contrary to LP Policies HB1 and HB10 which, inter alia, require development to not lead to a loss of amenity for neighbours taking account of poor outlook.

Access

20. The A261 London Road is subject to a 30mph speed limit adjacent to the appeal site. There was a steady flow of traffic along it at the time of my site visit. Access would be via the plot of No 12 which has a moderately steep gradient. The submitted drawings show a pedestrian footpath along one side of the access.
21. Although the proposed access would be to serve no more than 20 dwellings, there would be the potential for conflict to occur as a car and large vehicle, such as refuse or delivery lorry, would not be able to pass on the road. This could result in vehicles having to reverse along the access road. This could result in a danger to highway safety, given the likely slope of the access road and position of the access on the main road. There would also be potential danger to pedestrians if vehicles were to mount the pavement to pass.
22. I am therefore not satisfied that suitable access to the site can be achieved. The proposed development would therefore be contrary to Policies HB1 and T1 which require development to facilitate ease of movement and create an environment that is safe for all street users.

Land Stability

23. The submitted desk study noted a number of geotechnical slope stability hazards. It highlighted a high risk area under the access road where slope instability problems were almost certainly present as a significant constraint on land use. A medium risk area, including the footprint of the development, where problems were probably present or have occurred in the past, was identified.

24. These hazards are further identified as arising from reactivation of the existing historical landslips and new landslip movements. It included the potential for these to occur as a result of imposed loadings from the proposed development, removal of support to previously slipped sections of the slope and overly steep or deep excavations. The desk study concluded the landslide risk was significant. There is therefore the potential for the proposed development to have an adverse effect on land stability.
25. It is suggested that this matter could be dealt with by condition, requiring further site investigation to be undertaken. Any such condition must meet the tests set out in paragraph 56 of the Framework. I cannot be certain that the quantum of development proposed could be delivered in a way that would not have an adverse effect on land stability, or that development could be constructed, would be safe over its planned lifetime and would not have an adverse effect on land stability elsewhere. Furthermore, I cannot be certain that the associated costs would not have an effect on the viability of the proposal. Such a condition would therefore not be reasonable in all other respects.
26. The appellant has referred to other sites where site investigation conditions have been used. However, I do not have full details of the information submitted with those cases to be sure that they provide a close parallel. I am also mindful that ground conditions naturally will vary from site to site and note the caveat in the example given in the desk study that the appropriate solution in that case may not be appropriate for this development given the likely different form of the proposed dwellings.
27. Consequently, it has not been demonstrated that the proposed development could be carried out without an adverse effect on land stability. It would therefore be contrary to LP Policy NE6 which requires it to be clearly demonstrated that the site can be safely developed.
28. The Council has referred to LP Policy HB1 in its reason for refusal, however this refers to compliance with other relevant policies within the development plan and as such is not directly relevant to this reason for refusal in its own right.

Affordable Housing and Open Space

29. CS Policy CSD1 is clear that development proposing 15 or more net dwellings or on a site greater than 0.5ha should provide 22% on-site affordable dwellings. The submitted UU proposes a commuted sum towards an off-site contribution in place of this. There is no explanation for this approach which is clearly contrary to the intent of the development plan for housing sites to include a range of tenures.
30. CS Policies C3 and C4 require the provision of open space and children's playspace. These should be provided on site unless it would not be appropriate or desirable. The Council accept that a commuted sum towards off-site contributions would be acceptable in this case. I have no reason to disagree with this.
31. The appellant has submitted a UU which seeks to address both of these matters, along with education contributions sought by Kent County Council. Both the Council and the County Council have raised concerns with the drafting

and enforceability of the UU. The parties are also not in agreement with the contributions secured by the UU.

32. Had I been minded to allow the appeal, the issues around the drafting and contributions towards open space and education could have been explored further. However, this would not overcome the lack of justification for there being no on-site affordable housing, or the other harms I have identified.
33. The proposed development would not make suitable provision for affordable housing and open space. It would therefore be contrary to CS Policy CSD1 which requires housing development to create balanced neighbourhoods with a range of tenures, and CS Policies C3 and C4 which require development to make provision to meet the open space and child playspace needs of the proposed dwellings.

Other Matters

34. There would be a benefit from the delivery of additional dwellings, irrespective of the amount of supply the Council can demonstrate. The site is located within an urban area with good access to services and facilities. Although these are issues to be addressed at the reserved matters stage, the dwellings could be designed to achieve acceptable living conditions for future occupiers and could include environmentally friendly features such as sedum roofing. Appropriate parking provision could be made.
35. The application was submitted following positive pre-application advice. The Framework acknowledges the benefits of early engagement and good quality pre-application discussion. While such advice is not binding, it is clearly unfortunate when a different decision is reached on an application. However, I have dealt with the appeal on its planning merits based on the evidence before me. I also note the comments of the appellant with regard to how the amended scheme was dealt with. However, addressing these concerns does not fall within the remit of this appeal.

Conclusion

36. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR