



Appeal Decision

Site visit made on 19 June 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/B1415/W/23/3326196

Land adjoining 14-16 Harley Way, St Leonards On Sea TN38 8BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Aston Assets Limited against the decision of Hastings Borough Council.
 - The application Ref HS/DS/21/00929 sought approval of details pursuant to condition Nos 1, 7, 9, 10, 12, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27 and 28 of a planning permission Ref HS/OA/18/00726, granted on 13 December 2018.
 - The application was refused by notice dated 19 January 2023.
 - The development proposed is reserved matters application relating to layout, appearance, scale and landscaping for the erection of 3 no.2 bed apartments.
 - The details for which approval is sought are:
 - Condition 1: (Layout, appearance, scale and landscaping)
 - Condition 7 (Vehicular Access)
 - Condition 9 (Cycle Parking)
 - Condition 10 (Surface Water Drainage)
 - Condition 12 (Drainage Surface Water Discharge Rates)
 - Condition 13 (Public Sewer Diversion)
 - Condition 14 (Attenuation)
 - Condition 15 (Drainage Maintenance and Management Plan)
 - Condition 16 (Site Waste Management Plan)
 - Condition 17 (Plant Details)
 - Condition 18 (Construction Environmental Management Plan)
 - Condition 20 (Operations)
 - Condition 22 (Land Stability and Soils Report)
 - Condition 23 (External Lighting)
 - Condition 24 (Open Space, Planting, Boundary Fences)
 - Condition 25 (Trees)
 - Condition 26 (Bins)
 - Condition 27 (EVCP)
 - Condition 28 (Energy).
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Decision

1. The appeal is allowed and the reserved matters are approved, namely layout, appearance, scale and landscaping, details submitted in pursuance of condition No 1 attached to outline planning permission Ref HS/DS/21/00929 dated 13 December 2018, subject to the conditions in the attached Schedule.
2. The appeal is also allowed insofar as it relates to details submitted pursuant to condition Nos. 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27 and 28 of the aforementioned outline planning permission in accordance with the terms of the application Ref HS/DS/21/00929, dated 28 September 2021, subject to the conditions in the attached Schedule.

Preliminary Matters

3. In December 2018, the Council granted outline planning permission and approved the means of access for the site to be developed for up to 4 No. 2-bed apartments. Condition 1 of the outline permission required the submission of reserved matters relating to layout, appearance, scale and landscaping. In addition to this, the main parties have confirmed that details pursuant to conditions 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27 and 28 were also to be considered at this stage.
4. During the consideration of the detailed scheme, the proposal was revised from 4 No. to 3 No. 2-bed apartments. This does not breach the terms of the substantive outline permission and I have amended the description of development in the banner heading to reflect this change.
5. Following the Council's decision, the appellant's appeal submissions included additional drainage details. The appeal process should not be used to evolve a scheme and it is important that what is considered is essentially the same as that on which the local planning authority took their decision and on which the views of interested parties were sought. I have had regard to the 'Wheatcroft' principles including whether the information would materially alter the nature of the development. Given that the alterations made do not fundamentally alter the proposal and others have had an opportunity to comment on them during the appeal stage, no parties would be prejudiced by my consideration of them. I have therefore proceeded on this basis.

Main Issues

6. The reasons for refusal refer only to the design, scale and massing of the proposed building and the lack of sufficient information as to the drainage infrastructure and possible resulting flood risk.
7. Therefore, the main issues are a) whether or not the proposed building would represent an appropriate development; and b) drainage/flood risk.

Reasons

Proposed Building

8. The appeal site is within a residential area, positioned at the eastern end of Harley Way, a short cul-de-sac of two storey semi-detached properties. The site is set at a lower ground level than the western end of Harley Road but nevertheless occupies an elevated position, that is visible from various vantage points, in particular Bexhill Road.
9. The site is positioned slightly apart from the other properties in Harley Way and its configuration is different from the prevailing pattern of development in the road. Thus, any building on the site would not be able to fully reflect the arrangement and spacing of the existing dwellings in Harley Way. Nevertheless, the building and site would be laid out so that the main entrance and parking area is accessed from the northern side, with garden spaces to the side and rear. This is what might reasonably be expected in this context.
10. The front of the building would be set slightly behind the prevailing building line on this side of the road. However, given that the proposed building would be set away from the existing dwellings, this would not be harmful. The site layout

overall broadly reflects that shown on the illustrative drawings submitted with the outline application and would not be harmful to the character of the street.

11. The appeal scheme proposes 3 No. 2-bed apartments. Each of the units accords with or just exceeds the minimum internal space standards for a 2-bed apartment. The outline permission allows for a development of up to 4 No. 2-bed apartments. The scale of development currently sought would therefore be well within the broad parameters set by the substantive permission. There is nothing before me to indicate that the situation has materially changed and that a lower quantum of built form is now unacceptable.
12. Given the shape and nature of the site, a building that is deeper than it is wide would seem an inevitable consequence of constructing a building containing flats. The building has been designed to have the same ridge height as its nearest neighbouring building in Harley Way. This would not reflect the stepping down of ridge heights, albeit the front element of the building would be a small design acknowledgement of this street scape feature. However, the slight separation from the neighbouring properties, together with being at the end of the row means that this would not be unduly harmful to the overall street scene.
13. The fenestration pattern on the north, west and east elevations is restrained. This does leave some larger areas of brickwork. However, this could not be said to be so impactful that it would render the building's appearance unacceptable. A building on this site, providing three apartments, will be unable to replicate the window patterns of the neighbouring buildings. I am also mindful that more or larger windows could have the effect of drawing the eye to an even greater extent. As it is, the building would utilise external materials that would not be out of keeping with the area and the external appearance would not be so different as to cause harm to the character of Harley Way.
14. The proposed building would be visible from Bexhill Road, which is below Harley Way and to the south of it. Given the sloping nature of the site, the building would clearly present as three storeys when viewed from Bexhill Road. However, it would be seen against a backdrop and within the context of the other properties in Harley Way.
15. Within the broad vista looking west from Bexhill Road towards the appeal site other three storey buildings are visible. This includes buildings on Bexhill Road and those set above it. Indeed, there is a range of different buildings which are set at a higher level than Bexhill Road and which are visible from it. Some are more prominent than others. The position of the appeal site and the nature of what has been permitted by the outline permission means that any building on the appeal site will have a higher level of prominence and visibility from Bexhill Road than some of its immediate neighbours.
16. However, given the materials and fenestration pattern on the southern elevation, the proposed building would not appear as a completely alien or unexpected feature. A wildflower meadow is proposed to the rear of the building. Whilst I have some doubts as to how effective this would be in providing screening, it may help in some small way to soften the visual effect of the building. Overall, I find the appeal proposal would not give rise to an unacceptable scale of built form relative to its surroundings nor would it have an unacceptable appearance.

17. The scheme would entail areas of both hard and soft landscaping. Given the nature of the proposal and size and shape of the site, the landscaping is what might reasonably be expected. The main areas of hardstanding would be to the front of the building, with planting to the sides and rear. The Council has not specifically raised concerns in relation to the landscaping details and given my observations on site I see no reason to conclude otherwise. Accordingly, the appeal proposal would not be unacceptable in terms of matters of landscape treatment.
18. In view of all of the above, I have found no basis to conclude that the layout, appearance, scale and landscaping of the appeal scheme that is before me would be harmful, bearing in mind the parameters set by the permitted parent permission. The proposal therefore accords with Policy DM1 of the Hastings Development Management Plan 2015 and Policy SC1(i) of the Hastings Planning Strategy 2014 which, amongst other things, require developments to protect and add to the local character. For similar reasons, the proposal would accord with the Framework's design objectives.

Drainage/Flood Risk

19. The Officer Report noted that Southern Water (SW) had objected to the proposal as, although a minor diversion of the sewer was being considered, the plans needed to be amended to show this information. The Council were therefore concerned as to whether the proposed changes would be achievable.
20. Subsequent to the Council's decision, a formal application to divert the public sewer was submitted to SW. They have now confirmed that the submission was acceptable. As such, the Council's concerns regarding the diversion of the sewer have been overcome.
21. Separate to the issue of the sewer diversion, SW had confirmed that there was adequate capacity in the local sewerage network to accommodate a surface water flow. However, the Local Lead Flood Authority were seeking further information to demonstrate how flood water would be managed on site during such an event without increasing flood risk elsewhere, including to the highway.
22. As part of the appeal a 'SUDs Report' from Nimbus Engineering Consultants Ltd was submitted. This sets out various measures that will be adopted, including a maintenance regime and the provision of a Surface Water Underground Attenuation Tank. It would be of a size to avoid any flooding for 1:100 storm event +45% Climate Change and 10% urban creep.
23. The Council has not raised any direct concerns regarding the proposed approach but was concerned that this may have consequences for the proposed ground works, which the Officer Report confirms were acceptable i.e. condition 22 (Land Stability and Soils Report). However, there is no evidence that this will be the case. If it were subsequently necessary to amend the ground works details in any way, revised details could be submitted for the Council's approval, as the outline permission does not prevent alternative proposals being submitted to address the same issue.
24. Therefore, based on the substantive evidence before me, I have no reason to conclude that the development would adversely impact on the existing

drainage infrastructure or increase flood risk elsewhere, including to the highway.

25. Accordingly, the details pursuant to Condition 10 (Surface Water Drainage), Condition 12 (Drainage Surface Water Discharge Rates), Condition 13 (Public Sewer Diversion), Condition 14 (Attenuation) and Condition 15 (Drainage Maintenance and Management Plan) are acceptable.
26. These details accord with Policies SC1 and SC7 of the Hastings Planning Strategy 2014 insofar as seeking to manage and prevent flood risk. They also accord with the Framework's policies for ensuring flood risk is not increased elsewhere as a result of development.

Other Matters

27. The appellant's submission also sought to address the other conditions which were required to be submitted with the reserved matters of condition 1. The Council's formal decision did not indicate a concern with any of these other matters. Similarly, their appeal statement did not raise these matters as being unacceptable.
28. Having regard to the Officer Report and being mindful that details of access should have been fully considered as part of the outline approval, I am satisfied that the highways and parking matters have been sufficiently addressed. The site layout indicates there would be sufficient cycle parking provision. Details of the nature of the cycle parking can be secured through conditions attached to this decision.
29. The officer report noted that waste would not be collected from the storage area and that residents would be required to move bins to the kerbside on the relevant day for collection. However, the report acknowledged that this is not an uncommon occurrence in a residential area and as such was considered acceptable. Furthermore, there was no objection from the Council's Waste and Recycling Team. On this basis, the details would meet the requirements of condition 26.
30. Although the officer report refers to the need for an updated ecological report, condition 21 only seeks the details of the role and responsibility of an appropriately competent person. These details appear to have been provided and I have made my decision on this basis.
31. Condition 23 requires details of external lighting. This is shown on drawing J003632-DD-10, which relates to the earlier building and site layout. Whilst the Council raises no objection to the details, for consistency, it would not be appropriate to include this within the list of approved drawings. Updated details could however be provided for the Council's approval.
32. Condition 25 seeks a tree report. However, this seems to be covered by the landscape reserved matters, the details for which were not a contentious issue for the Council. However, the planting plan and associated landscape proposal drawing show an earlier site layout. Their broad details are reflected in the revised site layout drawings, but to avoid any inconsistency between drawings these details will need to be re-provided with the correct layout. However, this, together with a programme for implementation can be addressed through this appeal decision.

33. The site layout indicates the provision of two electric vehicle charging points, which are intended to address condition 27. Given that electric vehicle charging points now fall under building regulations, and in the absence of evidence to the contrary, there is not a planning reason to find these details unacceptable.
34. The Council has also indicated, as part of this appeal, that information was submitted to address the following conditions: condition 16 (Site Waste Management Plan), condition 17 (details of plant), condition 18 (Construction Environmental Management Plan), condition 24 (details of open space, planting, and all boundary fences), condition 28 (details of climate change mitigation and adaptation measures). The Council has not raised objections to these submissions and based on the evidence before me I have no reason to find them unacceptable. As noted previously, the ground conditions details (condition 22) were acceptable to the Council.

Conditions

35. In addition to a condition which lists the approved plans and details of the development, conditions are required to secure updated landscaping details and ensure the implementation of all landscaping, thereby protecting the character and appearance of the site and wider area.
36. A condition securing the exact details of the cycle parking is required, as these have yet to be confirmed. A condition securing details of external lighting that accords with the approved building/site layout is also imposed. Both are necessary to ensure the site functions as intended.
37. A condition securing the proposed obscure glazing would protect the living conditions of residents.
38. This approval is governed by the standard timescale for implementation set out in the outline permission. It is not necessary to include a condition to this effect with this decision. The Council has also suggested conditions which go beyond the remit of this appeal or which would seek further details on matters to which they have not objected to and which were not part of the reasons for refusal. I do not therefore consider such conditions to be reasonable.

Conclusion

39. There are no other relevant matters before me which indicate that the appeal should fail. In view of my findings, the appeal proposal would accord with the development plan when read as a whole.
40. Consequently, I conclude that, subject to the conditions specified in the attached schedule, the appeal should be allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following drawings and details:
 - Site Location & Block Plan - OB/100/LBP
 - Site Plan - J003632-DD-03 Rev B
 - As Proposed Lower Ground Floor Plan in Context - J003632-DD-04 Rev A
 - As Proposed Ground Floor Plan In context - J003632-DD-05 Rev A
 - As Proposed Floor Plans P1 - J003632-DD-06 Rev A
 - As Proposed Floor Plans P2 - J003632-DD-07 Rev A
 - As Proposed Elevations 4 Flats - J003632-DD-08 Rev A
 - As Proposed Street Elevations - J003632-DD-09 Rev A
 - SUDS REPORT (Ref: C2972-R1-REV-A) prepared by Nimbus Engineering Consultants Ltd, dated July 2023
 - Drainage Layout A20216/0200 Rev T4
 - STORM SEWER DESIGN prepared by Patrick Parsons Limited, dated 26/05/2021
 - Site Waste Calculator, prepared by The Waste Company
 - Site Waste Management Plan, prepared by The Waste Company
 - Construction Environment Management Plan prepared by Patrick Parsons, dated 17 November 2020
 - Precautionary Method of Working prepared by David Archer Associates, dated 14 October 2020
 - Geotechnical Assessment Report (Report Reference: R14646) prepared by Ashdown Site Investigation Limited, dated 14 July 2021
 - Biodiversity Enhancements prepared by David Archer Associates, dated 1 June 2021
 - Final Energy Statement for Planning prepared by Base Energy Service Ltd, dated 8 June 2021
- 2) No development above ground level shall commence until a landscape planting plan and programme of implementation have been submitted to and agreed in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details before any part of the development is first occupied, in accordance with the agreed implementation programme.
- 3) If, within a period of 5 years from the date of planting, any tree or plant (or any planted in replacement for it) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the Local Planning Authority gives its written consent to any variation.
- 4) Before the development is first occupied the hard landscaping works shall be carried out in accordance with the approved details.

- 5) Prior to the occupation of the development hereby permitted full details of the covered and secure cycle storage facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to any occupation of the development hereby permitted.
- 6) Prior to the occupation of the development hereby permitted, details of external lighting shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to any occupation of the development hereby permitted.
- 7) The building hereby permitted shall not be occupied until the windows shown on the approved drawings as being obscurely glazed have been fitted with obscured glazing, and no part of those windows 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.

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