



Appeal Decision

Site visit made on 28 January 2025

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/T1410/W/24/3351270

Land to the rear of 4-6 Whitley Road, Eastbourne, BN22 8NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Meisels against the decision of Eastbourne Borough Council.
 - The application Ref is 230629.
 - The development proposed is the creation of a new three storey block of 11no. flats with associated parking, cycle storage and bin stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Applications for planning permission are to be determined in accordance with the development plan for the area unless material considerations indicate otherwise. I have considered the development plan as a whole, including the policies of relevance to the main issues in the Eastbourne Core Strategy (Core Strategy). The National Planning Policy Framework (the Framework) is a material consideration.
3. For accuracy, the description of development is as specified by the Appellant on the Appeal Form and the Council on the Decision Notice.

Main Issues

4. The main issues are:
 - a. Whether the proposal would create acceptable living conditions for future occupants.
 - b. Whether it makes acceptable provision for affordable housing.
 - c. Whether it is acceptable when regard is paid to effects on the public highway.

Reasons

Living conditions – future occupants

5. In relation to Flat 3, the location of the bedroom window across from the boundary gate providing access to Ringwood Road creates an obvious and clear risk of close views into the window. While the likely intensity in use of the gate is unevidenced, its potential utility as a pedestrian cut through towards the A259 and location in relation to the main building leads me to conclude that the gate could be well used.

6. Left unmanaged, it is reasonable to expect that occupants of Flat 3 would be faced with a choice of either leaving their main and only bedroom curtains drawn or tolerating substantial intrusion on their privacy. Notwithstanding the Appellant's assertion, I do not have substantiated evidence demonstrating how this issue would be satisfactorily addressed.
7. In addition, the location of the bedroom of Flat 3 in relation to the access to the building and main staircase core creates a material risk of disturbance to the future occupants of Flat 3. This is both as a result of the main door to the building opening and closing and noise from users in the communal areas of the development. While it is possible that this issue could be managed through careful insulation of the wall between the bedroom of Flat 3 and the communal hallway, I do not have substantiating evidence to reach a conclusion that this would be reasonably achievable or effective in adequately managing the issue.
8. I do not disagree with the Council's view that an acceptable standard of accommodation would be created for future occupants of the development, with the exception of Flat 3. However, taking a rounded view of living conditions across the proposal as a whole, the materiality of the risks associated with Flat 3 are such that a conclusion that the proposal would not create acceptable living conditions for future occupants is justified.
9. There is conflict with the development plan for the area flowing from the harm, in particular Policy B2 of the Core Strategy which requires, amongst other things, protection of the residential amenity of future residents.

Affordable housing

10. It is common ground between the parties that the proposal would generate a requirement for a 30% affordable housing contribution. The proposal is not accompanied by a S106 legal agreement or evidence of another means of securing the necessary contribution. The Appellant's Design and Access Statement saying that they anticipated a S106 generated by the Council is a matter between the parties. It does not change the fundamental position in this appeal that the affordable housing contribution is unsecured.
11. The proposal does not make acceptable provision for affordable housing. There is conflict with the development plan for the area, including Policy D5 of the Core Strategy which requires, amongst other things, all development to contribute towards affordable housing where there is a net gain of 1 or more residential units.

Highways

12. Paying regard to the Appellant's transport statement and the response from the County Council highways team (adopted by the Council), a shortfall in onsite car parking provision of between 3 and 4 spaces when the proposal is assessed on the basis of the ESCC parking calculator is a matter of common ground.
13. The Council's (advised by the County Council) on site car parking requirement is said to be generated using the ESCC parking calculator based on a need for some unallocated parking for residents and visitors. It is expressed as the minimum number of parking spaces they would expect to see at a development of this type.

14. While the parking calculator should only be used as a guide, and the Council's approach of treating the figure as a minimum lacks flexibility, it is an appropriate starting point for determining an appropriate level of parking provision.
15. To varying degrees, both parties acknowledge the sustainability of the location and size of the dwelling units as factors influencing the likelihood of future occupants of the development choosing to own a car. Some of these considerations are reflected in the parking calculator itself.
16. The Appellant's transport statement sets out credible evidence of the sustainability of the location and other factors. While the evidence justifies a margin of flexibility, as a matter of fact and degree, the shortfall in car parking provision in this case is significant and is not justified based on the evidence.
17. The issues of onsite car parking levels and safety of access are, inevitably, linked. As such, the Appellant's case that the courtyard provides ample turning space for vehicles is undermined by the fact that the proposal unjustifiably underprovides in terms of onsite parking provision. In relation to the suitability of the single track access, given the scale of the development and visibility up and down the access, the inability of vehicles to pass each other through a section of the access would not have material negative effects on users of the A2021 or pedestrians. Nevertheless, for the reasons set out above, overall I do not have evidence to confirm that the proposed access arrangements would be acceptable.
18. In terms of waste collection, there is no substantiated evidence that the Appellant's suggested private waste collection approach can be secured and is deliverable. In these circumstances, a condition seeking to control this matter would not be appropriate.
19. On secure cycle parking provision, there is no stated policy basis for the Council's position that 11 cycle parking spaces would be required. Paying regard to the location and nature of the development and the accessibility of the proposed cycle provision, the 10 cycle spaces identified are acceptable.
20. For these reasons, the proposal is not acceptable when regard is paid to effects on the public highway. The proposal would not accord with Paragraph 115 (c) and (d) (Framework) in respect of ensuring safe and suitable access to the site for all users and demonstrating cost effective mitigation of any significant impacts on the transport network or highway safety.

Other Matters

21. I have paid regard to comments from other interested parties. Comments relating to the main issues have been considered as part of my conclusions.
22. Amongst other concerns, I note objection on the grounds that the scale of the proposal in this backland area would have a harmful impact on the living conditions of occupiers of surrounding properties and would not have an acceptable impact on the character and appearance of the area or contribute to the objective of fostering well designed places. While it is not necessary for me to conclude on these issues to decide this appeal, in other circumstances I may have been inclined to explore the question of whether these matters should be main issues.

Conclusion

23. The proposal would not create acceptable living conditions for future occupants, does not make acceptable provision for affordable housing, and is not acceptable when regard is paid to effects on the public highway. There is conflict with the development plan for the area that amounts to conflict with the plan as a whole.
24. The Council accepts that they cannot demonstrate five years of housing land supply, which triggers consideration of whether the presumption at Paragraph 11 of the Framework applies. For the avoidance of doubt, in my overview of benefits and harms below I use the rising scale of limited, moderate, significant and substantial.

Benefits

25. The proposal would deliver 11 dwellings on previously developed land, in an accessible location, with associated social benefits linked to their occupation. This would support the Government's objectives of significantly boosting the supply of homes (Paragraph 61, Framework) and making effective use of land (Paragraph 124, Framework). Although it is a relatively small development, its contribution would be meaningful against the backdrop of a poor housing land supply position and considering the important contribution that small and medium sized sites can make to meeting the housing requirement of an area (Paragraph 73, Framework).
26. An absence of an affordable housing contribution would fail to address the needs of groups with specific housing requirements (Paragraph 61, Framework). This reduces the weight of the benefit, marginally as the Council does not have an up to date planning policy approach in place giving certainty to what the required need for affordable housing is.
27. Considering the factors above, significant weight is given to the benefits of housing delivery on the site.

Harms

28. The proposal would not create acceptable living conditions for future occupants. The Framework is clear that planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for future users (Paragraph 135, Framework). While the harm in this case relates only to a single unit, the risks of severe impacts are obvious and clear with no evidenced pathway for effective management of the issue. This harm attracts substantial weight.
29. The level of on-site car parking provision is not appropriately justified which, in turn, materially dents the credibility of the Appellants case on whether suitable access would be provided. This generates a lack of accordance with Paragraph 115 (c) and (d) (Framework). The overall conflict with Paragraph 115 is reduced marginally by the location of the site, the potential to utilise sustainable modes of transport, and the provision proposed for cycling facilities. Nevertheless, this harm attracts significant weight.
30. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs. This proposal would not meet the needs of future occupiers because it would demonstrably fail to provide acceptable living conditions.

31. Although it would meet the need for new homes and promote the effective use of land, I have significant concerns that the proposal would not promote health and well-being, with a high standard of amenity for future users. This materially reduces the overall benefit of housing delivery on the site.
32. Weighing things up, the adverse effects of granting planning permission substantially and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The presumption at Paragraph 11, Framework is not a material consideration in this case.
33. There are no other material considerations indicating to me that a decision should be taken other than in accordance with the development plan.
34. As such, and paying regard to all other matters raised, the appeal is dismissed.

D R McCreery

INSPECTOR