



Appeal Decision

Site visit made on 8 January 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2025

Appeal Ref: APP/T1410/W/24/3349103

4 Denton Road, Eastbourne, East Sussex BN20 7SU

- 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 St Marys Homes Ltd against the decision of Eastbourne Borough Council.
 - The application Ref is 240123.
 - The development proposed is demolition of the existing garage and the erection of 1no. new dwelling to the rear of 4 Denton Road.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the determination of this application a revised National Planning Policy Framework (the Framework) has been published. The relevant design, amenity, biodiversity and highway safety policies in the revised Framework are the same (other than paragraph references) as those in the previous Framework and as such I consider there would be no prejudice to any party by considering the development against the relevant policies in the revised Framework.

Main Issues

3. The main issues are:
 - whether the proposed development would provide acceptable living conditions for its future occupiers, with particular regard to privacy and light; and the effect of the proposed development on;
 - the biodiversity of the site;
 - highway safety in the area;
 - the character and appearance of the area, including the Meads Conservation Area (the CA); and
 - the living conditions for occupiers of neighbouring properties, with particular regard to privacy.

Reasons

Living Conditions (for future occupiers of the proposed dwelling)

4. The appeal site (the site) is part of the land around 4 Denton Road, a large, detached building split into flats (No 4). It is proposed to demolish a detached

garage, located behind and to one side of No 4, and to erect a new dwelling at the rearmost end of the undeveloped land behind it. Accordingly, the site comprises part of the land behind No 4, the land upon which the garage currently sits, and the access thereto.

5. The proposed dwelling would be located in one corner of the site, leaving the remainder, less the access, to function as its residential garden. The proposed garden area is overlooked by clear-glazed windows and doors in the ground, first, and second floors of No 4. It was apparent during my site visit that at least some of these windows serve habitable rooms. The distance from No 4 to the proposed garden area is some 13m. Given this, and the downward angle of view from the majority of windows, occupiers of the proposed dwelling would be subject to a highly invasive degree of overlooking in the garden, leading to an unacceptable absence of privacy overall.
6. Whilst a close-boarded fence around the edge of the site would reduce intervisibility between the proposed garden area and ground floor windows at No 4, it would not assist in preventing overlooking from upper floor windows. I have no evidence that landscaping sufficiently tall, dense, and evergreen to effectively mitigate overlooking from the upper floor windows would not also erode outlook and light to both the proposed garden area and gardens serving No 4. As such, I do not consider boundary planting an appropriate solution to the harm identified.
7. There are a mix of evergreen and deciduous trees near the edges of the site, some of which are tall and clustered close together. Even so, there are substantial gaps between the tallest trees, and none of the site boundaries have comprehensive tree coverage. This allows reasonable daylight into the site. Furthermore, the distance from the site to No 4, and the gap between the proposed dwelling and the eastward edge of the proposed garden area, would be sufficient to allow adequate direct sunlight into the proposed garden.
8. Overall, whilst I find future occupiers of the proposed development would enjoy adequate levels of light, they would also experience harmfully inadequate levels of privacy. In that respect the proposed development would provide unacceptable living conditions for its future occupiers, contrary to Policies B2 of the Eastbourne Core Strategy (2013) (the CS) and HO20 of the Eastbourne Borough Plan (2003) (the BP) where they require development to protect the residential amenity of future occupiers and avoid loss of privacy by overlooking from habitable rooms.

Biodiversity

9. The Council cites the absence of sufficient information to show a measurable net gain in biodiversity from the proposed development as a reason for refusal. The development benefits from a temporary exemption to the biodiversity gain planning condition set out in the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024, as it relates to an application for planning permission for a small development made before 2 April 2024.
10. BP Policy NE22 requires the protection of specified wildlife habitats, none of which are evidently present at the appeal site, and neither BP Policy NE28 nor CS Policy B2 include a requirement for biodiversity gains. Even so, CS Policies D1 and D9 require development to enhance the natural environment and to enhance

biodiversity through the inclusion of wildlife needs in design, and ensuring any unavoidable impacts are appropriately mitigated for. As such, a requirement for biodiversity gains is contained in the development plan, albeit not in all the policies cited in the reason for refusal.

11. The proposed dwelling would be positioned near the edge of the site, close to several trees. The site is mainly unkempt grassland, whilst the open land around it largely comprises residential lawns. The trees are likely to play an important role in local biodiversity, therefore. The application does not include any information as to how the foundations of the dwelling would interact with the roots of those trees. It is not evident, therefore, that the proposed development could be built without compromising their health and, in turn, reducing biodiversity.
12. In the absence of evidence that tree-loss and resultant harm to biodiversity levels is not an inherent element of the proposed development, I see no reason to find that an overall gain in biodiversity could be achieved. As such, to allow the appeal subject to a condition to that effect would be unreasonable.
13. There is no evidence that proposed development would result in a gain in biodiversity, contrary to the requirements of CS Policies D1 and D9.

Highway Safety

14. The proposed development would provide one car parking space in place of the existing garage, towards the far end of the access from the site entrance. Whilst the red line showing the extent of the site is labelled as notional on the submitted plans, I have no evidence that occupiers of the proposed dwelling would be entitled to turn on the forecourt of No 4, which is outside of the appeal site boundaries.
15. Existing boundary walls, piers, and planting near the site entrance combine to significantly reduce driver visibility when leaving the site and joining the road. This makes it essential that drivers can leave the site in a forward gear to mitigate risks to safety.
16. Even at its widest, the site access is not evidently wide enough for a car to be turned around within it. To be able to leave the site in a forward gear a driver would have needed, when entering the site, to have turned in Denton Road before reversing down the access. There are no restrictions that prevent a car from parking immediately outside the site entrance, on the opposite side of Denton Road. This limits the space available to turn in the road safely and likely requires mounting the pavement during the process, to the detriment of pedestrian safety. Furthermore, to reverse the length of the access over an area that may be used by pedestrians and cyclists associated with the proposed dwelling is, within itself, an unsafe practice, particularly given the narrowness of the space.
17. The proposed development would have a harmful effect on highway safety, contrary to CS Policies B2, D8, and D10A, and BP Policy UHT1, where they require well designed developments that prioritise the needs of pedestrians and cyclists, and the creation of a safe environment.

Character and Appearance

18. The site is in Character Area 4 (Area 4) within the CA, as set out in the Meads Conservation Area Appraisal (2012) (the appraisal). The statutory duty set out in

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

19. The appraisal states that Area 4 is defined by changes in land level allowing long, sweeping vistas along the main streets within it, including Denton Road, and across neighbouring open sites. The openness of the streetscape is noted, as is the presence of flint, stone and brick boundary walls, alongside red brick pavements and blue brick crossovers, with street trees set in wide grass verges. No 4 is within a group described as the best in Area 4, and which includes substantial, two or three-storey Edwardian houses with clay tiled roofs, prominent red brick stacks, and a range of embellishments to the front elevations. The significance of the CA, insofar as it relates to the appeal, is in the way the substantial Edwardian houses on the northern side of Denton Road combine to form a coherent frontage.
20. The proposed dwelling would be located at the far end of the site, behind No 4. It would incorporate materials and design details of a reasonable match to those most prominent in the area. Views of it from the road would be fleeting, and it would not disrupt or compete for visual prominence with the Edwardian frontages around it, therefore.
21. Furthermore, the dwelling would be one of a handful of smaller buildings interspersed between the larger houses. These are an established feature of the area which, because of their modest scale, do not detract from the Edwardian frontages. They include a small, detached dwelling at 10a Denton Road, a modest detached dwelling at 8b, and an outbuilding at 28 Denton Road (No 28). The appellant has drawn my attention to the latter, and based the design of the proposed dwelling upon it. I recognise that the outbuilding at No 28 is not a separate dwelling, but its visual relationship to its host would nevertheless be directly comparable to that between the proposed dwelling and No 4.
22. The proposed dwelling would be visible from rear windows of nearby homes, but would be one of a number of buildings located behind the Edwardian frontage; I observed a sizable garage block behind 20 Denton Road, similar developments to the rear of plots on Carlisle Road backing onto Denton Road, and a detached dwelling at 6 Denton Road, located alongside the location of the proposed dwelling. Whilst the proposed development would create a smaller plot than occupied by many of the Edwardian houses, it would be comparable in size to those at 6a and 6b Denton Road, and provide a garden of similar dimensions. I do not consider the proposed development to be out of keeping with the character and appearance of the area, therefore.
23. Overall, I find the proposed development would not harm the significance of the CA and would adhere to the character and appearance of the area. As such, it would comply with the requirements of CS Policies D10, D10a and BP Policies UHT1 and UHT15 to preserve the character, setting and appearance of CAs and the built environment.

Living Conditions (for occupiers of neighbouring properties)

24. The site backs onto the rear garden of the nearest ground floor flat in No 4 (the flat). The rear wall of the flat includes a glazed conservatory, glazed doors, and windows, facing out onto the garden of the flat.
25. The proposed dwelling would incorporate rooflights facing into the site (the rooflights), and a first-floor, front elevation window facing towards the site access (the window). The rooflights would be placed high enough in the roof slope to restrict views downward from the rooms they serve and, as such, prevent overlooking of either the flat or its garden. Gardens to the immediate north of the site would be protected from overlooking by a combination of the height of the rooflights and the existing boundary enclosure at the northern edge of the site. Intervisibility between the rooflights and upper floor, rear windows in No 4 would take place at an obtuse angle over at least 20m and, as such, not materially harm privacy.
26. The window would allow direct overlooking over a short distance into the flat and its garden, and into the house at 6b Denton Road (No 6b) and its garden, significantly eroding privacy for occupiers of those properties. There would also be intervisibility between the window and existing bay windows in the ground and first floor, side elevation of No 4 (the bay windows), albeit at an obtuse angle.
27. I note the appellant's willingness to amend the first-floor window design. Given that the bedroom served by the window is also served by a clear-glazed rooflight, a condition requiring the window to be obscure-glazed and fixed shut up to 1700mm from internal floor level could be imposed without resulting in unacceptable reductions to outlook from the bedroom. Such a condition would prevent harmful overlooking of the flat, No 6b, and the bay windows.
28. Occupiers of the proposed development would walk and drive past the ground floor bay windows, resulting in direct intervisibility over a close distance. However, the proposed site access already serves the existing garage and allows that same degree of intervisibility. I have no evidence that the existing garage and access belong exclusively to the occupants of the flat served by the bay windows. Therefore, I have no evidence that the proposed development would result in any reduction in privacy for those windows, when compared to the current arrangement.
29. The proposed development would, subject to an appropriate planning condition, not result in harmful overlooking of neighbouring properties, and would comply in that respect with Policies B2 of the CS and HO20 of the BP, which require development to protect the residential amenity of existing residents and avoid loss of privacy by overlooking from habitable rooms.

Planning Balance

30. I have found that the proposed development would result in unacceptable living conditions for its future occupiers in respect of privacy, and would have a harmful effect on biodiversity and highway safety, resulting in conflict with the development plan as a whole. Policies B2, HO20, D1, D8, D9, D10A and UHT1 are consistent with Chapters 12, 15, and 9 of the Framework, which requires development to create places with a high standard of amenity for existing and future users, minimise impacts on and provide net gains for biodiversity, and ensure that safe

and suitable access to development sites can be achieved for all users respectively. As such, I have attached significant weight to the conflict with policies.

31. The delegated officer report supplied by the Council indicates that the provisions of paragraph 11(d) of the Framework were engaged at the time the application was refused. I have nothing to indicate that position has changed.
32. The scheme would deliver one new home on a small to medium site, which could be built quickly and contribute towards addressing the shortfall in housing. The site is within walking distance of services, facilities, and a range of public transport options. It would make a more effective use of land by increasing the density of development. I have found the proposed increase in density to not result in harm. The Framework is supportive of these features. The benefits of new housing on such sites carry great weight, but they are tempered in this instance by the modest scale of the scheme. There would also be economic benefits associated with the undertaking of development and the subsequent occupation of the site. Given the scale of the proposal, these are modest benefits.
33. The degree to which the proposed development would provide unacceptable living conditions for its future occupiers, and the harm to biodiversity and highway safety, would be significant. I therefore find that whatever the shortfall in the Council's supply of deliverable housing sites might be, the adverse impacts of the development would significantly and demonstrably outweigh the modest benefits. As such, the proposal would not constitute a sustainable form of development in terms of the Framework.

Conclusion

34. The proposal conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

A Knight

INSPECTOR