

---

# Appeal Decision

Site visit made on 26 April 2016

**by Alex Hutson MATP CMLI MArborA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13 May 2016**

---

**Appeal Ref: APP/T1410/W/15/3140942**

**51 Upperton Lane, Eastbourne, Sussex BN21 2DA**

- 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 Miss Helen Elizabeth Dupre- Dupre Properties Limited against the decision of Eastbourne Borough Council.
  - The application Ref PC/150694, dated 26 June 2015, was refused by notice dated 30 October 2015.
  - The development proposed is "Demolition of existing building and flint boundary wall. Rebuilding of flint wall and erection of a two storey dwellinghouse with parking space."
- 

## Decision

1. The appeal is dismissed.

## Preliminary matters

2. I have used the description of the proposed development from the Council's decision notice. It adequately and simply describes the proposed development instead of the longer and more detailed description given on the application form.
  3. The Appellant has submitted a number of revised plans as part of the appeal. These plans show considerably different fenestration details to those plans submitted to and considered by the Council as part of the original planning application. Having regard to the 'Wheatcroft Principles' it would be unreasonable for me to accept these revised plans given that it may deprive the consultees of the original proposal the opportunity to provide representations on these plans. In addition, the Council has not provided an assessment of the merits or otherwise of these plans and I therefore cannot be certain that they have seen them and have had an adequate opportunity to comment on them.
  4. Furthermore, the Procedural Guide for Planning Appeals – England dated 31 July 2015, in Annexe M paragraph M.1.1, sets out that a fresh planning application should normally be made if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal. My determination of this appeal is therefore based on the plans submitted with the original application.
-

## **Main Issues**

5. The main issues are whether the proposal would preserve or enhance the character or appearance of the Upperton Conservation Area; and the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy.

## **Reasons**

### *Conservation area*

6. The appeal property is located within the Upperton Conservation Area (UCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that with respect to development affecting buildings or other land in a conservation area, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."
7. In addition, Paragraph 132 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The appeal property, located on the eastern side of Upperton Lane, is a single storey building that has a current lawful use as a residential dwelling. The eastern side of Upperton Lane is predominantly characterised by single storey buildings, often garages, that appear considerably subordinate to the larger four storey terraced dwellings along Upperton Gardens that they back on to. Whilst of no particular architectural merit, the low height of the buildings along the eastern side of Upperton Lane, including the appeal property, allows views up and down the lane to the rear elevations of the larger terraced dwellings and provides a spatial quality to the area. The low height of these buildings and the views and spatial qualities afforded as a result, positively contribute to the character and appearance of the UCA.
9. The proposal would introduce a two storey dwelling with a flat roof onto the appeal site that would be set back from the frontage of Upperton Lane. A flint boundary wall would be incorporated along the frontage in combination with a sliding gate to allow access to a parking space.
10. The scale, bulk and massing of the proposal would appear considerably at odds with the scale, bulk and massing of other buildings along the eastern side of Upperton Lane and would not share a similar level of subordination to the terraced dwellings along Upperton Gardens that these other buildings display. The additional height would also reduce views towards the rear of the terraced buildings along Upperton Gardens and would erode the spatial qualities of the area. This would result in a cramped, visually dominant and intrusive form of development that would fail to preserve the character or appearance of the UCA, notwithstanding the current lawful use of the appeal property.
11. I acknowledge that there is a two storey building at the adjacent property, 49 Upperton Lane, currently in use as an office. However, this is the only example of a two storey building along this side of Upperton Lane and was given planning consent prior to the designation of the UCA. In addition, whilst this building does not conform to the general characteristics of the area, it incorporates a hipped roof that assists with reducing its overall scale, bulk and

- massing in contrast to the proposal. For these reasons, I do not consider that the presence of this building justifies a planning consent for the proposal at hand.
12. I acknowledge that the incorporation of a flint boundary wall along the frontage of the appeal site may be a positive feature that would provide some benefits to the streetscape. However, this benefit of the proposal does not outweigh the harm that I have found to the character and appearance of the UCA as a result of the overall uncharacteristic scale, bulk and massing of the proposal.
  13. Whilst I have found harm to the character and appearance of the UCA, in the context of the UCA as a whole, given its considerable size, I consider the harm arising to the significance of the designated heritage asset would be less than substantial.
  14. As required by paragraph 134 of the Framework, I must therefore consider whether there are any public benefits that outweigh the less than substantial harm identified above. With respect to this, I have not been presented with any compelling evidence from the Appellant to this effect. However, I acknowledge that the Appellant highlights the benefits of an additional housing unit with regard to increasing the housing supply in the Borough, in light of the alleged inability of the Council to meet a five year supply of housing land. With an eye to the policies of the Framework as a whole, I accept that such a contribution to housing supply may be, in the context of paragraph 134 of the Framework, a public benefit. However, even if I were to accept that the Council cannot demonstrate a five year supply of housing land, such a contribution would be, in the wider scheme of things modest, and clearly would not be sufficient in my view to outweigh the harm I have identified in respect of the designated heritage asset.
  15. I therefore conclude that the proposal would fail to preserve or enhance the character or appearance of the UCA contrary to the requirements of s72(1) of the Act and that the harm identified to the significance of the designated heritage asset, albeit less than substantial, would not be outweighed by public benefits as required by paragraph 134 of the Framework.
  16. The proposed dwelling would also be contrary to saved Policies UHT1- Design of New Development, UHT4- Visual Amenity, UHT15- Protection of Conservation Areas, of the Eastbourne Borough Plan 2001-2011 adopted 2007 (Borough Plan); and Policies B2- Creating Sustainable Neighbourhoods, C2- Upperton Neighbourhood Policy, D1- Sustainable Development, D10- Historic Environment and D10A- Design, of the Eastbourne Core Strategy Local Plan 2013 (Core Strategy). These policies require, amongst other things, development to harmonise with the character and appearance of the area, to be appropriate in scale and form and setting, to respect local distinctiveness, to enhance the built environment and to preserve or enhance the character or appearance of conservation areas. These policies are consistent with the broad aims and principles of the Framework, that seek planning to ensure high quality design, to take account of the different roles and character of different areas and to conserve heritage assets in a manner appropriate to their significance.

*Living conditions*

17. The proposed dwelling would be approximately 3 metres from the rear boundary of the rear garden of 51 Upperton Gardens. I observed that this garden is relatively modest in length. The existing low height of the appeal property is likely to maintain a good sense of space and openness for the users of this modest sized garden. Furthermore, the existing low height of the appeal property is likely to maintain a good sense of space and openness for the occupiers of the lower level flats at 51 Upperton Gardens when looking across the garden from within habitable rooms that have rear facing windows.
18. The substantial increase in height of the proposal, combined with its close proximity to the rear boundary of 51 Upperton Gardens, would considerably erode the existing sense of space and openness of the rear garden of 51 Upperton Gardens and would result in a considerable sense of enclosure to this garden. In addition, the substantial increase in height of the proposal would be likely to substantially detract from the existing open outlook obtained from the rear facing windows of any habitable rooms within the lower level flats in 51 Upperton Gardens. This would result in significant harm to the outlook of the occupiers of the lower level flats within 51 Upperton Gardens and the users of the rear garden of this property. This would substantially reduce the occupiers of these flats enjoyment of their homes and garden.
19. Turning to matters of privacy, any future occupiers of the proposed dwelling would obtain clear views, from a short distance, from the proposed first floor, rear bedroom, rear facing windows into the rear garden of 51 Upperton Gardens and the rear windows of flats within 51 Upperton Gardens. These windows would likely also afford clear views into the rear gardens and windows associated with 49 and 53 Upperton Gardens, given their orientation and close proximity. The proposal would therefore result in a substantial loss of privacy for the occupiers of these dwellings that would considerably reduce the enjoyment of their homes and gardens.
20. The Council makes reference to a suggestion by the Appellant to obscure glaze the proposed first floor, rear bedroom, rear facing windows to reduce the level of overlooking. I have not been able to locate any reference to this within the Appellant's evidence. However, the submitted plans do indicate the intention for obscure glazing to the proposed first floor, front bedroom, front facing windows. Nevertheless, if the obscure glazing of the proposed first floor, rear bedroom, rear facing windows is intended, I would have considerable reservations had I been minded to allow the appeal, given that the submitted floor plans do not indicate a side window in the rear bedroom, or indeed the front bedroom, and therefore appear to be inconsistent with the proposed elevations plans that do show side windows in these bedrooms.
21. I could not therefore be confident, based on the evidence before me, that the obscuring of these windows would not result in a level of harm to the living conditions of any future occupiers in respect of outlook, given these significant inconsistencies. In addition, any proposed first floor side windows would have a close and direct relationship with windows in the rooflope of 49 Upperton Lane, that could reasonably have a detrimental effect on the privacy of users of this building, notwithstanding its current use. These matters lend weight to my decision to dismiss the appeal.

22. I therefore conclude that the proposal would result in harm to the outlook and privacy of the occupiers of neighbouring properties, contrary to saved Policy HO20- Residential Amenity, of the Borough Plan; and Policy B2, of the Core Strategy. These policies require, amongst other things, development to protect the residential amenity of existing and future occupants, including in respect of privacy and outlook. These policies are consistent with the broad aims and principles of the Framework that seek planning to secure a good standard of amenity for all existing and future occupants of land and buildings.

*Other matters*

23. I acknowledge that the proposal would occupy previously developed land within a wider residential context and would occupy a location with a good level of access to public transport and local shops, services and facilities. However the harm I have found to the character and appearance of the UCA and to the living conditions of the occupiers of neighbouring properties would significantly and demonstrably outweigh these benefits.

**Conclusion**

24. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

*Alex Hutson*

INSPECTOR