



## Appeal Decision

Site visit made on 8 November 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

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Appeal Ref: APP/T1410/W/23/3317177

St Andrews Church, Blackwater Road, Eastbourne BN21 4NG

- 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 Mr Mark Overy of N Living Limited against the decision of Eastbourne Borough Council.
  - The application Ref 210537, dated 17 June 2021, was refused by notice dated 28 November 2022.
  - The development proposed is redevelopment of existing site to create 17 houses with cycle parking and car parking.
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### Decision

1. The appeal is allowed and planning permission is granted for redevelopment of existing site to create 17 houses with cycle parking and car parking at St Andrews Church, Blackwater Road, Eastbourne BN21 4NG in accordance with the terms of the application, Ref 210537, dated 17 June 2021, subject to the conditions within the attached schedule.

### Application for costs

2. An application for costs was made by Mr Mark Overy of N Living Limited against Eastbourne Borough Council. The cost application is the subject of a separate decision.

### Preliminary Matters

3. Following the deadline for final comments, a revised version of the National Planning Policy Framework (the Framework) was published. Both the Council and the appellant have been consulted on the amended version of the Framework and neither party provided comments.
4. Planning permission<sup>1</sup> for the redevelopment of St Andrews Church to create 35 apartments, whilst retaining its front façade was granted in 2018 and has been implemented through the partial demolition of the church. The appeal proposal is an alternative proposal to the scheme that has been permitted.
5. It has been confirmed in correspondence that the correct post code is '**BN21 4NG**'. **I have replicated** this within the banner above.

### Main Issues

6. The main issues are:
  - whether the proposal would make an efficient use of the site and result in an appropriate mix of housing, and

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<sup>1</sup> Planning Permission Ref. PC/170156

- the effect of the proposal on highway safety, with particular reference to intervisibility and parking provision.

## Reasons

### *Housing*

7. Policy UHT1 of the Eastbourne Borough Plan (2001-2011), September 2007 (BP), outlines that development proposals are required to make the most effective use of the site with the highest density appropriate to the locality. BP Policy HO3, indicates that permission will not be granted for developments which would result in the net loss of residential units previously committed. The Policy explains that there is an exception, where it can be demonstrated that a scheme would result in a significant improvement in the quality of residential accommodation. The appeal proposal would result in the net loss of residential units compared to the scheme subject to the implemented planning permission.
8. Based on the explanatory text for BP Policy HO3, the quality of residential accommodation is associated with the living conditions of its residents, in particular the provision of private amenity space. Each of the proposed dwellings would have their own private external area, which is an improvement on the scheme subject to the extant permission which only includes a small, shared external amenity space. The internal areas of the proposed dwellings would comply with the Technical housing standards – nationally described space standard; albeit they would be modest in size. There is no evidence before me on the amount of internal space provided by the scheme subject to the extant permission, as such a comparative assessment cannot be made.
9. The proposal would also include improved sustainability measures compared to the extant permission. This would lead to a reduction in energy use; however, this would not directly affect the living conditions of future residents and in turn would not affect the quality of residential accommodation, as termed within the BP.
10. The proposal would lead to an improvement in the quality of residential accommodation, but the extent of this improvement would only be modest. Moreover, the proposal is not making the most effective use of the site with the highest density appropriate, as the extant permission has demonstrated that a higher density development would be acceptable.
11. Policy TC6 of the Eastbourne Town Centre Local Plan, November 2013 (LP), indicates that proposals for new residential development in the town centre must demonstrate how design issues have been addressed, including the provision of a mix of different dwellings to include one, two, and three bedroom units. The proposal includes two, three, and four bedroom dwellings, only.
12. Whilst the proposal does not accommodate one-bedroom units, it would provide family-sized houses including three-bedroom units, unlike the extant permission. Given the evidence provided, the lack of one-bedroom units in the proposal is adequately compensated by the provision of three-bedroom houses, which are of greatest need in the area.
13. Overall, I conclude that the proposal would not make an efficient use of the site for housing delivery but would result in an appropriate mix of housing. It would be contrary to BP policies UHT1 and HO3 as it would not make the most efficient use of the site and would lead to the net loss of residential units,

previously committed, without significantly improving the quality of residential accommodation. Nonetheless, it would comply with policies B1 and D1 of the Eastbourne Core Strategy Local Plan, February 2013 (CS) and LP Policy TC6. These policies indicate that priority will be given to housing delivery on previously developed sites, all development should be sustainable and well designed, and proposals for residential development in the Town Centre must demonstrate how the design issues have been addressed. Moreover, the proposal would comply with the Framework where it indicates that planning decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing.

#### *Highway safety*

14. The appeal site fronts Blackwater Road and is located between the junctions with Cornfield Lane and Wish Road. The design of Blackwater Road leads me to consider that it is more of an arterial route than Cornfield Lane and Wish Road, which are both narrow and, based on the evidence, lightly trafficked. Several small parking areas are located adjacent to Wish Road, and both Cornfield Lane and Wish Road accommodate garages which are accessed directly from the road. Both these roads include sections with narrow footpaths. Whilst both are subject to some form of parking restrictions, during my site visit I observed cars parked on both roads.
15. The visibility of drivers exiting the proposed dwellinghouses would be partially obscured by the proposed vegetation and slats of the proposed shutter. Due to the characteristics of these roads, vehicles are likely to travel at relatively low speeds. Moreover, as there are parking areas and garages immediately adjacent to the roads, pedestrians, cyclists, and drivers would reasonably anticipate slow moving vehicles exiting garages or the parking areas. The collision data shows that there were no accidents on Wish Road or Cornfield Lane between August 2016 and July 2021. Given that these roads include similar access arrangements to those proposed, this suggests that there is not an existing highway safety problem with either of the roads or with the design of the proposed accesses.
16. It has been suggested that given the demolition of the church other design solutions which offer greater intervisibility could be delivered. My assessment on the acceptability of the appeal proposal is based on its own planning merits.
17. Although the car parking spaces would be enclosed by three walls, a roof, and a sliding shutter, it would not be comparable to a garage. The slatted shutter would mean the space is not weatherproof and would allow views between it and public areas. The space would be more akin to a car port. Furthermore, the retention of the parking spaces could be secured by a condition attached to any planning permission.
18. Each of the parking spaces would be in excess of the minimum standard for a parking space within a car port detailed within the East Sussex County Council Guidance for parking at new residential development. I therefore considered them to be of an appropriate size.
19. The East Sussex County Council Parking Demand Calculator indicates that the proposal would generate demand for 26 vehicle spaces, this includes visitor parking. The calculator considers the site's accessible location close to Eastbourne town centre and train station. Census data suggests that the total

- development demand is 14.56 parking spaces, when considering the size of dwellings. However, this does not include demand for visitor spaces. I therefore consider that the development demand of 26 parking spaces generated by the Calculator is a more accurate forecast.
20. The proposed parking provision would be half of the forecasted development demand leading to a shortfall of 13 spaces and an increased demand of on-street parking. **However, while I appreciate the Council's forecast parking requirement does take account of location, the proposal is in a very accessible location with access to services and facilities in walking distance, as well as convenient public transport. I am not convinced therefore that access to a car would be an essential requirement. Furthermore, the extant planning permission for 35 apartments also only included 13 parking spaces. The total development demand when reviewing census data was 20.31 spaces for that development, excluding visitor parking. Given that the extant planning permission is for 18 more dwellings than the appeal proposal, it is likely that demand for visitor parking would be higher. The appeal proposal would therefore represent an improvement on the extant planning permission in relation to the provision of off-street parking.**
21. Disability is a relevant protected characteristic to which the Public Sector Equality Duty applies, and I have had due regard to that duty. The proposal would not alter existing on-street parking restrictions, also the decrease in demand for on-street parking, presented by the appeal before me now compared to the extant permission, would improve the chances of people with disabilities being able to park closer to their homes. I therefore conclude that the proposal would advance equal opportunities between people who have a protected characteristic and those who do not.
22. The small number of vehicular trips generated by the appeal proposal would not materially alter the environment where pedestrians and cyclist feel safe using these roads. Similarly, whilst Cornfield Lane is narrow there would be sufficient space for vehicles to manoeuvre safely, without coming into conflict with other road users.
23. I am mindful of the shortcomings of the proposed intervisibility between pedestrians and drivers, due to the shutters and vegetation, and the forecasted shortfall in off-street parking. However, in weighing the balance of risk against probability, from my own observations on site, and due to the existing road conditions, I describe above, I do not consider that these would result in an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe, in line with the Framework.
24. Overall, I conclude that the proposal would not have a harmful effect on the safety of pedestrians, cyclist and drivers using Cornfield Lane and Wish Road, with particular reference to intervisibility and parking provision. The proposal would comply with CS policies B2, D8 and D10A and BP policies TR2 and UHT1. These policies indicate that proposals are required to create a safe environment, provide for the travel demands they create, and ensure car parking and highway access is not visually dominant, also new development should support safe and effective traffic movement, whilst being accessible to all. It would also be in accordance with the Framework where it advises that in town centres authorities should seek to improve the quality of parking, so that it is convenient, safe, and secure.

## Other Matters

25. The appeal site is in proximity to the Grade II listed 1-24 Cornfield Terrace. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special regard to the desirability of preserving listed buildings and their setting. The significance of these listed buildings includes their 19<sup>th</sup> Century architecture and the setting of the terrace fronting a wide road, which allows the architecture to be appreciated in long distance views. The appeal site is behind Cornfield Terrace the other side of the narrow Cornfield Lane. The rear of the terrace includes little features of historical architectural merit. Also, existing views of the rear of the terrace are largely screened by the church. Given the location of the appeal site to the rear of Cornfield Terrace and the scale and mass of the existing development at the appeal site, the appeal proposal would preserve the setting of the listed building.
26. The appeal site is adjacent to the Town Centre and Seafront Conservation Area (CA). The significance of the CA, as far as it is relevant to the appeal proposal, includes the distinctive hierarchy of streets and largely consistent palette of materials for external surfaces. The appeal proposal would maintain the street hierarchy as it would partially front Blackwater Road. Moreover, it would include external finishes which are present elsewhere within and on the edge of the CA. For these reasons, the appeal proposal would preserve the setting of the CA as a whole.
27. St Andrews Church is also identified as a Building of Local Interest and is therefore a non-designated heritage asset (NDHA). Its significance relates to its historical architectural merit. As the proposal would result in the demolition of the existing building to enable the erection of the houses the scheme would have an adverse effect on its significance.
28. The appeal proposal would be a modern example of a high-density development, incorporating family sized accommodation, suitable for an urban setting. Whilst it does not seek to replicate features of historical buildings in the area, it is not without architectural merit. I note that interested parties have made recommendations for alterations to the proposed design; however, my assessment is based on the acceptability of the appeal scheme only.
29. A viability assessment was submitted which demonstrates that it would be unviable to provide affordable housing within the development. There is no substantive evidence that the assessment is unacceptable. As such, the lack of affordable housing provision would be acceptable in this instance.
30. The proposed roof terraces would be appropriate in this location. Given their size and location, and distance to neighbouring properties, they would not have a harmful effect on the living conditions of neighbouring residents. Likewise, the proposed dwellings would not attract pests, including seagulls, any more so than other residential development in the area. I am therefore satisfied that it would not affect the living conditions of future residents or neighbouring residents.
31. The proposal includes measures such as a green roof and a sustainable drainage system. There is no evidence before me which indicates that the proposal would not be policy compliant in relation to sustainability measures.

32. The second reason for refusal on the decision notice refers to paragraph 97, now 101, of the Framework. This paragraph refers to the security of development, including where large numbers of people are expected to congregate. It is unclear how this relates to the appeal proposal, as such, it has not altered my assessment of the acceptability of the appeal proposal.

#### Planning and Heritage Balance

33. Set against the harm identified there would be social and economic benefits associated with the proposal. The addition of 17 houses would be a significant benefit against a housing shortfall together with economic benefits associated with the construction of the scheme and increased population living in the area. However, I am mindful that the proposal would effectively lead to a reduction in the housing supply figures given that the scheme for 35 apartments on the site, already included in the supply figures, would not be delivered. This therefore tempers the level of the benefits and I ascribe them moderate weight.
34. The BP dates from 2007; however, the weight to be attached to it does not hinge on its age. Rather paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework requires developments to support decisions that make efficient use of land taking into account the identified need for different types of housing, amongst other factors. BP Policy HO3 seeks to maximise the number of units on the site and would only support a reduction in the number of committed units where there is a significant improvement in the quality of residential accommodation. As such, BP Policy HO3 is not entirely consistent with the Framework. Therefore, the conflict between the proposal and BP policies UHT1 and HO3 should only be given moderate weight in this appeal.
35. There are no policies in the development plan that positively favour development which does not make the most effective use of the site. As the appeal proposal is contrary to the policies listed above, there would be conflict with the development plan when considered as a whole.
36. The Council can only demonstrate 1.8 years of deliverable housing land. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining an application are out-of-date. Consequently, planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Noting, the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing development.
37. The benefits associated with the proposal would be moderate. Moreover, the Framework outlines that planning decisions should support developments that make efficient use of land. The proposal would result in a high-density development, albeit it has been demonstrated that a higher density development would be acceptable. For these reasons, only moderate weight is ascribed to the harm.
38. Consequently, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against

the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does apply.

39. I have found that the loss of the NDHA would cause less than substantial harm. However, all parties accept that there is no protection from demolition of the **building under the applicant's permitted development rights**. As partial demolition has already occurred this is a real prospect. Furthermore, the Council acknowledge the building is likely to remain vacant and fall into a state of disrepair unless converted to residential use. This together with the benefits I outline above are sufficient to outweigh the harm caused by its loss.

#### Conditions

40. The Council has not provided a list of suggested conditions, other than those within the consultation responses to the original application. I have considered these in light of the guidance contained with Planning Practice Guidance and paragraph 60 of the Framework.
41. Conditions specifying a time limit to implement the permission and approved plans are required in the interest of certainty. A condition requiring materials for external surfaces to be submitted to and approved by the local planning authority is required in the interest of character and appearance.
42. A condition requiring a construction method statement is required to ensure that neighbouring businesses and residents maintain appropriate access to their properties and their living conditions are not harmfully affected during the construction of the proposed development.
43. A condition requiring the parking spaces and access to be laid prior to the occupation of the dwellings is required to appropriately mitigate the effect of the appeal proposal on the highway network.
44. A condition requiring details of the surface water and foul drainage scheme and a maintenance and a management plan for the system to be approved, is required to ensure that the appeal proposal drains appropriately for the lifetime of the development. Photographic evidence of the installed system is not required, because it is not necessary as a condition already requires the system to be implemented in accordance with the approved plans and retained thereafter.

#### Conclusion

45. For the reasons given above, the proposed development conflicts with the development plan when considered as a whole. However, as per paragraph 11 of the Framework, the policies which are most important for determining the application are out-of-date and the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. As such, material considerations indicate that the appeal should be allowed.
46. Therefore, I conclude that the appeal should be allowed, and planning permission should be granted.

*J Hobbs*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 020, 021 rev A, 022, 023, 024, 025 rev B, 026, 027 rev A, 028, 029, 030 rev A.
- 3) No development shall take place, including any works of demolition, until a construction method statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition, and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) Other than demolition, no above ground works shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Other than demolition, no above ground works shall commence until details of the foul and surface water drainage has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until drainage works have been implemented in accordance with the approved details and retained thereafter. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, and the method employed to delay and control the surface water discharged from the site;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 6) No dwelling shall be occupied until the parking spaces and vehicular accesses have been laid out in accordance with the approved plan Ref 021 rev A. The parking spaces and vehicular accesses shall thereafter be retained for the use of parking and as a means of access for the approved dwellinghouses.





## Costs Decision

Site visit made on 8 November 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

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Costs application in relation to Appeal Ref: APP/T1410/W/23/3317177  
St Andrews Church, Blackwater Road, Eastbourne BN21 4NG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Mark Overy N Living Limited for a full award of costs against Eastbourne Borough Council.
  - The appeal was against the refusal of planning permission for the redevelopment of existing site to create 17 houses with cycle parking and car parking.
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### Decision

1. The application for an award of costs is allowed in the terms set out below.

### Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council acted unreasonably in so far as it has failed to substantiate its reasons for refusal, prevented a development which should clearly be permitted, and failed to adhere to deadlines.
4. The only evidence provided to support the reasons for refusal were consultee responses to the planning application and the decision notice. As a minimum, I would expect a brief report detailing the Council's reasoning, outlining why it considers the proposal does not conform with the development plan, taking account of material considerations. Moreover, the Council has not refused the development for all the reasons sets out within the consultee responses, and there is no evidence before me explaining their decision making. For these reasons I consider that the Council has failed to substantiate its reasons for refusal.
5. Without an explanation on how the decision was made, it is unclear how the Council came to a different decision to myself. As there is no detailed evidence on why the Council chose to refuse the application and I have determined that the appeal should be allowed, I conclude that the Council's actions has prevented a development which should have been permitted.
6. Given the Council has not sought to provide additional evidence, I do not conclude that they have failed to adhere to the deadlines of the appeal.
7. Overall, I consider that the Council has acted unreasonably resulting in the applicant incurring an unnecessary expense. Therefore, a full award of costs is warranted.

## Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Eastbourne Borough Council shall pay to Mr Mark Overy of N Living Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Eastbourne Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*J Hobbs*

INSPECTOR

Richborough