



# Appeal Decision

Hearing held on 13 April 2010

by **Michael Say BA DipTP MRTPI**

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

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**Decision date:  
1 June 2010**

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## Appeal Ref: APP/B1415/A/09/2119316

### J Hollingsworth site, Braybrooke Road, Hastings, East Sussex TN14 1TQ

- 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 Exit Asset Management against the decision of Hastings Borough Council.
- The application Ref HS/FA/08/00625, dated 26 August 2008, was refused by notice dated 25 June 2009.
- The development proposed is residential development comprising 88 flats, parking, landscaping, community facility and open space.

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## Decision

1. I dismiss the appeal.

## Main issue

2. I consider that the main issue in this case is the effect of the proposed blocks of flats on the character and appearance of the area having regard to the impact on the local street scene, the integration of the development into the urban form when seen from further afield, and whether the development would preserve or enhance the character or appearance of the neighbouring Blacklands Conservation Area.

## Reasons

3. The appeal site is an area of vacant land occupying a prominent position on a hillside overlooking the town centre with views through to the Castle and nearby parkland. Its principal frontage is to Braybrooke Road, which slopes down from south west to north east. On the opposite side of Braybrooke Road is a mixture of detached and semi-detached dwellings sitting above road level. To the rear of the site the land falls away towards a railway line. Opposite the north east end of the site is the corner of the Blacklands Conservation Area, which includes within its boundary the registered Alexandra Park, the southern corner of which lies close to the site.
4. The proposed development would take the form of 2 substantial buildings arranged parallel to Braybrooke Road with a gap between them about 10 metres wide. In the south west the height of the development would be slightly greater than the adjacent Victorian housing and would incorporate 5 storeys with the top floor set back from the main façade. A similar overall roof height would be maintained along the length of the development. This would allow the incorporation of an additional 4 storeys at the north east end,

producing a 9 storey structure at this point. Here, the lowest 2 storeys would be provided within a "plinth" element containing a community use and the top floor would be set back substantially from the end elevation. Car parking would be provided behind the blocks towards the south west end of the site. Balconies would generally be provided for the dwellings and a number of the lower flats would have small private gardens. Due to the constrained nature of the site, most of the communal amenity space would take the form of roof terraces.

5. The parties are agreed that housing development is acceptable in principle on the site. The Council's concern focuses on the size, bulk, siting and design of the blocks. Relevant development plan policies include policies DG1, DG7 and C1 of the Hastings Local Plan (LP), adopted in 2004. LP policy DG1 seeks to control development form. DG1(b) relates to the need for the physical attributes of development such as scale and design to be suitable, including in relationship to nearby buildings, spaces and views. DG1(c) adds site levels to the relevant criteria for consideration. Policy DG7(a) requires that development involving high or visually prominent buildings will maintain or enhance the visual quality of the surrounding area. DG7(b) adds a specific requirement that it will not harm a conservation area. Policy C1 sets out additional requirements in relation to development proposed within or adjacent to conservation areas.
6. The appellant states that considerable care has been taken in developing the scheme in discussion with Council officers and other relevant bodies. Steps have been taken to complement the articulation of the housing on the adjoining site to the south west and to retain the existing building line on the south east side of Braybrooke Road. The gaps between the buildings and at the south west end of the site would help to preserve important views across the town. Care has been taken in the selection and coordination of a variety of materials with a view to breaking up the mass of the development and imparting a human scale to it.
7. However, the Design and Access Statement affirms that a key aspect of the brief was to include as many flats as would comfortably fit on the site, noting that it is a difficult development site for which any scheme will need to be sufficiently dense to be viable. This has resulted in a scheme which stands out noticeably from its surroundings.

*Effect on local street scene*

8. The change in the character of Braybrooke Road would be substantial. Notwithstanding the attempts to incorporate design features to reflect the appearance of neighbouring houses, the height of the blocks would bear no relationship to the local topography. Consequently the appearance would be unacceptably overbearing towards the north east end of the site. Even at the south west end, where the height approximates to existing development, the verified view submitted by the appellant indicates a bulk and hard edge which would be unsympathetic to the neighbouring terrace, notwithstanding the gap to be left between the new and existing buildings. At the other end of the site the 2 storey plinth element would rise to a height roughly level with the eaves of the 3 storey Victorian building opposite on the corner of Victoria Park Road,

with, set back a few metres to the south west, a further 7 storeys rising up behind the plinth.

9. Development on this scale would conflict with the objectives of LP policy DG1(b) regarding the need for the scale of development to be suitable in relationship to nearby buildings. In addition the horizontal emphasis of the design, albeit modified by vertical articulation, would sit uncomfortably with the traditional housing in the area, again contrary to DG1(b) requirements.

*Integration into urban form when seen from further afield*

10. The appellant's Design and Access Statement notes that the site commands views over much of Hastings, the Castle and the sea. It acknowledges that this means that the proposed development would be visible from key vantage points across the town. The hilly nature of the town produces elevated vantage points where clear views are available above the lower areas. When viewed from the open space near the Castle, an appreciation can be gained of the significant difference between the urban form of the town centre, where a number of substantial modern buildings have been built on relatively low lying ground, and the residential areas, where the scale of the individual buildings is smaller and they tend to reflect the rises and falls in the topography. To my mind this makes a significant contribution to the character of the townscape.
11. The proposal would rise up above the railway and the low lying town centre buildings to the south of it. Its hillside location within the residential area would emphasise both its prominence and the stark contrast with its surroundings. Careful selection of colours and elevational detailing would not disguise the slab-like appearance of a development which would not reflect the topography of the land on which it would stand. In commenting on the scheme, English Heritage considered that views from the overall surrounding townscape, from the east across the town, would benefit from stepping the scheme down, thereby acknowledging the landscape topography. The South East Regional Design Panel thought that in townscape terms it would be much better if there could be a more natural stepping of the blocks with heights reducing with the contours.
12. These views closely reflect my own conclusions that the massing of the proposal would relate unsympathetically with its surroundings at a scale which would prevent it from integrating into the urban form when seen from any distance. Thus it would conflict with the aims of LP policy DG7(a).

*Effect on Conservation Area*

13. The Blacklands Conservation Area (CA) stretches northward from the centre line of Braybrooke Road at a point close to the north east end of the appeal site. It encompasses traditional housing on either side of Alexandra Park, a large open space winding through the area. The appeal site is outside the CA but the visual impact of the proposal would be felt at its southern end.
14. From within the park, views could be obtained of the relatively slim north east elevation of the building. The principal, Braybrooke Road, elevation, running away from the park, would be partially screened by parkland vegetation and housing in Lower Park Road. Given the orientation of the development, the

screening and the distance involved, I do not consider that the development would have an unacceptable visual impact on much of the park.

15. I note the support for the scheme which was expressed by the Council's Conservation and Design team in its observations on the application, based on its consideration that, although large, the design would be of sufficiently good quality to avoid being unreasonably overbearing in the immediate vicinity. However, the junction between Braybrooke Road/Bethune Way and Lower Park Road, including the corner property and the park entrance, is an important point of entry to the CA. In my judgement, the presence of a development of the scale and style proposed would have an unacceptably overpowering effect on this part of the CA, dwarfing the corner property. For this reason I consider that the proposal would neither preserve nor enhance the character or appearance of the CA, contrary to the requirements of national and development plan policy.

#### *Other appeals*

16. The Council has drawn attention to 2 previous unsuccessful appeals relating to the site, Refs: T/APP/B1415/A/89/132474/P7 and T/APP/B1415/A/93/218860. These were for residential developments containing 83 and 60 flats respectively in blocks between 3 and 5 storeys high. Although these occurred some time ago, when different planning policies applied, I note that the Inspectors expressed similar concerns regarding the visual impact of the proposals to those now raised by the Council. These are consistent with the views I have formed and reinforce my own conclusions regarding the height and scale of what appears to be a larger development than those previously considered.

#### **Other Matters**

17. The parties have completed a Section 106 Agreement in conjunction with East Sussex County Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.
18. *Affordable Housing*: LP policy H6 seeks a minimum of 25 per cent of the units to be social rented housing. The Agreement provides for 18 such units and for a financial contribution to be made in respect of the shortfall of 4 units. The amount due would be calculated on the land value and the total build cost per unit of the units being provided on site at the time development commences. Although at this stage the precise level of the financial contribution has still to be negotiated, the parameters within which it would be decided should ensure that it would be fairly and reasonably related to the development proposed and I consider that this obligation passes the statutory tests.
19. *Local Sustainable Accessibility Improvement Contribution (LSAIC)*: this is a sum of £50,730 negotiated on the basis of interim Supplementary Planning Guidance (SPG) entitled "A New Approach to Development Contributions", published in 2003. This was supplementary to the former East Sussex and Brighton & Hove Structure Plan (SP), now superseded by the South East Plan (SEP). New housing allocations in the SEP, published in 2009, have led in part to revised LSAIC costs for residential development in 2010/2011. Hastings Borough Council's adopted SPG note 7 "Development Contributions" indicates

that the County Council's requirement for commuted payments was based on SP policy S3. This may have been carried forward in the SEP, though I have no information on this. Furthermore, no indication has been given of how the money would be spent, save that it is required "to offset the impact of the additional traffic". On the basis of the evidence before me I am therefore unable to be sure that this obligation meets the statutory tests.

20. *Road Traffic Regulation Order (RTRO) Contribution:* in commenting on the planning application the Highway Authority noted that, as a result of the development, alterations would be required to the parking bays in Braybrooke Road, and that this would require a RTRO which would need advertising and a legal process. The Authority considered that the applicants should contribute £1500 towards this work. I am not aware of the policy basis for this requirement or the reason why the amount was increased to £2000 in the Agreement. I am therefore unable to conclude with any confidence that this obligation would pass tests (a) and (c) in CIL Regulation 122.
21. *Play Area Contribution:* a sum of £70,000 has been agreed for the upgrading of specified playgrounds in the vicinity of the appeal site. LP policy DG13 requires the provision of children's playspace in residential schemes that include 25 or more family dwellings. This includes the appeal proposal. Where this cannot be provided on site a payment may be made for the improvement of a nearby playspace. SPG note 5 "The Provision of Children's Playspace in Housing Developments", adopted as interim guidance in 2004, sets out the playspace standards required. I understand from the SPG that the contribution would be based on the actual costs incurred by the Council in undertaking the work and a commuted sum towards future maintenance. Given the size of the proposed development, the number of units involved and the lack of space on-site for this type of amenity, I consider that this obligation would pass the statutory tests.
22. *Public Art Contribution:* LP policy DG20 seeks the provision of "public art" in major development schemes, stating that the Council would have regard to the contribution that would be made by any such works or effects on the appearance of the scheme and the character of the area. A sum of £25,000 has been negotiated for this purpose, but with no commitment to any specific course of action. Whilst I sympathise with the objective of this obligation, including the possible future involvement of the local community in any project, on the evidence before me I cannot conclude that this obligation would pass the statutory tests.
23. In light of these findings, since the obligations relating to the LSAIC, RTRO and public art contributions fail to meet 1 or more of the tests set out in CIL Regulation 122, I am unable to take them into account in determining the appeal. I give significant weight to the obligations for affordable housing and for the improvement of local playgrounds to compensate for a low level of on-site playspace.
24. A number of local residents have objected to the proposals on grounds of highway safety and a lack of on site parking provision. I understand that the proposal for 62 off street residential parking spaces slightly exceeds the maximum standard set by the development plan for a site in this location. I have seen no evidence, either at my site visit or in submissions, that parking

conditions or highway safety would be harmed by the residential part of the development, and neither the Council nor the Highway Authority have objected on parking or highway safety grounds. Subject to the resolution of the issues I have identified regarding the agreed LSAIC and RTRO obligations, the residential element of the scheme would strike an appropriate balance between the need to cater for car usage and the national planning objective to encourage the use of other forms of transport. However, at the Hearing it was confirmed that there would be no off-street parking or drop-off facility allocated to the significant area of floor-space for use by an unspecified D1 community use. On the information available to me, I consider that this could cause highway safety problems in the vicinity of the use, adding to my concerns regarding the visual impact of the development.

### **Conclusions**

25. I acknowledge that the proposed development would make efficient use of a designated housing site and an appropriate contribution to affordable housing in the area, and that the obligation to improve local play facilities would, in policy terms, provide adequate compensation for the restricted provision on-site. However, these considerations are, in my judgement, clearly outweighed by the visual harm I have identified, which is a compelling reason for refusing planning permission. Furthermore, had I been able to weigh in the balance the LSAIC, RTRO and public art obligations, this would not have altered my conclusion.
26. I conclude that the proposed blocks of flats would have an unacceptably harmful effect on the character and appearance of the area having regard to the impact on the local street scene, the integration of the development into the urban form when seen from further afield, and whether the development would preserve or enhance the character or appearance of the neighbouring Blacklands Conservation Area.
27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*M.A.Say*  
INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|           |                             |
|-----------|-----------------------------|
| I Coomber | Stiles Harold Williams      |
| P Naylor  | R H Partnership, Architects |
| C Hunt    | Appellant's representative  |

### FOR THE LOCAL PLANNING AUTHORITY:

|          |                     |
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| R Harman | Planning consultant |
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### INTERESTED PERSONS:

|             |                |
|-------------|----------------|
| G Daniel    | Councillor     |
| A Verceuil  | Local resident |
| A Ingleton  | Local resident |
| V Mercer    | Local resident |
| R Hart      | Local resident |
| I Castro    | Local resident |
| A McGilvery | Local resident |
| A Alexander | Local resident |

### DOCUMENTS

- 1 Planning conditions requested by the Environment Agency
- 2 Section 106 planning agreement (undated)
- 3 Interim Supplementary Planning Guidance (SPG) Note 7:  
*Development Contributions, Hastings B C*
- 4 Interim SPG: *A New Approach to Development Contributions, East Sussex C C*
- 5 Hastings Local Plan chapter 7a: *Housing*

### PLANS

- A Blacklands Conservation Area
- B Braybrooke residential parking zone