
Appeal Decision

Site visit made on 20 February 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 4th April 2017

Appeal Ref: APP/U1430/W/16/3163559

Rialto Hall, St Marys Lane, Bexhill TN39 5JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Devonshire Estates Ltd against Rother District Council.
 - The application Ref RR/2016/2398/P, is dated 8 September 2016.
 - The development proposed is described as "outline planning application for the demolition of 2x dwellings and the development of 6x dwellings".
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the proposed site layout plan and potential site access improvement plans as illustrative only.
3. I note that the description of the proposed development provided on the planning application form refers to the demolition of two dwellings. The Council has advised that an application for change of use of the barn to the south east corner of the appeal site to a dwelling has been refused planning permission (Ref RR/84/2248) and has also been dismissed at appeal. The Council advise that this building has been in use as an ancillary annexe but the appellant contends it has been in use as an independent dwelling known as 'Bearsden' since 2009. The appellant has indicated that 'Bearsden' is subject to a Certificate of Lawfulness. I have also seen sight of an appeal decision (APP/U1430/A/10/2127139) relating to 'Little Bearsden' that has allowed the extension of an annexe and use of the extended building as one unit of holiday accommodation. Whilst this information assists my understanding in relation to the current residential use of the appeal site, these issues are separate to this appeal.

Main Issues

4. The Council failed to determine the planning application within the prescribed period. The Council has submitted a statement in support of this appeal which includes a report ('D' Report) that sets out the Council's intended decision to refuse planning permission had they been in a position to determine the application. The Appellants Statement of Case and final comments documents are consistent in that they deal with this matters raised by the Council.
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5. Bearing this in mind, I consider that the main issues of this appeal are: -
- a) the effect of the proposal upon the character and appearance of the area;
 - b) whether it would be in an accessible location; and
 - c) whether the proposal would constitute a sustainable form of development, taking into account local and national planning policies.

Reasons

Context

6. Policy DS3 of the Rother District Local Plan (the Local Plan) sets out those existing towns and villages to which new development will be directed in order to maintain the existing settlement pattern. Policy OSS2 of the Rother Local Plan Core Strategy (the Core Strategy) states that development boundaries around settlements will continue to differentiate between areas where most forms of new development would be acceptable and where they would not. The appeal site lies outside the designated settlement boundary and is within the countryside.
7. However, the Council has acknowledged it is currently unable to demonstrate a five year supply of housing. Paragraph 47 of the National Planning Policy Framework (the Framework) and, in such circumstances, paragraph 49 instructs that policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The presumption in favour of sustainable development at paragraph 14 of the Framework requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Policies DS3 and OSS2 relate to the supply of housing and I will deal with the housing land supply shortfall further below and the weight to be afforded to Policy DS3 and Policy OSS2 in light of this shortfall.

Character and appearance of the area

8. The appeal site is located within a rural gap between the settlement of Bexhill and a small settlement known as Lunsford Cross/The Thorne. Whilst I observed a few dispersed dwellings in the wider context of the appeal site, the area is generally characterised by small fields, boundary hedges, pockets of woodland and tree lined roads.
9. The appeal site is a triangular area of land abutted on two sides by highways and a grass field beyond a well maintained boundary of tall conifer trees to the south. The site comprises a two-storey house with outbuildings and an additional two-storey dwelling unit. The grounds also host enclosed grass areas. These give the appeal site a sense of spaciousness and a rural context. Along the Ninfield Road frontage the site is bounded by hedges and trees with a fence behind set upon an embankment. The rooftops of some of the buildings at the appeal site are visible from Ninfield Road through the vegetation. A mixture of vegetation, closeboard fencing and conifer trees/hedgerow set upon an embankment run along the boundary of St Mary's Lane.

10. I observed that the site is separated from the linear development in Ninfield Road and the existing predominantly residential development north of the appeal site (Lunsford Cross/The Thorne) and is positioned within a rural landscape. The northern corner of St Mary's Lane and Ninfield Road comprises native species hedge with some trees along the embankments. Travelling south from Lunsford Cross/The Thorne the character becomes rural at this point and the appeal site is seen as part of the rural landscape.
11. The proposal would expand built development and increase the size of the settlement at Lunsford Cross/The Thorne. This would compromise the purposes of Policies RA2 and EN1 that seek to protect rural character and open landscapes between clearly defined settlements. Although the existing use of the site is residential and has a large residential plot, much of the site remains open and undeveloped. The replacement of existing buildings with six dwellings with more intensive formalised layout, long access driveways, parking, turning areas, and landscaping, would have a significant urbanising effect upon the character of this rural landscape and would substantially change its character.
12. The provision of six dwellings on the site would not have any particular visual or physical affinity with the development off-set to the north. The indicative layout lodged with the application fails to demonstrate the proposal could be satisfactorily assimilated into Lunsford Cross/The Thorne. In effect the proposal involves the piecemeal development of land which currently contributes to the rural setting of the land to the south of Lunsford Cross/The Thorne. Whilst the boundaries of the site are presently well screened and this could remain the case, I consider six dwellings built within close proximity to the boundaries of the appeal site, particularly if two-storey, would be visible through boundary vegetation, in a similar way as the existing buildings are visible from Ninfield Lane. The more intensive urbanising development would have a detrimental visual effect within this rural landscape and would not integrate with its rural character. It would also diminish the countryside gap between Bexhill and the development at Lunsford Cross/The Thorne which maintains a separation between these built up areas.
13. I acknowledge there are no statutory designations in place relating to the land between Bexhill and Lunsford Cross/The Thorne. There is dispute between parties as to whether or not the land constitutes a 'valued' landscape in the context of footnote 9 and paragraph 109 of the Framework. However, to my mind the appeal site, in landscape terms, forms part of the countryside fringe between settlements and is an important landscape gap to which paragraph 109 promotes protection.
14. My attention has been drawn to Policy BX3 of the Core Strategy which identifies land north east, north and west of Bexhill for new residential and employment development. The timing and location of this will be subject to the Sites Allocations process. The Council's Development and Site Allocations Plan (DaSA) has been placed on deposit for public consultation on 12 December 2016. Draft DaSA Policy BEX3 seeks to deliver a comprehensive urban extension with provision of green space and other infrastructure at land north of Bexhill and between the built up confines of Lunsford Cross/The Thorne. It identifies the area surrounding the appeal site, including land around St Mary's Lane, as part of the strategic development area for residential growth and new woodland buffers in the vicinity of the appeal site but the plans are

diagrammatic. With due regard to paragraph 216 of the Framework this plan, although advancing, is at a relatively early stage and is still subject to public consultation and examination. As a consequence I give limited weight to the draft DaSA, including Policy BEX3.

15. The appellant says that approx. 0.4ha of the appeal site is shown as being within the preferred options for housing development and includes the area around St Mary's Lane. Although Policy BX3 of the Core Strategy directs new development to land between Bexhill and Lunsford Cross/The Thorne the finer detail of the Bexhill settlement expansion is subject to the DaSA. Policy BX3 does not, by implication, mean that residential development at the appeal site has been accepted at this stage or that the existing character of the area and that of St Mary's Lane would, in due course, significantly change.
16. The proposed development is in outline and the details of the access are reserved. However, it is clear to me that due to the treed and vegetated boundaries along both road frontages, extensive sightline would be required to achieve adequate visibility either as part of a new access on to Ninfield Road or the upgrading of the existing at St Mary's Lane. The removal of a significant amount of hedgerow along either of the road frontages and cutting back the embankments would erode the character and appearance of these rural roads and landscape areas.
17. Further to this, the appellant has provided illustrative plans showing how the existing site access at St Mary's Lane could be upgraded to achieve improved visibility at either side. I observed St Mary's Lane to be a narrow countryside lane which the Council advise is a historic highway. Although St Mary's Lane does not have any protected policy status and has, to some extent, a domestic boundary appearance along the appeal site frontage, it is clear the existing access would require upgrading to achieve the visibility splays required to make the access acceptable to the Highway Authority. This would entail the removal of a hedgerow and cutting back the embankment over a length of 43m along either side of the access within the appellant's ownership.
18. Whilst I accept the owner could undertake such work and increase planting along this road frontage boundary at present, these works are more likely to take place to facilitate the proposed development. Removal of the roadside boundary would detrimentally change the character of this narrow rural lane and add to the urbanisation of the location. Although a landscape strategy could comprise native tree and hedgerow planting as part of a replacement boundary, the visibility splay would alter the character of this rural land at this point detrimental to its character.
19. Overall, the visual harm of the proposed development to the character and appearance of the rural landscape would be substantial.
20. For these reasons, the proposal would conflict with Policies RA2 and EN1 of the Core Strategy which seek to protect the rural character and open landscapes. The proposal would also conflict with Paragraphs 17 and 109 of the Framework that recognise the intrinsic character and beauty of the countryside and seek to conserve and enhance the natural environment. This weighs heavily against the scheme.

Accessibility

21. There are no pedestrian footpaths around the appeal site but the appellant says a link from the appeal site could be created to the existing public footpath on the opposite side of Ninfield Road. In addition, the appellant refers me to a bus stop around 80m from the appeal site and indicates it to be served by the No.95 hourly bus service providing links to the hospital, town centre, local supermarkets and Bexhill-on-Sea train station. The appellant also indicates that there is a primary school, doctors and dentist and a convenience store within walking distance, although the Council advise that these are in Bexhill or Sidley around 0.86m away. As such, future occupiers would have some public transport options available to them potentially within walking distance.
22. The appellant also refers me to an appeal at land at The Thorne, Ninfield Road (appeal ref: APP/U1430/A/13/2202104). I note that appeal site related more closely to the settlement of Lunsford Cross/The Thorne, but in terms of accessibility that appeal site has similar accessibility credentials to that of this appeal. The Inspector in respect of that appeal opined that the location of the land adjoining The Thorne was not good in terms of accessibility and considered that realistically many journeys would be made by car. He went on to say "*... given the proximity to Sidley and Bexhill-on-Sea the length of trips for employment, shopping, leisure, education and other day-to-day activities would be short. Notwithstanding this, the proposal could not be characterised as in an accessible location*". I agree with the Inspector and consider these conclusions to be relevant to this appeal site which is only a short distance away.
23. My attention has been drawn to the North Bexhill Access Road promoted through the DaSA that has gained planning permission. This road would serve the anticipated Policy BEX3 expansion. The main junction to this road along Ninfield Road is to be located directly opposite the appeal site. I accept this would create improved accessibility to services and facilities. The appellants suggest that a potential second or replacement access point could be created at the appeal site that would link with this new highway. The acceptability of such an access would be subject to a reserved matters application, if this appeal was found to be acceptable in all other respects. However, the access road is not yet in place and, therefore, does not justify the proposed development being accepted on the basis of this planning permission. Further, I have determined above that little weight can be afforded to Policy BEX3 of the DaSA.
24. The proposal in this location would lead to some adverse impacts as its location would not enable the fullest possible use of public transport, walking and cycling. Whilst decisions should ensure that new development that would generate significant transportation movements are located where sustainable transport options can be optimised and the need for travel by car minimised, the creation of six dwellings at the appeal site would not lead to significant movement. The consequences of the development, in this respect, would not be great.

Sustainability

25. The Council's stance is that given the site's location beyond the settlement boundary, it lies within the countryside for the purposes of the relevant development plan policies where restraint is placed on new housing. The proposal would conflict with Policy DS3 of the Local Plan and Policy OSS2 of the

Core Strategy which direct new development to existing towns and villages to maintain the existing settlement pattern. However, the Council is unable to demonstrate that a deliverable five year supply of housing land is available, as required by the Framework and the Council's adopted policies relating to housing provision, such as Policy DS3 and Policy OSS2 cannot be considered up-to-date (in accordance with paragraph 49 of the Framework).

26. In terms of the level of weight to afford to Policies DS3 and OSS2, the Local Plan pre-dates the Framework but the Core Strategy has been adopted following the Framework coming into place. Both Policy DS3 and Policy OSS2 seek to define development boundaries around settlements and differentiate between areas where most forms of new development would be acceptable and where they would not. In my view both of these policies seek to deliver housing growth, in a sustainable manner. Policy OSS2 also reconciles the competing aims of protecting important 'gaps' of countryside. Whilst I consider that Policy OSS2 and Policy DS3 are broadly consistent with the Framework, the Council accept that it is currently able to identify a 3.9 years supply of housing sites, which includes a 20% buffer. Given this level of shortfall, I afford Policies DS3 and OSS2 limited weight.
27. Given all of the above, the proposal, therefore, falls to be considered against paragraph 14 which sets out the presumption in favour of sustainable development and states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. It is necessary for me to therefore weigh the sustainability credentials of this proposal, with particular reference to the economic, social and environmental dimensions of sustainable development, as set out in paragraph 7 of the Framework, against one another.
28. With respect to economic considerations, the proposal would provide employment opportunities during the construction period. The occupiers of the new housing may well contribute to the local economy. However, the Council's inference is that the economic benefits would be 'limited'. The proposal would be small-scale and therefore I see no reason to disagree. I therefore afford limited weight to such benefits.
29. In terms of the social benefits, the Council has a significant shortfall in its housing land supply. Bearing this in mind, along with the small-scale nature of the scheme, I consider that a moderate level of weight should be afforded to the contribution that the scheme would make to the Council's housing land supply.
30. Turning to environmental considerations, the scheme would be located outside of the settlement boundary contrary to Policy DS3 and Policy OSS2, but as these policies are out-of-date, they carry limited weight and whilst weighing against the scheme, this is not to any significant degree. I have concluded that the proposal could not be characterised as in an accessible location, although the consequences of this would not be significant. This matter therefore also attracts limited weight against the scheme.
31. Further, paragraph 7 of the Framework makes it clear that sustainable development should contribute to the protection and enhancement of the natural, built and historic environment. Paragraph 9 of the Framework also confirms that pursuing sustainable development involves seeking positive improvements in the quality of the natural, built and historic environment, as

well as people's quality of life. With regard to the first main issue, I found that the proposed development would harmfully alter the character and appearance of the area. I attach significant weight to this issue.

32. Weighing all of these against one another, on balance, I consider that the economic and social benefits of the scheme are significantly and demonstrably outweighed by the identified environmental harm. Consequently, the scheme does not constitute sustainable development, when the Framework is taken as a whole. Furthermore, I conclude that the scheme conflicts with the development plan as a whole.

Other Matters

33. I have taken into account the *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East*, SSCLG [2016] EWCA Civ 168 Court of Appeal judgement in reaching my decision. Where paragraph 49 and 14 apply, as is the case here, policies are deemed to be out of date as a result of a lack of a five year housing land supply. However, this judgement indicates that it remains necessary to conclude against policies as they remain part of the development plan. I have done this in reaching my decision.

Conclusions

34. I have taken into account all the other matters that have been raised but find they do not alter the main considerations that have led to my decision to dismiss this appeal and, therefore, planning permission is refused.

Nicola Davies

INSPECTOR