
Appeal Decision

Site visit made on 24 April 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 28 June 2017

Appeal Ref: APP/C1435/W/17/3167839

Royal Mires Nursery, Lye Green, Crowborough TN6 1UU

- 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 Rumwood Nurseries (Partnership) against the decision of Wealden District Council.
 - The application Ref WD/2016/1618/F, dated 24 June 2016, was refused by notice dated 18 November 2016.
 - The development proposed is demolition and clearance of existing retail garden centre and erection of 9x detached family dwellings (4x four bedroom and 5x five bedroom) with associated garages, landscaping and hardstanding.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - a) the effect of the proposal upon the character and appearance of the area and the High Weald Area of Outstanding Natural Beauty (AONB); and
 - b) whether the proposal is an appropriate location for new residential development to avoid the over-reliance on travel by car.

Reasons

Context

3. Policy EN2 of the Wealden Local Plan 1998 (the Local Plan) seeks to maintain the existing settlement pattern. Policy WCS6 of the Wealden District Core Strategy Local Plan 2013 (the Core Strategy) sets out categories of settlement in rural areas at which development boundaries will be retained and those in which additional housing development is allocated. Lye Green is not identified for housing development and, as such, the appeal site lies outside any designated settlement boundary. Policy SPO3 of the Core Strategy directs the majority of new housing to be accommodated within, or as sustainable extensions to, existing towns or as limited growth within those villages capable of accommodating development in a sustainable fashion. Paragraph 55 of the National Planning Policy Framework (the Framework) seeks to avoid isolated homes in the countryside unless there are special circumstances. The appellant acknowledges the appeal site is within the countryside.
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4. Policy EN6 of the Local Plan and Policy SPO1 of the Core Strategy also seek to conserve and enhance the natural beauty and character of the designated landscape of the High Weald AONB and to have regard to traditional settlement patterns.
5. However, the Council has acknowledged it is currently unable to demonstrate a five year supply of housing. Paragraph 47 of the Framework and, in such circumstances, paragraph 49, instruct 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 EN2, WCS6 and SPO3 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 these policies in light of this shortfall.

Character and appearance of the area

6. The appeal site falls within the High Weald AONB. The appellant argues that the proposed development, comprising nine dwellings at the appeal site, would not be a 'major' development and therefore paragraph 116 of the Framework would not apply in this case. Notwithstanding this, paragraph 115 of the Framework accords great weight to the conserving of the landscape in AONBs which is afforded the highest status of protection.
7. The appeal site is located on the eastern side of London Road. Although there are a small number of dwellings within the surrounding area, the appeal site falls within the countryside where fields, farmed land and woodland characterise the landscape.
8. I observed that the garden centre has a mix of outdoor storage and sales, covered indoor retail area and area of outdoor plants displayed on sale, as well as greenhouses and a small number of polytunnels and timber buildings. The covered areas are grouped together centrally within the appeal site. There are also greenhouses or glass houses that run along the eastern side of the site but these are of low height. The majority of the site, however, is made up of hard surface used for parking or retail display purposes providing a much more spacious and undeveloped character and appearance.
9. The proposed development would extend over the full area of the appeal site and would introduce two-storey development where none currently exists and, most notably, to those parts of the site that are currently mostly free from built development. It would be of a significantly greater height than that of the modest covered indoor retail area and other structures at the garden centre. Each property would be two-storey and have separate garage buildings. Although the development would replace the existing structures at the site the proposal would create more substantial built development of a sizeable footprint and height.
10. The appearance of the development would be one of substantial houses together with surfaced accesses and parking areas. The development would introduce an urbanising development over the entire site and, as such, would project more so into the wider landscape than that of the existing development at the site. Such a development would result in a diminution of the rural

character and appearance of this location and the countryside. In addition, the development would erode the existing spaciousness to the northern and southern parts of the site. The consolidation of residential development would be visually substantially more prominent and intrusive within this rural landscape even if domestic structures and paraphernalia were controlled under The Town and Country Planning (General Permitted Development) (England) Order 2015.

11. The surrounding fields are rural in character. Hedgerows enclosing fields are a particular feature of this landscape. The garden centre is also enclosed by trees and landscaping along the boundaries. I acknowledge the Landscape and Visual Impact Assessment (LVIA) submitted by the appellant in support of their application is professionally prepared and has not been challenged by the Council. The assessment advocates the overall sensitivity to the type of development proposed to be low. It indicates that there would be no total or substantial loss of the landscape elements and features (namely topography, hedgerows and trees) that currently characterise the boundaries of the appeal site.
12. I observed that the existing structures at the site are visible in glimpsed views through the existing vegetation along London Road. The vegetation on the other boundaries is well established and densely populated. However, whilst some of the trees are tall there are parts in which the proposed two-storey development would be visible when viewed from the wider landscape. Although additional planting could strengthen boundary planting this would take time to establish so there would be initial to medium term harm. Whilst I acknowledge the additional landscaping would help to mitigate the visual impact of the proposed development, the proposal would nonetheless involve the loss of a large part of the less developed areas of the site and would introduce urban-related built development. The proposed development would be clearly visible in views from London Road at the access to the site where the two large dwellings of plots 8 and 9 could be seen.
13. The appellant asserts that the existing retail use is not characteristic of the wider landscape and that residential development of the site may be an inevitable change to the existing land use and considers this small scale residential development to be more appropriate.
14. Whilst I accept the existing scattered residential development in the surrounding area has established over a period of time, this proposal would significantly intensify built development within the open countryside and consolidate the scattered domestic built form in the countryside. The addition of nine dwellings with a formalised layout, long access driveways, parking, turning areas and landscaping, would have a significant urbanising effect upon the site and would substantially change its character. The provision of nine dwellings on the site would convey the impression of an enclave of housing. Although the existing retail use is not characteristic of the wider landscape, I consider that the proposed development would also be out of keeping with this rural setting and would be inappropriate to its rural context.
15. Whilst I accept that the appeal site is a previously developed site, overall, the visual harm of the proposed development to the character and appearance of the rural landscape and the High Weald AONB would be substantial.

16. For these reasons, the proposal would conflict with Policies EN1, EN6 and EN27 of the Local Plan and Policy SPO1 of the Core Strategy. These policies seek to conserve and enhance the natural beauty and character of the landscape of the High Weald AONB and have regard to traditional settlement patterns and to protect distinct landscapes of the District, particularly those nationally designated. The proposal would also conflict with the Wealden Design Guide Supplementary Planning Document 2008 that seeks new development to respect established landscape character and preserve local distinctiveness.
17. Furthermore, the proposal would conflict with Paragraphs 17, 55 and 109 of the Framework that recognise the intrinsic character and beauty of the countryside and seek to conserve and enhance the natural environment. The proposal would also be contrary to paragraph 115 of the Framework. This weighs heavily against the scheme.

Accessibility

18. Policy EN2 of the Local Plan and Policy SPO7 of the Core Strategy seek to reduce the need to travel by car by concentrating development where it can most closely relate to public transport opportunities and make it easier to travel by more sustainable modes of transport.
19. The appeal site is located approximately 3.2 kilometres from Crowborough, where there is a good range of services and facilities, including employment and leisure. The appellant accepts that there are limited non-car travel choices available to future residents. In my opinion, using public rights of way across fields would not facilitate easy connectivity to any service, local or neighbourhood centre, although the public house, petrol station and small grocery store at Boarshead could be reached. There are no footways or street lighting along London Road. Walking and cycling to and from the site would be potentially hazardous and unappealing, particularly at night and in the winter. Although cycle routes in the area would connect with the wider cycle route network and would offer some connectivity with a broader range of services, these routes are some distance from the appeal site and would likely be used for recreational purposes rather than for day-to-day access to services.
20. There are therefore practical difficulties for access by walking, cycling and public transport. The occupiers of the proposed dwellings would, in my opinion, rely to a large extent on the use of private vehicles to access services and facilities on a day-to-day basis or alternatively have deliveries from service centres. However, the existing garden centre business operation at the appeal site is wholly car-dependant. The appellant's evidence suggests that vehicle movements would reduce as a result of the proposal. The appellant's Transport Statement database analysis that indicates an average of 134 two-way vehicles trips are generated per day by the nursery and this could be up to 236 if the nursery was utilised to its full capacity. In contrast the appellant's TRICS database has indicated that 44 vehicle movements would be generated by the occupiers of the proposed dwellings across a 12 hour day. This would be a reduction in vehicle trips over the course of the day. I consider this has to be set against the existing use of the site.
21. The likely traffic pattern, which I observed on site includes some movements by large goods vehicles, would be different to the nature of traffic from those associated with a housing development. The future occupiers would undertake some local trips which would be usual in the case of the main food shop.

Whilst there are shortcomings with regard to services close by to the site and access to services and facilities, this must be balanced against the reduction in vehicle movements. This is a benefit of the proposed development and I attach moderate weight to this.

22. Further to the above, the reduction in vehicle movements and associated nitrogen deposition would be an advantage to the air quality of the European Protected Habitat Sites of the nearby Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). This is an additional benefit of the proposed development and I also attach modest weight to this.
23. My attention has been drawn to two appeal decisions at land at Steel Cross, Crowborough (appeal ref: APP/C1435/A/14/2223431) and Malvern Caravans, Worcestershire (appeal ref: APP/J1860/A/14/2227378) both of which I accept have some issues that are similar to the proposed development before me. Both cases deal with the site's location in relation to services and facilities and, in the case of Malvern Caravans, existing vehicle movements. Nonetheless, the appeal before me relates to a different site and, notwithstanding any similarity of these other examples to the appeal before me, I have considered this appeal on its own merit.
24. Overall, whilst there would be some conflict with Policy EN2 of the Local Plan and Policy SPO7 of the Core Strategy, I conclude that the proposed development would not materially conflict with Policies EN1 and TR3 of the Local Plan and Policy SPO12 of the Core Strategy. These latter policies seek to ensure that proposed development would not create or perpetuate unacceptable traffic conditions and have regard to assessing the effects of proposals on the environment, which includes air quality, amongst other matters. The proposal would also comply with paragraphs 17 and 30 of the Framework which seek to support reduction in greenhouse gas emissions.

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 EN2 of the Local Plan and Policies WCS6 and SPO3 of the Core Strategy which direct new development to particular settlements in the rural area and to those in which additional housing development is allocated. However, the Council is unable to demonstrate that a deliverable five year supply of housing land is available, as required by the Framework. The Council's adopted policies relating to housing provision, such as Policy EN2 and Policies WCS6 and SPO3 cannot, therefore, 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 EN2, WCS6 and SPO3, the Local Plan pre-dates the Framework but the Core Strategy has been adopted following the Framework coming into place. Policy EN2 of the Local Plan and Policies WCS6 and SPO3 of the Core Strategy seek to maintain the existing settlement pattern and to define where new development would be acceptable. In my view these policies seek to deliver housing growth in a sustainable manner. Whilst I consider that Policy EN2 and Policies WCS6 and SPO3 are broadly consistent with the Framework, the Council accepts that it is currently only able to identify a 4.18 years supply of housing sites. Given this level of shortfall, I afford Policies EN2, WCS6 and SPO3 limited weight.

27. Further to this, the Council has explained that the Inspector examining the Core Strategy recognised there were environmental constraints within the District and that modifications were necessary to make the Core Strategy sound and a review of the spatial strategy has been built into it. The appellant comments that building close to the Ashdown Forest supports the re-use of existing developed sites like this one rather than bringing forward greenfield urban expansions to meet the housing deficit. Although this process of assessing housing need and locations for growth is ongoing, the Council confirms that it cannot yet demonstrate a five years' supply of housing sites.
28. Given all of these considerations, the proposal, therefore, falls to be considered against Policy WCS14 of the Core Strategy and paragraph 14 which set 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 against one another, as set out in paragraph 7 of the Framework.
29. 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, these economic benefits would, in my opinion, be limited. I therefore attach limited weight to such benefits.
30. In terms of the social benefits, the proposal would assist in meeting a deficiency of larger family sized homes of four bedrooms plus for those who may desire to live in the country or within a rural community.. The dwellings could be constructed to Building Regulations national technical standards. The Council has a significant shortfall in its housing land supply and the proposal would provide twelve additional homes, nine on site and three via a commuted sum¹. 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 overall housing land supply and/or shortage of family-sized dwellings within the District.
31. Turning to environmental considerations, the proposal would not involve the loss of high value agricultural land or land of ecological value. The appeal site does not fall within a conservation or flood risk area and the surface water runoff could be reduced at the appeal site. The proposal does not involve works beyond the appeal site boundary and would not affect surrounding land. The existing trees and hedgerows around the site would be retained. The benefits brought about by the SAC payment through a Community Infrastructure Levy contribution would promote conservation interests. The proposal would reduce vehicle movement and thus improve air quality. It would make use of a previously developed site where the existing business use, in isolation, is in decline running at a loss requiring subsidy from the parent garden centre. I therefore afford modest weight to such benefits.
32. However, the scheme would be located outside of the settlement boundary contrary to Policies EN2, WCS6 and SPO3, but as these policies are out-of-date, they carry limited weight and whilst weighing against the scheme, this is not to

¹ I note that a signed and dated Unilateral Undertaking is before me to secure the offsite affordable housing via a commuted payment.

any significant degree. I have concluded that the proposal, although not in an accessible location in terms of its relationship to services and facilities, would nonetheless bring about a reduction in overall traffic movements along local rural lanes and improve air quality. These benefits also attach modest weight.

33. Further to this, paragraphs 7 and 9 of the Framework make it clear that sustainable development should contribute to the protection and enhancement of the natural, built and historic environment and seek positive improvements to these, 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 and the High Weald AONB. I attach significant weight to this issue.
34. Weighing all these issues against one another and taking into account all policies drawn to my attention, on balance, I consider that the economic, social and certain specific environmental benefits of the scheme are significantly and demonstrably outweighed by the identified environmental harm to the character and appearance of the area and the High Weald AONB. 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

35. The appellant refers me to the Council's emerging Local Plan and the latest Issues, Options and Recommendations Consultation which show a need for additional homes between 2013- 2033. This plan is at a very early stage and remains to be fully scrutinised and tested through the adoption process. As a consequence I give little weight to this emerging Local Plan or those documents informing it.
36. Development in the southern part of the District is constrained by the waste water capacity of Hailsham North and Hailsham South Waste Water Treatment Works. Specific concerns relate to the increase in new development and the treatment of additional waste water, increased discharge of effluent and the continued decline in ecology quality downstream within the Pevensey Levels SAC and Ramsar site. The Environment Agency has indicated that it will not support growth until an alternative discharge location/technical solution is provided. This may affect development above the existing capacity in the area served by these waste water treatment works and this matter would support my findings and weigh against the proposed scheme.

Conclusions

37. I have taken into account all the other matters that have been raised, including those of local residents and Withyham Parish Council, but they do not alter the main considerations that have led to my decision to dismiss this appeal.

Nicola Davies

INSPECTOR