
Appeal Decision

Site visit made on 20 November 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 5 January 2018

Appeal Ref: APP/U1430/W/17/3180209

Land to the West of Hilltop Drive, Rye, East Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Keith Hollidge of The East Mountain Trading Co against the decision of Rother District Council.
 - The application Ref RR/2017/877/P, dated 29 March 2017, was refused by notice dated 13 June 2017.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the four plot locations as shown on drawing number SD/570/02B as illustrative only.
3. The Council says that the application was not valid because the appellant had not served an appropriate notice in relation to a parcel of unregistered land at the appeal site. A planning application must be accompanied by the relevant certificates. The appellant has submitted Certificate D. Completion of Certificate D requires the appellant to advertise the proposal in the press. The appellant has undertaken both, although subsequent to the Council's determination of the planning application.
4. The requirement of the Certificate is set out in Article 13 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). 'Requisite notice' means notice in the appropriate form, set out elsewhere in the DMPO. The requirement for the certificate is rooted in section 65 of the Act. Section 65(5) states that, '*A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied*'.
A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied'.
5. Clearly, the Council should not entertain or determine a planning application not supported with the correct certificate. However, on realising its mistake (and there is no claim that it was anything other than a mistake) the appellant submitted a Certificate D confirming that a press notice had been served. This has been submitted with this appeal. It does not appear to me that the Act or DMPO have been designed to be so inflexible as to prevent such matters from being addressed.

6. Of course, it is important that considerations of natural justice are taken into account. The requirement for certificates is to ensure that anyone that owns or has an interest in land is aware of development proposals which may affect their property. I see no reason why the Certificate D could not have been truthfully completed in retrospect correcting the error to allow the appeal to be determined. In this instance those with an interest in this parcel of land have not been prejudiced.

Main Issues

7. The main issues in this case are the effect of the proposal on:
 - a) the character and appearance of the area and the High Weald Area of Outstanding Natural Beauty (AONB); and
 - b) the living conditions of existing and future occupiers.

Reasons

8. Policy OSS2 of the Rother Local Plan Core Strategy (RLPCS) 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. However, the Council does not have a five year supply of housing land in place and, as such, limited weight should be given to policies relating to development boundaries in respect of housing supply. I will return to this issue further below.

Character and appearance of the area and the High Weald AONB

9. The appeal site relates to a field positioned to the west of residential development at Old School Place and Hilltop Drive. Beyond the hedge and treed boundaries of the site the land to the north, south and west is open countryside, designated AONB. The steeply sloping appeal site, being located on an elevated position on the hillside, has a prominent and exposed siting in the wider landscape. I observed that there are clear views from the appeal site toward the surrounding open landscape and the appeal site would be clear in views from this surrounding countryside.
10. The appeal site, although being located adjacent to existing built development to the east, hosts those green and undeveloped characteristics of the adjoining rural landscape. Whilst the vegetated boundaries delineate the appeal site from the wider rural landscape, its verdant characteristics visually integrate the appeal site with the adjacent countryside. For this reason, I consider that the appeal site appears as an integral part of the wider countryside landscape, including the landscape of the High Weald AONB.
11. The Council considers the site to be a 'valued' landscape. Apart from there being a potential for archaeology at the site the land is not covered by specific designations, including those itemised at footnote 9 of the National Planning Policy Framework (the Framework). Nonetheless, given the visual assimilation of the site with the surrounding countryside I consider the land at the appeal site makes a valuable contribution to the wider rural landscape. In addition, this field provides an important buffer between the built up urban areas to the east and the wider exposed sloping landscape of the AONB.

12. Development of the appeal site, even at a low housing density, would create an extended protrusion of urbanising built development into the rural landscape substantially beyond the existing urban envelope. I find that the proposal would adversely affect the natural landscape character and would significantly harm the appearance of this countryside location. Whilst not encroaching into the AONB designation, it would nonetheless have a substantial impact on the scenic landscape of the AONB that surrounds the site on its north, south and west sides. The visual harm would be exacerbated by the exposed positioning of the development on the hillside.
13. Further to the above, I do not consider that landscaping within the proposed development or the vegetation around the boundaries of the appeal site would overcome this visual harm, taking into account the steeply sloping gradient of the appeal site.
14. The appellant contends that this is previously developed land being part of the curtilage of the former Hill House School that has been redeveloped. Annex 2 of the Framework indicates that curtilage of developed land can fall within the definition of previously development land, although it also states that it should not be assumed that the whole of the curtilage should be developed. As such, even if one were to define this site as previously developed land, it would not automatically follow that the land is acceptable for development.
15. I also note that there are historic planning permissions pertaining to other land relating to Hill House School. I do not find that those historic planning permissions relating to different land to that of the appeal site have any significant relevance to my consideration of this current appeal proposal. The proposed development can and should be considered on its own merits. Furthermore, those decisions pre-date the Framework and the adoption of the current RLPCS.
16. As a result I find that the proposed development would cause harm to the character and appearance of the countryside and the natural beauty and scenic value of the High Weald AONB. The proposed development would therefore conflict with Policies RA2(viii) and EN1(i) and (v) of the RLPCS that seek development to respect the character and appearance of the locality and the District's nationally designed landscapes including the High Weald AONB. I also find that the proposal conflicts with paragraphs 17 and 115 of the Framework. These recognise the intrinsic character and beauty of the countryside and afford great weight to conserving the landscape and scenic beauty in AONBs which is afforded the highest status of protection.

Living conditions of existing and future occupiers

17. I acknowledge that this is an outline proposal, nonetheless the red line appeal site plan includes the existing road access at Old School Place. Given the limitations of the appeal site it is extremely likely that access to the western most part of the appeal site would be via the existing access at Old School Place.
18. I find that in order to access the proposed residential development to the west of 1 Old School Place vehicular traffic would, in all likelihood, pass in close proximity to this dwelling. The rear of this existing dwelling is situated at an elevated land level and the garden is devoid of enclosing boundaries along both its south and west sides. I consider the creation of formalised access would

result in vehicular and pedestrian movements by occupiers of new households and service providers around the boundaries of 1 Old School Place. Such movements would be in close proximity to the front and rear windows, the rear conservatory, patio and open plan rear garden of this dwelling. Activity would take place throughout the day and into the evening. Pedestrian movements, vehicle noise and associated disturbance, along with disruption from vehicle lights, would impinge to an unacceptable degree on the quiet pleasant enjoyment of this residence.

19. The appellant argues that other highways in the vicinity pass close to existing properties. Examples where this takes place at Hilltop Drive and Hillcrest have been put forward. However, it appears to me that where highways pass by the side and rear gardens of properties in the area, those properties, in the main, are mostly enclosed by boundaries or hedges. These differ to the circumstances at 1 Old School Place where the side and rear boundaries are not enclosed. In addition, whilst accesses at the end of Hillcrest are positioned close to existing dwellings the traffic movements along these accesses is likely to be lower than that generated by the residential development at the appeal site. I therefore do not consider these examples justify the harm identified above.
20. The land at the appeal site declines steeply away from the rear boundaries of the existing dwellings at Old School Place. The Council is concerned that overlooking between the existing and proposed dwellings would be unavoidable. However, the development has been proposed in outline. As such, the proposal does not provide certainty as to the number of units to be built, their locations, layout and design. On the available evidence before me I have no substantive reason to conclude that mutual harmful overlooking would occur that could compromise privacy.
21. I find however that for those reasons set out further above, the proposed development would cause harm to the living conditions of existing occupiers of 1 Old School Place. The proposed development would therefore conflict with Policy OSS4(ii) that requires all development not to unreasonably harm the amenities of adjoining properties. I also find that the proposal conflicts with paragraph 17 of the Framework that seeks to secure a good standard of amenity for all existing occupants of land and buildings.

Other Matters

22. The appellant has referred me to Policies PC1, OSS1, OSS3 and OSS4 of the RLPCS. However, the Council has not referred to these policies that relate, amongst other matters, to the District's spatial development strategy and, location of development within its reasons for refusal. I have also been referred to Policy RY1 of the RLPCS but I do not consider that policy to be relevant as it relates to housing within the built-up area of Rye.
23. The appellant has also referred me to Policy RA3 of the RLPCS and paragraph 55 of the Framework. Both set out criteria in which development in the countryside could be accepted but the proposal does not appear to meet the criterion of either. As such, they do not offer support for the proposed development. Whilst the appellant contends that this criterion is not exhaustive, no special circumstances, other than those discussed above, have been clearly advanced.

24. Other policies from the 2006 Rother District Local Plan have been cited but as these have been superseded by the adoption of the RLPCS 2014 I do not consider these to be relevant to this appeal.
25. I acknowledge that the Council has not raised concerns on highway or archaeological grounds and that the proposal would not harm the setting of nearby listed building. I accept these are moderate benefits of the scheme.

Planning Balance

26. The Council does not currently have a five year supply of housing land in place. In such circumstances paragraph 49 of the Framework states that policies for the supply of housing cannot be considered up-to-date. The proposal, therefore, falls to be considered against paragraph 14 which set out the presumption in favour of sustainable development and states that planning permission should be granted. As the appellant points out this presumption can only be displaced if the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits.
27. The appellant also argues that in enforcing Policies RA2 and EN1 of the RLPCS that relate to character, appearance and designated landscapes this can prevent the delivery of houses. In this case development plan policies seek to protect the countryside, open landscapes and the District's nationally designated landscapes for their intrinsic value by restricting development in these areas. These are not policies for the supply of housing. Policies that protect the environment, whether itemised in footnote 9 of the Framework or not, should be applied on their own terms as they serve a different purpose, regardless of whether a five year housing land supply is in place. As the appeal site is within the countryside and adjacent the High Weald AONB the proposal therefore also falls to be determined against those specific policies which indicate that development should be restricted.
28. New dwellings at the appeal site would support the social and economic dimensions of sustainable development, as set out in paragraph 7 of the Framework. Construction costs would contribute to the local economy and provide employment during construction. The proposal would contribute toward the District's targets for housing delivery and five year land supply. However, given this is a relatively small site, this contribution would be modest. I attach only moderate weight to these social and economic benefits.
29. Notwithstanding these considerations, the proposed development would not meet the environmental role. This is because the harm to the character and appearance of the countryside and the High Weald AONB and the harm to the living conditions of existing occupiers bring the proposed development into conflict with the environmental dimension of sustainability, as set out in paragraph 7 of the Framework. I attach significant weight to these issues. These weigh very heavily against the scheme. When the Framework is considered as a whole, I find the scheme does not constitute sustainable development. This is because the positive housing supply and other benefits set out above, are significantly and demonstrably outweighed by the identified environmental harm. Furthermore, I conclude that the scheme conflicts with the development plan as a whole.

30. In reaching my decision I have had regard to the Supreme Court judgement¹ of 10 May 2017 to which the appellant has drawn to my attention.
31. Some concerns have been raised about how the Council considered the planning application. It is contended that the Council did not adequately explain how the development significantly and demonstrably outweighs the benefits. However, this is a matter that, if necessary, should be raised with the Council away from this appeal. These concerns would not lead me to alter my findings above.

Conclusions

32. A number of nearby residents raise a series of other concerns about the proposal but in view of my conclusions on the main issues there is no need for me to address these in the current decision.
33. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council