
Appeal Decision

Site visit made on 11 July 2019

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2019

Appeal Ref: C1435/W/19/3226676

Laurel Cottage, Street End Lane, Broad Oak, Heathfield TN21 8TS

- 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 planning permission.
 - The appeal is made by Mr & Mrs Bailey against Wealden District Council.
 - The application Ref WD/2018/0497/F, is dated 1 March 2018.
 - The development proposed is described as demolition of existing dwelling and erection of No.2 dwellings, access, landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Although there is no formal decision from the Council, it has considered the proposal and indicated that had it been in a position to determine the application it would have refused permission. The Council's concern relates to whether the site is within an appropriate location for the development, the design and appearance of the proposal and its effect on the High Weald Area of Outstanding Natural Beauty (AONB) in which it is located, and the effect of the proposal on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).
3. The Council has stated that the Wealden Local Plan Submission Document 2019 (Draft LP), was being examined in May 2019. As it has not yet been adopted and may be subject to change I only afford its policies limited weight.

Main Issues

4. The main issues are;
 - The effect of the proposal on the AONB.
 - Whether the appeal site is in a suitable location for housing with regard to adequate access to services.
 - The effect of the proposal on Ashdown Forest SPA and SAC.

Reasons

AONB

5. The Wealden Landscape and Settlement Character Assessment explains that within this area the landscape is particularly vulnerable to harm resulting from new development on the fringes of settlements. It is important that traditional buildings are safeguarded and that new development respects and reinforces local distinctiveness. This includes having regard to local building styles, the diverse range of local materials and their landscape setting.
6. The appeal site is situated on the outer edge of the settlement of Broad Oak, within a row of older detached dwellings, occupying varied sized plots and which front onto Street End Lane and Magreed Lane and back onto the open countryside. These dwellings sit on a ridge and the mature landscaped gardens to the sides of the dwellings afford elevated views over the open countryside to the rear of them. This, together with the modest size and varied designs of the dwellings, coupled with the diverse range of traditional building materials contributes to the rural fringe appearance of the row of dwellings. On the opposite side of Street End Lane, the housing development is more intensive and suburban in character and appearance.
7. The existing dwelling on the appeal site comprises a small artisan type cottage built in the mid to late C19th and which includes a diverse range of traditional external materials. There is no doubt that it contributes to the history of the settlement and the surrounding countryside and reinforces the local distinctiveness of Broad Oak and the surrounding countryside. However, as stated by the Council it has had a number of insensitive additions which have materially affected its appearance and integrity. As such the Council do not consider it could be categorised as a local heritage asset and I have little evidence before me to disagree with this view.
8. Paragraph 172 of the National Planning Policy Framework (the Framework), states that great weight should be given to conserving and enhancing the landscape and scenic beauty in AONB's, which have the highest status of protection in relation to these issues. Similarly, Paragraph 127 of the Framework seeks to ensure that new development is sympathetic to local character and history, including landscape setting and maintains a strong sense of place.
9. Unlike the existing dwellings along this stretch of Street End Lane the proposed dwellings would be set at an angle to the lane, with their front elevations orientated towards the adjacent road junction. The proposed dwellings would have consistent front and rear building lines and would be very similar in their design, form, height and appearance, although they would have different finished floor levels.
10. The dwellings would have particularly high and steeply pitched roofs with deep catslide features to the rear and on one of the dwellings this includes an uncharacteristic half hip feature. These roofs would be materially taller than that of the adjacent dwelling and would result in the pair of dwellings appearing unduly prominent and out of keeping with the street scene. The situation

would be exacerbated by the generally suburban appearance of the dwellings and their uniformity.

11. The rear of the proposed dwellings would be orientated towards and clearly visible from the open countryside where, due to their uniformity, height and suburban appearance they would materially detract from the character and appearance of the open countryside and the rural setting of Broad Oak. Any associated light pollution and domestic paraphernalia and activity within the raised paved areas to the rear of the proposed dwellings would add to this harm. Even if soft landscaping were to be planted to the rear of the site to shield the development from wider views, it would take some time to mature and could not be relied upon to become permanent.
12. The situation would be exacerbated by the proposed access off Magreed Lane and associated visibility splay; loss of planting; views directly into the proposed parking area and views of the front elevation of the proposed dwelling on plot two. These features would have a suburbanising impact on this narrow rural lane.
13. For these reasons the proposal would fail to respect the landscape characteristics and local distinctiveness of the area and would materially detract from the landscape and scenic beauty of this part of the AONB. This harm would materially outweigh the small contribution the proposal would make to the supply of dwellings in Broad Oak and the district as a whole and the small contribution the occupiers of the dwellings could make towards the vitality of Broad Oak and Heathfield. Further, this harm could not be adequately dealt with by condition.
14. I conclude on the first main issue that the proposal would unacceptably harm the landscape and scenic beauty of the AONB. It would be contrary to Policies EN6, EN12, EN27 and EN29 of the Wealden Local Plan 1998 (Local Plan), Policies SPO1 and WCS12 of the Wealden (incorporating Part of the South Downs National Park) Core Strategy Local Plan 2013 (Core Strategy), the Wealden Design Guide and the Framework, which seek, amongst other things, to protect and enhance the countryside as a resource, respect its context, character, landscape characteristics and local distinctiveness and enhance the scenic beauty of the AONB.

Location

15. The settlement of Broad Oak straddles the A264 and is sited less than 2km from the town of Heathfield, where there is a broad range of community facilities and services. Although Broad Oak is a small settlement it has a number of community facilities including a convenience store, gym, church, primary school, village hall (with pre-school) and a post office. There are also a number of business premises located between Broad Oak and Heathfield. In addition, most roads have pavements and this includes Street End Lane and the A265.
16. Policy EN1 of the Local Plan and Policy WCS14 of the Core Strategy seek to promote sustainable forms of development. Policies GD2 and DC17 of the Local Plan also seek to prevent most forms of residential development outside the built up areas and to concentrate development within existing defined settlements. When the Local Plan was adopted Broad Oak had a built up area

boundary and the appeal site was located just outside this boundary. However, this has since been removed through Policy WCS6 of the Core Strategy.

17. Together Policies SPO1, SPO7 and SPO8 of the Core Strategy seek to maintain the existing settlement pattern and to concentrate new development where it can most closely relate to public transport opportunities. Policy WCS6 of the Core Strategy defines Broad Oak as a Neighbourhood Centre, which is a category for settlements which either have limited access to facilities or poor accessibility.
18. The Core Strategy explains that the deletion of development boundaries within Neighbourhood settlements does not necessarily mean that growth will not be allowed, but that any growth will need to reflect the character and needs of the area. Further, the Core Strategy seeks the provision of at least 455 dwellings within the defined Service, Local and Neighbourhood Centres in the District. The Council has stated that within the Core Strategy no specific housing sites were allocated in Broad Oak and the subsequent Strategic Sites and Allocations Plan, which would have identified housing sites, was abandoned. Amongst other things, the Draft LP seeks to address this.
19. The proposed settlement strategy for the District, as set out in various policies within the Draft LP, similarly seeks to steer most development to the more sustainable and larger settlements in the district. It also makes provision for organic growth within and adjacent to the defined Core Areas of identified smaller settlements, including Broad Oak.
20. It is noted that within the Wealden Local Plan, Core Areas and Boundary Review Background Paper Document – Submission Document 2019 (Boundary Review Document), Broad Oak is identified as a settlement that could accommodate up to 50 new dwellings. In assessing the potential of two larger sites within the same section of Street End Lane as the Appeal site, the Boundary Review Document states that the frontage of one site and the gaps between the dwellings close to the junction with Magreed Lane might present limited infill options. This document also recommends the allocation of sites elsewhere outside the Core Area of Broad Oak for housing development. Although I recognise the current status of the submission document, it nonetheless highlights that, in principle, new development within and adjacent to the Core Area in Broad Oak can be appropriate.
21. The appeal site is identified as a Neighbourhood Centre where new small scale development is not precluded. Although the appeal site is not within the Broad Oak's Core Area as defined in the Draft LP, it is located adjacent to it. Having regard to the Braintree judgement¹ and the location of the site in relation to nearby dwellings, I do not find the site to be isolated.
22. Moreover, whilst the occupiers of the proposed dwellings are likely to be reliant on private transport for some activities, a good range of facilities and services would be located within walking, cycling or a short vehicle travelling distance from the appeal site. As the proposal would result in just one additional dwelling, any increase in car travel would be modest.
23. I conclude on the second main issue that the accessibility of the appeal site is satisfactory for a rural settlement and that the site is located in a suitable for

¹ Braintree District Council v SSCLG and others (2018) EWCA Civ 610

the provision of one additional dwelling. It would therefore comply with Policies SPO7, SPO8 and WSC6 of the Core Strategy which, collectively and amongst other things, allow for some development in Neighbourhood Centres to reflect the character and needs of the area.

Ashdown Forest

24. Under the precautionary principle set out within the Conservation of Habitats and Species Regulations 2017 (2017 Regulations), it is necessary to consider whether the appeal proposal is likely to have a significant effect on the internationally important features of the Ashdown Forest SPA and SAC, alone or in combination with other plans or projects. If the risk or possibility of significant effects cannot be excluded, an Appropriate Assessment (AA) must be undertaken.
25. Consistent with this and amongst other things Policy WCS12 of the Core Strategy seeks to protect recognised biodiversity and to ensure that new development does not have an adverse impact on the integrity of Ashdown Forest Special SPA & SAC. This includes the recreational impacts of visitors resulting from new housing developments located within 7 kilometres of the Forest. For the same reason Policy EA2 of the Draft LP seeks contributions towards the provision/maintenance of the existing Strategic Suitable Alternative Greenspaces and the Strategic Access Management and Monitoring Strategy for all new housing within 400 metres and seven kilometres of Ashdown Forest SPA. In this respect, as the appeal site is located in excess of seven kilometres from Ashdown SPA, the proposal does not conflict with these policies.
26. However, Policy SPO1 of the Core Strategy seeks, amongst other things, to protect and enhance recognised biodiversity and geodiversity attributes and in particular Ashdown Forest. In addition, Policy WCS12 of the Core Strategy states that further investigation will be undertaken of the impact of nitrogen deposition on the Ashdown Forest SPA & SAC, so that its long term effects can be understood and mitigated.
27. The policies in the Draft LP relating to the impact of nitrogen deposition on Ashdown Forest SPA and SAC are subject to objections and so I give limited weight to them in relation to this appeal. I understand that mitigation measures to overcome the effects of development on the habitats are stated within the Draft Wealden Local Plan Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development Submission Document 2019. It states that where development is in addition to that identified in the Draft LP, it will only be permitted if it can be concluded that the proposal would not adversely affect the integrity of Ashdown Forest SAC, in combination with other identified development, with or without identified mitigation measures. The appeal site is not identified for development in the Draft LP and the appellant has not identified the need for or supplied any mitigation. However, as the appropriate authority, it is incumbent on me to carry out an AA should I be minded to approve the development. Nevertheless, as I have concluded that the proposed development would conflict with other development plan policies, I have not completed an AA.
28. Without an AA, I have to conclude on the third main issue that there is an unacceptable risk of harm to the SAC such that the proposal would be likely to conflict with Policies SPO1 and WCS12 of the Core Strategy, the Framework

and the Conservation of habitats and Species Regulations 2017. These seek to protect nature conservation sites of international importance, such as SPA's and SAC's, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the habitats.

Other considerations

29. There's a disagreement between the parties whether the site represents previously developed land (PDL) or not. However, the status of the land has not had a bearing on my findings on the first main issue. This is because even if I was to find that the site is indeed PDL and significant weight is given to the reuse of suitable land within settlements, this would not overcome the great weight that is also given to conserving and enhancing the scenic beauty of the AONB.
30. The appellant has submitted a bat survey and whilst it does not include an emergence survey, it concludes that there is no evidence of bats living in the roof structure. As such, subject to the imposition of conditions that deal with protection and mitigation, the demolition of the existing dwelling should not have an adverse impact on an existing bat habitat. No further habitat surveys have been submitted relating to the site as a whole. In view of the location and size of the site, together with the long grasses, trees and shrubs within it, the proposal would have the potential to have an adverse impact on wildlife habitats. Had I found in favour of the appellant in relation to the first main issue, this is a matter upon which I would have sought further comments from the appellant.
31. Regarding highway safety I am satisfied that although Magreed Lane is narrow, subject to the conditions suggested by the Highway Authority, the proposal would not have an unacceptable impact on highway safety, or the free flow of traffic. Should the proposed visibility splays affect third party land this is a matter that would need to be resolved with the owners of such land.
32. I accept that the proposal seeks to boost the supply of housing and that the development is a windfall site. Whilst these matters are material considerations that weigh in favour of the proposal, I do not consider that either individually or cumulatively they outweigh the harm identified above.
33. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.
34. Finally, whilst the concerns expressed regarding the handling of the appeal application by the Council are noted, such matters do not affect the consideration of the planning merits of the appeal proposal, as other mechanisms exist to resolve such issues.

Planning Balance and Conclusion

35. The appellant argues that the Council cannot demonstrate a five year supply of deliverable housing sites. The Council accepts this position and as such, it is considered that the 'tilted balance' at paragraph 11 of the Framework should be engaged and the policies within the Local Plan that are most important for determining the appeal are considered out-of-date.

36. I have carefully considered this matter and in doing so I have also been mindful of the wording of paragraph 11 of the Framework and footnote 6 which specifically states that AONB's are one of those assets that are to be protected. In accordance with paragraph 11 d) i), I have found that the policies within the Framework provide a clear reason to dismiss this appeal. Thus, even if the Council is unable to demonstrate a five year supply of deliverable housing sites, the 'tilted balance' would not be engaged and the presumption in favour of sustainable development anticipated in paragraph 11 of the Framework does not apply.
37. Thus, whilst I have found that the appeal site is in a suitable location for the proposed development, I have found that it would harm the landscape and scenic beauty of AONB. For this reason, and having regard to the development plan when read as a whole, the appeal is dismissed.

Elizabeth Lawrence

INSPECTOR