



Appeal Decision

Hearing Held on 11 June 2019

Site visit made on 11 June 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2019

Appeal Ref: APP/C1435/W/18/3217430

Land at Pont Close, Punnett's Town, East Sussex

- 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 Mr Steven Knott of Quantum Land and Planning against the decision of Wealden District Council.
 - The application Ref WD/2017/0153/MAJ, dated 20 January 2017, was refused by notice dated 4 September 2018.
 - The development proposed is 22 residential units, (including 8 affordable units on-site), internal roads and parking, informal open space, together with hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the hearing the Council advised it did not propose to defend the fourth reason for refusal on its decision notice in respect of highway matters. At the hearing the main parties agreed highway concerns could be addressed by a road widening scheme proposed for Coldharbour Lane on highway land outside of the appeal site. It was also agreed between the main parties that a planning condition to require implementation of the road widening scheme, prior to commencement of the appeal development, could be imposed if the appeal were allowed.
3. At the hearing it was alleged by interested parties that land required for the road widening scheme was not highway land and documents which the main parties had not had the opportunity to consider were referred to by interested parties. Consequently, I adjourned the hearing to allow the opportunity for these documents to be reviewed by the main parties and for them to make further representations. I subsequently received comments which satisfy me that the road widening scheme could be undertaken within adopted highway and therefore I do not consider this matter requires further consideration and I closed the hearing in writing on 14 June 2019.
4. Since the appeal was lodged the National Planning Policy Framework (the Framework) has been revised. I have taken any comments made on relevant implications for the appeal into account in my reasoning.

5. My attention has been drawn to policies of the emerging Local Plan, some of which change the approach from the adopted development plan. However, I do not know to what extent there are unresolved objections to each of the emerging policies referred to and examination of these policies is yet to be completed. It is possible these policies could be amended or deleted as a result of the examination and therefore I attach limited weight to these policies.
6. At the hearing the Council confirmed that the objectives (SPO1, SPO7, SPO8 and SPO13) cited in their reasons for refusal are not policies of the development plan and do not therefore attract development plan policy status. I have considered the appeal on this basis.

Main Issues

7. The main issues are:

- whether the proposal is in a suitable location having regard to its accessibility to services and facilities and the Council's strategy for the location of development,
- the effect of the development on the character and appearance of the area including the High Weald Area of Outstanding Natural Beauty (AONB),
- the effect of the development on the Ashdown Forest and Lewes Downs Special Areas of Conservation (SACs), and
- whether the proposal would provide an appropriate mix of dwellings which reflects housing need.

Reasons

Suitable Location

8. Punnetts Town is a small village which contains a medical centre, primary school and village hall. But it does not have the services and facilities necessary to satisfy other day to day needs of future occupiers of the appeal scheme, such as a shop where convenience goods may be purchased. Whilst 2 bus services do pass through the village the evidence indicates there are only 5 return services per week in total and these occur on Tuesdays, Wednesdays and Thursdays only. Heathfield is the nearest location where such day to day needs may be met but this is a considerable distance from Punnetts Town, along unlit country roads.
9. Considering the above points it is highly likely most journeys to and from the appeal development would be undertaken by private car rather than by walking, cycling or public transport. Therefore, the proposal is not in a suitable location having regard to its accessibility to services and facilities and the Council's strategy for the location of development.
10. In respect of this main issue the Council's decision notice refers to saved Policies GD2 and DC17 of the Local Plan. These resist development outside of development boundaries defined on the Proposals Map. The appeal site is outside of any development boundary as is the whole village of Punnetts Town. In that respect the appeal development does not comply with these policies,

the supporting text of which states that development outside the development boundary is contrary to the plan's overall development strategy¹.

11. The appeal development would also not comply with paragraph 103 of the Framework which states that the planning system should actively manage patterns of growth to support walking, cycling and public transport. I appreciate the appellant's view that opportunities to maximise sustainable transport solutions varies between urban and rural areas, as stated in the Framework. But that does not make the appeal development acceptable in this regard.
12. Punnetts Town is identified for growth in the emerging Local Plan and a core area has been identified in the village with 40 dwellings proposed in and adjoining the core area. The southern boundary of the appeal site adjoins the proposed core area but as this growth strategy is yet to be tested as part of the Local Plan examination I give it limited weight.
13. I have been referred by the appellant to other appeal decisions in respect of this main issue but I am not satisfied that the level of services and facilities available in each of the settlements in these other cases is directly comparable to the appeal site in this case.
14. At the hearing the Council clarified that, in light of the Braintree case², the appeal development would not be 'isolated' in respect of paragraph 79 of the Framework and emerging Policy RAS 2 of the Local Plan and that these references in the decision notice should be omitted. Given the appeal site's proximity to other dwellings I am satisfied the Council's position is appropriate in this regard.
15. My attention has been drawn to Policy WCS14 of the Core Strategy and saved Policies EN1 and EN27 of the Local Plan in respect of this main issue. The first two of these policies reflect general principles of sustainable development and so I do not consider they are specifically relevant to the Council's position in respect of this main issue. The third of these policies seeks that the scale of development respects the character of adjoining development and so I do not consider it relevant to this main issue.
16. I conclude on this main issue that the proposal is not in a suitable location having regard to its accessibility to services and facilities and the Council's strategy for the location of development and that it does not comply with Policies GD2 and DC17 of the Local Plan noted above or paragraph 103 of the Framework in this regard.

Character and Appearance

17. The appeal site is within the High Weald AONB, a landscape designation of national importance. Saved Policy EN6 of the Local Plan permits development in the AONB only if it conserves or enhances the natural beauty and character of the landscape. The policy seeks that particular care is paid to the siting, scale and layout of development and that particular regard is had to landscape characteristics, tree belts and hedges, undeveloped ridge positions, visually exposed locations and the traditional settlement pattern.

¹ Paragraph 5.92 of the Local Plan

² *Braintree District Council v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 610

18. The statutory purpose of AONBs is to conserve and enhance their natural beauty. The Framework states that great weight should be given to conserving and enhancing their landscape and scenic beauty, which have the highest status of protection in relating to these issues. In this respect Policy EN6 is consistent with the Framework.
19. Saved Policy EN27 of the Local Plan permits development proposals when layout and design criteria are met. These include scale, form and landscaping, which the policy states should respect the character of adjoining development and promote local distinctiveness.
20. The appeal site is agricultural land in open countryside on the northern side of a ridge line and the village. The site contains a number of lightweight structures and a farmhouse. With the exception of Pont Close, Punnetts Town is generally characterised by a settlement pattern of linear development along the roadside. Pont Close is a cul-de-sac which would provide access to the appeal development and which contains dwellings on one side, opposite the appeal site.
21. High hedges and thick planting surround the perimeter of the appeal site some of which screen existing development on Pont Close in views from the north. They form part of the area's natural beauty and character. A significant amount would be removed to facilitate the appeal development. At my site visit I saw that the appeal site is visible from public viewpoints in the surrounding area, including up-close from Pont Close and Upper Greenwoods Lane, and further away, from locations on public footpaths to the north, east and north west.
22. In the context of this small village the appeal development would be of a significant scale and would be of an estate style layout with the backs of houses facing Upper Greenwoods Lane. This would be a departure from the established linear settlement pattern. These features of the development, coupled with the loss of significant natural green features in an exposed ridgetop location, would have harmful visual and landscape effects which would be seen from public viewpoints in the surrounding area. In particular, planting proposed for removal would expose existing development on Pont Close in views from the north.
23. Planting proposed as part of the appeal scheme may mitigate the effect of the development on the character and appearance of the area in the long term. However, in the short term the effects would be significant and harmful. Moreover, planting proposed along the northern boundary would be located within the rear gardens of the proposed dwellings. As I saw on my site visit, impressive views would be available to the north from these properties. As such, there would be likely to be significant pressure for the removal of planting on this boundary which would limit the extent to which the proposed planting would be effective in terms of screening the appeal development from views within the AONB. I conclude the development would harm the character and appearance of the area and the High Weald AONB to which I must attach great weight. The proposal would not therefore comply with Policies EN6 and EN27 noted above, or the Framework in this regard.

Special Areas of Conservation

24. Under the precautionary principle in the Habitats Directive as embodied in the Habitats Regulations³ it is necessary to ensure that development, either alone or in-combination with other plans or projects, will only be permitted if it can be concluded that it will not affect the integrity of European Sites, including SACs.
25. The Ashdown Forest SAC and Lewes Downs SAC are at risk from atmospheric pollution including from nitrogen deposition in part due to vehicle emissions from traffic on roads crossing or near these areas.
26. The appeal development would result in a net increase in traffic movements and potential for increased nitrogen deposition. Whilst there is no certainty that such movements would be on roads through or adjacent to the SACs it is likely that some of them would be, given the appeal development's position in relation to these SACs.
27. Emerging Local Plan Policy AF 1 seeks mitigation for the effect of development on SACs if it cannot be concluded that the proposals will not adversely affect their integrity. Emerging Policy AF 2 proposes a mitigation strategy for the effect of development identified in the plan on SACs as a result of net increases in traffic movements. The strategy comprises a package of measures set out in the emerging policy including monitoring, investigation and air quality management delivered by means of a financial contribution from developers, to ensure there is no adverse effect on the integrity of the SACs. The Council is developing a tariff to calculate financial contributions from developments in this regard. In addition, the strategy seeks other mitigation, set out in the emerging policies, which in this case the main parties agree may be secured by the imposition of a planning condition.
28. The appellant considers that the appeal development is development envisaged in the emerging Local Plan and that no mitigation is required, based on Natural England's response to the emerging Local Plan. However, Natural England's comments were not specifically in response to the appeal development which limits the relevance of their comments, and, as the appeal development includes mostly larger dwellings rather than comprising exclusively small dwellings⁴, it does not reflect the housing development envisaged for Punnetts Town in the emerging plan. I consider this distinction significant in respect of this main issue as in my judgement larger dwellings would be likely to lead to more vehicle movements than the same number of smaller dwellings.
29. If planned development envisaged in the village requires a financial contribution for mitigation, and therefore a planning obligation, it cannot be the case that windfall development does not. Considering the above points I am not satisfied that Natural England's comments on the emerging Local Plan may be used to conclude that the appeal development would not adversely affect the integrity of the SACs and I am not satisfied that no mitigation is required. At the hearing the appellant stated that if I disagreed with their position that no mitigation is required, mitigation may be secured by a planning condition, and, if that did not satisfy me, a planning obligation could be prepared to secure mitigation, reflecting that sought by the emerging policy.

³ The Conservation of Habitats and Species Regulations 2017

⁴ As defined in emerging Policy RAS 1 where small dwellings comprise 1 or 2 bedrooms

30. But despite the appellant's willingness in this regard no planning obligation is before me and based on the evidence provided it is likely any mitigation strategy for a development of this type and size would require a planning obligation. As I am dismissing the appeal for other reasons the submission of a planning obligation would not make any difference to my overall decision. Therefore, based on the precautionary principle I conclude that I cannot be certain that the appeal development, either alone or in combination with other plans or projects, would not affect the integrity of the SACs. Therefore, based on the evidence available to me the appeal development cannot be permitted for this reason.
31. Whilst I attribute little weight to the emerging policies of the Local Plan, the likely impact noted above and the breach of the Habitats Regulations, is a significant material factor weighing against the proposal. The conflict with the above emerging policies therefore assumes significant importance in the determination of this appeal. In any event, the proposed development would not comply with saved Policies EN1 and EN15 of the Local Plan and Policy WCS12 of the Core Strategy. Together these require that regard be had to the effects of proposals on air quality, seek mitigation for the effects of nitrogen deposition if appropriate and seek to safeguard designated nature conservation sites by resisting development likely to adversely affect their nature conservation value.
32. My attention has also been drawn to policy WCS14 of the Core Strategy but at the hearing the Council accepted this does not add to their argument in respect of this main issue. It has been alleged the Council is using this issue to prevent development not envisaged in the emerging Local Plan. But this is not a matter for me to consider in the context of this section 78 appeal and does not make the development acceptable in this regard.

Mix of dwellings

33. This discrete issue is incorporated within the second reason for refusal on the Council's decision notice. Emerging Policy RAS 1 identifies 40 new dwellings may be built in Punnetts Town provided these are small individual housing developments of up to 5 dwellings and provided they consist of 1 or 2 bedrooms. All of the market dwellings proposed in the appeal scheme exceed this size.
34. At the hearing the Council explained this policy seeks to accommodate some development in less sustainable settlements to respond to the local housing need for smaller open market units and that the area already contains a high proportion of large dwellings. Additionally, the emerging policy is intended to stimulate opportunities for smaller scale developers and help integrate development into more sensitive village environments.
35. I give limited weight to Policy RAS 1, as set out above, because it is an emerging policy and I have limited evidence to support the Council's position in respect of housing need. Moreover, as no adopted development plan policy has been provided to support the Council's case in respect of this main issue I do not find conflict with the development plan in this regard. I conclude on this main issue that, in respect of housing need, no harm would occur as a result of the mix of dwellings proposed.

Planning Balance

36. The appeal scheme would deliver 22 new homes including affordable housing. These are benefits of the scheme and considerations which I give significant weight in my decision.
37. The evidence indicates the Council does not have a 5 year supply of land for housing. As such the weight to be given to conflict with Policies GD2 and DC17 noted above is substantially reduced as these policies restrict the supply of land for housing. However, paragraph 11 of the Framework sets out that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development.
38. In this case, such policies include those relating to AONBs and SACs. In respect of each of those main issues I have found harm as set out above. Accordingly there are clear reasons for refusing the development, notwithstanding the benefits noted above. Therefore, the Council's 5 year housing land supply position is not a determinative issue in this appeal.

Conclusion

39. For the reasons given above the appeal is dismissed.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Best MRTPI	Parker Dann
Angus Jeffery BSc PhD CMLI	Landscape Visual Ltd
Steven Knott	Quantum Land and Planning
Hannah Ronan	Parker Dann

FOR THE LOCAL PLANNING AUTHORITY:

Doug Moss	Wealden District Council
Kelly Sharp	Wealden District Council

INTERESTED PERSONS:

Brian Bowtle	Local resident
Christine Hayes	Local resident
Linda Ingle	Local resident
Don Jenkinson	Local resident
Stephen Long	Local resident
Robert Shapter	Local resident

DOCUMENT SUBMITTED DURING THE HEARING

R (oao Matthew Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)