



Appeal Decision

Site visit made on 26 November 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

Appeal Ref: APP/P1425/W/19/3233578

The side garden of 2 St Michaels Cottages, Ditchling Road, Ditchling Common, Ditchling, RH15 0SJ

- 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 Augustinian Care against the decision of Lewes District Council.
 - The application Ref: LW/19/0387 dated 24 May 2019, was refused by notice dated 18 July 2019.
 - The development proposed is the erection of a 4-bedroomed house in the garden area of 2 St Michaels Cottages.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal has been made in outline with all matters of appearance, access, landscaping, layout and scale reserved for future approval. I note that block and floor plans were submitted with the application showing the layout of the site but as the application form does not indicate that the layout is for approval at this stage, I have treated these plans as being for illustrative purposes only and have dealt with the appeal on this basis.
3. On 28 October 2019 the Ministry of Housing, Communities and Local Government (MHCLG) published a letter setting out a revised Housing Delivery Test (HDT) measurement for Lewes District Council of 86%. This superseded the 2018 measurement of 50% published on 19 February 2019, to which the appellant indirectly refers in the appeal evidence. Both main parties have been afforded the opportunity to comment on the implications of this revised measurement for their respective cases, and I return to this matter later in my decision.
4. The Council's second reason for refusal refers to Policy DM25 of the Lewes District Local Plan Part 2 (2018) (LPP2). The LPP2 was submitted in December 2018 and, from the evidence before me, the examination is still underway. In accordance with paragraph 48 of the National Planning Policy Framework (the Framework) weight may be given to policies in emerging plans according to the stage of preparation of the plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of those policies with the Framework.
5. Although the LPP2 has reached an advanced stage and Policy DM25 is broadly consistent with the Framework, the Council has not advised whether or not

there are any unresolved objections to this policy. Accordingly, I can only give limited weight to this policy in the determination of this appeal.

Main Issues

6. The main issues are:

- a) whether the proposed development would be in a suitable location for housing, having regard to the character and appearance of the area and the Council's strategy for the location of housing;
- b) the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular regard to vehicle movements, and on the future occupiers of the proposed development with particular regard to the retained trees; and
- c) the effect of the proposed development on the biodiversity interest of the Ditchling Common SSSI.

Reasons

Suitability of location for housing

7. The appeal site is bounded to the east by No 2 St Michaels Cottages, No 1 St Michaels Cottages, Nos. 1 and 2 St Peters Cottages and Bankside Farm. However, to the north and west are fields which form part of a larger area of agricultural land between the appeal site and the built-up areas of Wivelsfield to the north-east and Burgess Hill to the west. To the south is an area of woodland which forms part of Ditchling Common. Therefore, notwithstanding the presence of the other dwellings and the appellant's contention to the contrary, in my judgement based on my observations during my site visit, the context of the appeal site relates more in character to a rural landscape than to an urban or suburban area and thus does form part of the countryside.
8. However, the appeal site is in a secluded position with a number of trees and other vegetation screening it from longer-distance public views. The site is currently in use as a garden and although the proposal would introduce built form and an access / parking area onto the site, the majority of the site would remain in garden use. The proposed development would therefore not be significantly harmful to the character and appearance of the area.
9. The appeal site is located outside the Planning Boundaries for Wivelsfield and Wivelsfield Green as defined on the Proposals Maps of the Lewes District Local Plan (2003) (LDLP). Policy CT1 of the LDLP directs development to within the Planning Boundaries and restricts development outside the Boundaries to certain specified forms of development.
10. This approach is echoed by Policy 1 of the Wivelsfield Neighbourhood Plan (2016) (WNP) which defines a development boundary for Wivelsfield Green. This boundary differs from that in the LDLP as it incorporates allocated housing sites to deliver the minimum of 30 net additional dwellings required for Wivelsfield Green by Spatial Policy 2 of the LDLP. Nevertheless, the appeal site remains outside the revised development boundary and is not one of the forms of development allowed for Policy CT1. I therefore conclude that in this respect the proposed development would be contrary to Policy CT1 of the LDLP and Policy 1 of the WNP.

11. In support of the proposal the appellant argues that the appeal site is in a sustainable location within walking distance of facilities and services. From the evidence before me and what I observed during my site visit, the appeal site is located approximately 2 km from the centre of Wivelsfield Green which has a convenience store, public house and primary school.
12. However, although these facilities are within walking distance of the appeal site, the route is alongside the B2112 which has no pavement or street lighting and only narrow verges for much of the stretch between the access to the appeal property and the turning to Wivelsfield Green. The centre of Burgess Hill has a greater range of facilities and services but is further away and would also be accessed via a stretch of the B2112 with no pavement or street lighting. With the amount of traffic on this road that I observed during my site visit, walking would be neither a safe nor attractive option for accessing these limited facilities.
13. In this respect, the proposal before me differs from that in the appeal for Land adjacent to Gyllyngdune, South Road, Wivelsfield Green¹ to which the appellant draws my attention, where the Inspector noted the pavement access from the site before him to the facilities in the village. With the narrowness of the B2112 and its levels of traffic, cycling would also be an unlikely attractive alternative to the use of the private car.
14. I noted during my site visit that there is a bus stop and shelter on the B2112 within a short direct walk from the appeal site. From the evidence before me, there are bus services to Haywards Heath and Crawley, which have a large range of facilities and services. However, I have not been provided with any evidence as to the timing and frequency of this service and am therefore unable to conclude that the bus service would provide a convenient and realistic alternative to the use of the private car for accessing facilities and services for everyday living or activities such as employment, recreation or education. I therefore consider it inevitable that the majority of journeys from the proposed dwelling would be made by the private car, which would be contrary to the Framework's encouragement of the use of alternatives to the private car.
15. Furthermore, the appeal site lies outside the main built-up areas of Wivelsfield and Burgess Hill, from both of which it is separated by areas of undeveloped countryside. In this respect the appeal site differs from the site in the Courts' consideration of the meaning of 'isolated' in terms of paragraph 55 (now paragraph 79) of the Framework in that the latter was on the edge of a "recognisable village", "characterised by linear development extending along several roads"².
16. However, the site in the appeal before me is located at the end of an access track serving 1 and 2 St Michaels Cottages, 1 and 2 St Peters Cottages and Bankside Farm. Other dwellings in the locality to which the appellant draws my attention include the recent development on the site of the former Royal Oak public house and the St George's Park, an assisted living / care home complex both a short distance from the appeal site. In this respect the site before me

¹ APP/P1425/W/15/3140780

² *Braintree DC vs SSCLG, Greyread Ltd & Granville Developments Ltd* [2017] EWHC 2743 (Admin) [2018] EWCA Civ 610

has similarities to that in the *Braintree* case which also had a number of dwellings nearby.

17. Therefore, having regard to the judgement in *Braintree*, I do not consider the site to be isolated. Paragraph 79 of the Framework is therefore not engaged. However, this does not mean that the appeal site should be considered to be within a 'settlement' for the purposes of applying development plan policies and I conclude that the proposal conflicts with development plan policies that seek to prevent the location of new housing outside of settlements.

Living conditions

18. The vehicular access to the proposed development runs past Bankside Farm and adjacent to the rear garden boundaries of Nos. 1 and 2 St Michaels Cottages and Nos. 1 and 2 St Peters Cottages. However, any passing vehicles would be intermittent and a temporary source of noise. I noted during my site visit a number of vehicles parked between Bankside Farm and the appeal site which suggests significant existing vehicular movements past Bankside Farm. The access route is separated from St Michaels and St Peters' Cottages by reasonably long rear gardens which would limit the noise transmission to these dwellings. I am not persuaded therefore that the additional vehicle movements associated with one additional dwelling would cause unacceptable disturbance to the occupiers of these existing dwellings.
19. I therefore conclude that in this respect, the proposed development would not conflict with Policies ST3 or ST4 of the LDLP which, amongst other things, require development to respect the amenities of adjoining properties and not to cause noise or disturbance to the occupiers of other dwellings. Policy CT1 of the LDLP is not relevant to this issue as it does not specifically cover living conditions.
20. The appeal site accommodates a number of trees, including 3 mature oak trees on the southern boundary. The proposal before me is in outline only with all matters reserved for future approval and I therefore have nothing before me to demonstrate that the construction of a dwelling on this site would itself be likely to harm these trees. Indeed, the indicative layout submitted with the application demonstrates that it would be possible to accommodate a dwelling on the site whilst retaining these oak trees and the other trees on the site.
21. However, although my site visit took place on a cloudy day late in the year, it is clear that the oak trees will cast a substantial amount of shade across the site on sunnier days, particularly when in full leaf. The trees would also reduce the amount of daylight available to the proposed dwelling. Even though a dwelling could be designed with large areas of glazing to maximise daylight and sunlight, the presence of the trees would have an adverse effect on the living conditions of the future occupiers of the proposed dwelling in this respect.
22. With the exception of Policy ST4 of the LDLP which protects the occupiers of proposed houses in backland or tandem locations from loss of privacy and noise, none of the development plan policies cited by the Council seek to protect the living conditions of future occupiers of new development. I therefore find no conflict with the development plan in this respect. However, paragraph 127 f) of the Framework requires planning decisions to ensure that developments create places with a high standard of amenity for future users.

23. Furthermore, the proximity of the trees to a dwelling wherever located on the site would also be likely to give rise to concerns about wind-throw or the shedding of branches. There would be a likelihood of the occupiers of the proposed dwelling wishing to lop or top or possibly even remove the oak trees. Whilst, from the evidence before me, the trees are not subject to a Tree Preservation Order, they nevertheless contribute significantly to the landscape of the area and significant works to them would be likely to harmfully diminish this contribution.

Ditchling Common SSSI

24. The appeal site abuts the northern boundary of the Ditchling Common Site of Special Scientific Interest (SSSI), which is designated for its range of grassland and other habitats with a number of locally uncommon plants. These habitats support important butterfly and moth populations and are locally important for breeding birds.
25. The Council has not provided any indication in what way the proposed development could harm the features of the SSSI that make it of special scientific interest. However, from the limited evidence before me I consider that harm to the breeding bird populations of the SSSI could arise from uncontrolled dogs and predation by cats. The appellant has referred to the use of a planning condition for other developments close to the SSSI requiring the inclusion of information within sales literature about the importance of the SSSI and prohibiting the keeping of cats as pets. The Council has not disputed the use of such a condition and in my judgement such a condition, were permission to be granted, would meet the six tests for conditions in the Framework and would protect the special interest of the SSSI.
26. Accordingly, the proposed development would not conflict with Core Policy 10 of the Lewes District Local Plan Part 1 Joint Core Strategy 2010-2030 (JCS) which sets out Key Strategic Objectives including, in part, the conservation and enhancement of wildlife, nor with paragraph 175 of the Framework.

Other Matters

27. As explained under Procedural Matters above, Lewes District Council has a HDT measurement of 86%. Consequently, in accordance with the Framework, the Council does not need to apply a 20% buffer when calculating its 5-year housing land supply. With the 5% buffer, in accordance with paragraph 73 of the Framework, the Council is able to demonstrate a supply of deliverable housing sites of 5.59 years as at 1 April 2019, the latest figures available to me.
28. However, with an HDT measurement of less than 95%, the Council is required to prepare an Action Plan and has done so. The appellant refers to the inclusion of "encouraging the development of small and medium-sized development sites" as an action that local planning authorities could consider as part of an action plan in the advice in the Planning Practice Guidance and contends that the Council's reliance on strategic sites is a very narrow approach. However, I am not persuaded from the evidence before me that the Action Plan is flawed in its approach.
29. Nevertheless, I accept that the proposed dwelling would make a modest contribution to the housing supply, which lends some support to the proposal.

It would also make a modest contribution to the local economy through its construction, albeit temporary, and through new employees and customers for local businesses and services. I note the appellant's suggestion of the provision of nest boxes and additional planting to enhance the biodiversity of the site.

30. There is common ground between the main parties that, in accordance with the judgement in *Dartford BC vs SSLG* [2017] *EWCA Civ 610*, the appeal site should be considered as previously-developed land as being within the curtilage of a permanent structure and located outside any built-up area. The JCS, WNP and the Framework support, in principle, the use of suitable previously developed land although the reference to previously developed land in Policy 1 of the WNP is only in the context of the development boundaries defined in the WNP.
31. The appellant draws my attention to the permission granted for the development of 7 dwellings on the site of the former Royal Oak public house, which is located a short distance from the appeal site and also outside any defined Planning Boundaries. The appellant contends that the consistent application of planning policy would lead to the granting of planning permission for the proposal before me.
32. However, the Council seeks to differentiate between the Royal Oak site and that before me explaining that the Royal Oak site proposal was considered to be a beneficial use of a brownfield site and was intended to provide two affordable housing units. Although the appellant contends that the development footprint exceeded the brownfield footprint and that the affordable housing units have not been provided, the appeal site differs significantly from the Royal Oak site in that the latter contained existing built development. There is therefore sufficient difference in circumstances between the Royal Oak development and the proposal before me for it not to set a precedent for the appeal proposal.
33. I note the appellant's suggestion that the demolition of Nos. 1 and 2 St Michaels Cottages and their replacement with 3 dwellings would be the redevelopment of brownfield land increasing development footprint in the same way as the Royal Oak development. However, this is not the proposal before me and it is also an established principle that each case should be considered on its own merits.
34. The appellant's legal right to use the access has been disputed by the occupiers of Nos. 1 and 2 St Peters Cottages, which has been rebutted by the appellant. This is a private matter between these parties and outside the scope of this appeal.

Planning Balance

35. I have concluded above that the appeal site is not in an isolated position in the terms of paragraph 79 of the Framework and that the proposed development would not be significantly harmful to the character or appearance of the area or harm the living conditions of the occupiers of neighbouring dwellings. It is also accepted that the site falls within the definition of previously-developed land and that the dwelling would contribute to the area's housing needs and to the local economy. The development could result in some enhancement to the biodiversity value of the site.

36. However, those contributions would be very modest. The proposed development would be contrary to the development plan in respect of its location outside a defined Planning Boundary. Notwithstanding the existence of a bus stop within close proximity to the appeal site, from the evidence before me the proposed development would give rise to additional journeys by the private car. I have concluded that the living conditions of the occupiers of the proposed development would be adversely affected by the trees on the southern boundary of the site, which contribute to the landscape of the area and would, in my judgement, be threatened by the occupation of the dwelling.
37. Section 38(6) of the Planning and Compulsory Purchase Act 1990 requires, where regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination to be in accordance with the development plan unless material considerations indicate otherwise. The Council can demonstrate a 5-year supply of deliverable housing sites and so full weight should be attached to the relevant policies of the development plan. In this appeal I do not find that material considerations indicate a decision other than in accordance with the development plan.

Conclusion

38. For the reasons given above, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

Martin Small

INSPECTOR