
Appeal Decision

Site visit made on 26 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/U1430/W/19/3235686

Bridge House, Chick Hill, Pett TN35 4EQ

- 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 P Bradbury against the decision of Rother District Council.
 - The application Ref RR/2018/3133/P, dated 17 December 2018, was refused by notice dated 25 March 2019.
 - The development proposed is described as erection of dwelling and provision of two parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters except access reserved for future consideration. Where the submitted plans show details of scale, appearance, layout and landscaping I have therefore treated these as indicative. Nonetheless, the plans show the design in a reasonably high level of detail, and the application has been prepared directly in response to concerns raised in relation to a previous refused outline scheme which was dismissed in appeal APP/U1430/A/04/1167985 (the previous appeal). As such I consider it likely that the plans closely reflect the nature of the scheme that would be presented in clearance of the reserved matters. I have therefore placed significant weight on the submitted plans in my reasons below, whilst necessarily considering scope for variation.
3. During the course of the appeal the Council adopted its Development and Site Allocations Local Plan 2019 (the DSA). I have therefore taken previously emerging Policies of the DSA cited by the Council into account in my reasons below. I am satisfied that doing so does not prejudice the interests of the appellant as the adoption was anticipated, and the key policies in question are unchanged.

Main Issues

4. The main issues are the effect of the development on:
 - the safe and efficient use of the highways;
 - the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB);

- whether the site is a suitable location for residential development with regard to flooding and drainage;
- whether the site is a suitable location for residential development with regard to access to services and facilities; and
- the living conditions of occupants of adjacent dwellings with particular regard to privacy.

Reasons

Highways

5. The proposed vehicular access to the site already exists and is in use to access other dwellings. This is a narrow, roughly surfaced track which adjoins Chick Hill Road close to Chick Hill Bridge.
6. The track rises steeply at the point at which it joins the road. Consequently, the position of a driver waiting to leave the access is in very low relative to the adjacent road surface. The effect is further accentuated by the fact that road itself rises steeply uphill to the righthand side of the access. The combination of these factors, with obstruction of righthand visibility by boundary treatments, means that the view from the access towards the right is limited. Thus, oncoming vehicles travelling down Chick Hill Road are not fully, if at all visible to drivers waiting at the junction until they are very close.
7. In clear conditions the front of a vehicle waiting to leave the access would be visible to a driver travelling down Chick Hill Road across a reasonably long distance. Provided that sufficient space was available, an oncoming driver would have time to slow or stop if a vehicle pulled out in front of them. However, in the event that the driver pulled out of the access at the point at which an oncoming vehicle was as close as it could get without being seen, the chances of a collision would be high. This would be most true in the case of a vehicle leaving the access to turn right. The additional driver effort required to leave the junction given the sharp difference in levels, in my view moderately increases the risk.
8. The parties dispute which national guidance should be applied in calculating visibility splay requirements. In this context, even if I were to find that the lesser requirement set out in Manual for Streets (MfS), was more applicable than that set out in the Design Manual for Roads and Bridges, a compliant splay to the right-hand side of the access cannot be achieved.
9. I acknowledge that MfS states that unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem. In this regard survey results indicate that traffic using Chick Hill Road is relatively light, and travels at low speeds. The access itself already serves a number of dwellings, no recent accidents have been recorded, and the percentage increase in vehicles using the junction would be small in relative terms. Be that as it may however, in view of my observations above, I nonetheless consider that the existing access is unduly hazardous due to inadequate visibility, and that any avoidable increase in the risks involved in its use would therefore be unacceptable.
10. The track is not wide enough to accommodate 2 vehicles at once, thus in the event that a vehicle wished to turn into the access as another sought to leave,

this would result in vehicles standing stationary in the road. However, in view of the fact that the road is not heavily used, and that any vehicle waiting in the road would be clearly visible to other oncoming traffic, it is unlikely that this would have an unacceptable effect on either the safe, or the efficient use of the highway.

11. The Council has cited paragraph 32 of the 2012 version of the National Planning Policy Framework (the Framework) in its decision notice. This has been carried forward to paragraph 108 of the most current 2019 version of the Framework, with revisions. Paragraph 108 nonetheless still states that it should be ensured that safe and suitable access to a site can be achieved for all users. The proposed development would fail in this regard.
12. For the reasons outlined above I conclude that the development would have an unacceptable effect on highway safety. It would therefore conflict with Policy CO6 of the Rother Local Plan Core Strategy Adopted 29 September 2014 (the CS), which seeks to ensuring that all development avoids prejudice to road safety; and relevant provisions of the Framework as outlined above. Though the decision notice also cites Policy TR3 of the Rother District Local Plan Adopted July 2006 (the Local Plan), this specifically relates to parking provision, and so is not relevant.

Character and appearance

13. The site occupies an elevated position at the top of a steep bank which forms the side of a hill. Though the submissions refer to vegetation north of the site, most of this appeared to have been subject to recent clearance at the time of my visit. The immediate setting to the north is indeed that of an open hillside which merges into farmland.
14. The hillside is appreciable in views from the south, including from Chick Hill Road, rising ground further south, and to a more limited extent, from Marsham Brook Lane. Within these views the hillside is an attractive feature. Indeed, its openness is made all the more conspicuous in contrast to the suburban development which occurs high up on the opposite side of Chick Hill Road.
15. The proposed dwelling would be located in the lowest part of the site, and its shape, configuration and surface finishes could be designed to provide it with a low profile and muted appearance. Insofar as it would be practical for vegetation to the south to be retained or thickened, this would provide at least some screening. The dwelling would however still be visible from the south, and its visibility would be likely to increase on a seasonal basis. In this regard planting along other boundaries would make little difference.
16. Given the prominence and openness of the site and its setting, the proposed dwelling would appear both conspicuous and intrusive. This perception would be increased by the absence of any other development at the same level within the immediate setting of the site, and would be further highlighted by associated domestic paraphernalia likely accumulate within the curtilage.
17. I acknowledge that the Inspector in the previous appeal identified that harm to the character and appearance of the area would be caused by visibility of the dwelling then proposed along a driveway access adjoining Chick Hill Road. No such driveway features in the current appeal scheme. It is nonetheless clear that the previous Inspector's underlying concern was the uncharacteristic

positioning of the a dwelling relative to its broader setting. The same would be true of the dwelling subject of the current appeal.

18. As the site is located within the AONB, I have had regard to the statutory purposes of the AONB's designation, which are, most particularly, to conserve and enhance the natural beauty of the area; and paragraph 172 of the Framework, which states that great weight should be given to conserving and enhancing landscape and scenic beauty within ANOBs. Regardless of the fact that the site is located at the very edge of the AONB, the visual character and exposure and the hillside means that it plays a significant landscape role. As I have found that the development would appear intrusive within its setting, it would clearly fail to conserve or enhance the natural, landscape or scenic beauty of the AONB. I attach great weight to the harm that would be caused.
19. I have considered potential to address the above concerns within the context of the reserved matters. However, in my view little additional scope exists to resolve the issues of visual prominence and intrusion, including through landscaping.
20. For the reasons outlined above I conclude that the development would have an unacceptable effect on the character and appearance of the area, including by failing to conserve and enhance the AONB. It would therefore conflict with Policy EN1 of the CS, and Policy DEN2 of the DSA, which each seek to ensure the conservation and enhancement of the AONB; Policies OSS4 and RA3 of the CS, and Policy DEN1 of the DSA, which all require development to respect the character of the locality; and relevant provisions related to design and AONB protection set out within the Framework.

Flooding and drainage

21. The access track is located within Flood Zone 3, as too would be the parking area. It is therefore likely that both would be subject of future flooding. The Council additionally indicates that the site is affected by surface water flooding. In this regard the appellant has not submitted a site-specific flood risk assessment (FRA) in relation to the scheme, contrary to the requirements of Policy EN7 of the CS, which in turn reflects national policy set out within the Framework.
22. I appreciate that the access track already exists, and that the parking area would occupy an existing levelled space directly adjacent to the parking area serving Bridge House. As such, the amount of development which would actually occur with Flood Zone 3 would be small. Nonetheless the Planning Practice Guidance (PPG) specifically excludes developments involving subdivision of an existing curtilage from the category of 'minor' development not requiring an FRA.
23. Both Policy EN7 of the CS, and the Framework, otherwise seek to direct development to areas at lowest risk of flooding. In this regard it is reasonable to assume that the District contains sites capable of accommodating a single dwelling, no part of which falls within Flood Zone 3. As such I consider that the scheme fails the sequential test as set out within the Framework.
24. I have therefore had further regard to the exception test set out in paragraph 160 of the Framework, and doing so have applied the highest vulnerability category to the site as indicated by the PPG. In this regard it has not been

demonstrated that the development would provide wider sustainability benefits that would benefit the wider community, outweighing the flood risk. In the absence of any evidence, I also cannot be satisfied that the development would be safe for its lifetime without increasing flood risk elsewhere. Consequently, the exception test is failed, and the Framework indicates that planning permission should be refused.

25. I acknowledge that the most vulnerable part of the development would be raised well above the level of the access and parking area. In the event of flooding below, future occupants would be able to leave the site on foot through the existing pedestrian access onto Chick Hill Road. It remains the case however that future occupants might attempt to use their vehicles at times of flooding, giving rise to potential risks to life.
26. I further acknowledge that the Council accepts that the SuDs calculation submitted as part of the appeal shows that adequate surface water drainage measures could be achieved. I see no reason to disagree. This does not however alter the fact that the effects that the development would have on flooding are unknown.
27. For the reasons outlined above I conclude that insofar as the development could incorporate sustainable drainage systems it would comply with Policy SRM2 of the CS, and Policy DEN5 of the DSA, which each seek to promote the provision of sustainable drainage. However, the appellant has otherwise failed to demonstrate that the site is a suitable location for residential development in relation to flood risk, and the harm to which this could give rise. Thus the development conflicts with Policy EN7 of the CS which seeks to avoid inappropriate development in areas at risk of flooding; and relevant provisions of the Framework outlined above. Though the Council also cited Policy DRM1 of the DSA in its decision, this relates to water efficiency as opposed to drainage and flooding, and therefore it is not relevant.

Location

28. Policy OSS2 of the CS and Policy DIM2 of the DSA set out the Council's spatial strategy, which directs development to locations identified on the basis of development boundaries. Policy RA3 of the CS further restricts the types of development which may take place within 'countryside' locations lying outside development boundaries. The DSA does not carry forward the development boundary for Pett Village. Even taking the development boundary into account however, the site, including the part on which the dwelling would be located, would largely fall outside. As the type and location of development proposed would not meet any of the criteria set out in Policy RA3, it would conflict with the above policies. In this regard the Council's particular concern is that the location would require future occupants to depend on private vehicles to access services and facilities on a day-to-day basis, leading to environmental harm.
29. The Framework identifies a range of considerations with regard to rural housing. These include within paragraph 78, which states that housing should be located where it will enhance or maintain the vitality of rural communities, particularly where development in one village may support services in a village nearby. Paragraph 102 of the Framework also states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision making. Notwithstanding the fact that the Council's general objective of locating

development in the most accessible areas is consistent with the principles of sustainable development outlined in the Framework, paragraphs 78 and 102 indicate a more flexible approach than that set out in the development plan, which I shall consider further below.

30. Pett Level does not appear contain any services or facilities. The day-to-day needs of future occupants could not therefore be met within Pett Level. Other small settlements are located close by. However, I have not been provided with any clear indication of what services or facilities they contain. As such the extent to which future occupants of the proposed development could access or support services or facilities in other villages nearby is uncertain.
31. Even if services and facilities do exist in adjacent villages, it is unlikely that these would be sufficient to support the day-to-day needs of future occupants of the development. Travel to larger settlements would therefore be necessary.
32. In this regard the site is located a reasonably short distance from bus stops offering an hourly service into Hastings and Rye. This is a good level of service for a rural location. However, neither of the closest bus stops can be accessed without walking along Chick Hill Road, which lacks any pavement, lacks lighting, and in some places lacks any verge. Considered in combination with my findings regarding the safety of the access, walking to either bus stop would be neither a safe nor convenient option for future occupants. This would deter use of the bus.
33. Future occupants could cycle, but given the distances involved it is unlikely that this would represent a practical means of accessing services and facilities on a day-to-day basis. Future occupants of the development could not therefore make safe or realistic use of sustainable modes of travel. They would instead be reliant on private vehicles, and use would give rise to environment harm.
34. Though I have been provided with little information regarding the nature of the local community, future occupants of the development could presumably participate in village life. Any contribution would nonetheless be small, and attracts little weight as a consideration in favour of the development. For this, and the reasons above, environmental harm would be outweighed by any clearly defined benefits in terms of local vitality.
35. I therefore conclude that the site is an inappropriate location for residential development given the likely reliance on private vehicles by future occupants to access to services and facilities, and the environmental harm to which travel would give rise. I conclude therefore that the development would conflict with Policies OSS2, RA2 and RA3 of the CS, and Policy DIM2 of the DSA as outlined above, and Policy OSS3 of the CS, insofar as this requires compliance with other CS policies in relation to development location. The decision notice also cites paragraph 79 of the Framework, which relates to the development of isolated homes in the countryside. However, as the proposed dwelling would be physically isolated, paragraph 79 is not relevant.

Privacy

36. As the dwelling would occupy an elevated position well above the roof levels of existing dwellings to the south, some views over these dwellings from within the site would be possible.

37. Insofar as these dwellings include Bridge House immediately to the south, little other than the roof would be visible from the site. Though a patch of land would be retained immediately adjacent to the site, this does not currently appear to serve any particular use. Distance, relative orientation and vegetation would obscure any clear view of amenity space at 1 Shady Nook. However, Samantha, and to a lesser extent Rosella, would be more directly exposed to view. With regard to both the latter, both overlooking and a perceived sense of overlooking would be likely to arise.
38. In this regard I note that the Inspector in the previous appeal considered that overlooking from a dwelling on the site could be prevented by restricting scope for provision of windows at first floor level at reserved matters stage by use of a condition. Such a condition could also be used in this instance. Moreover, whilst the plans currently show a raised terrace, scope for provision of balconies could be excluded in the same way.
39. For the reasons outlined above, I conclude that, subject to conditions, the development would not have an unacceptable effect on the privacy of occupants of neighbouring dwellings. The development would therefore comply with Policy OSS4(ii) of the CS, which requires that development does not unreasonably harm the amenities of adjoining properties.

Other Matters

40. At both the time the application was determined, and the appeal was lodged, the Council lacked a 5-year supply of deliverable housing sites (5yhls). Since this time the Inspector responsible for examination of the DSA has found the overall housing supply and delivery assumptions within the DSA are justified, effective and accord with the CS. The Council has not however confirmed to what extent its position regarding 5yhls has therefore changed.
41. Either way, I am satisfied that the policies most important for determining the application are broadly consistent with the Framework, and that specific policies within the Framework that protect areas or assets of particular importance themselves provide clear reasons for refusal of planning permission. In this case the specific policies in question are those related to areas at risk of flooding, and the AONB; the latter applicable on account of the fact that the great weight of the harm caused to the AONB would not be outweighed by the very limited social and economic benefits that would be provided by addition of a single dwelling. As such the 'tilted balance' set out in paragraph 11 of the Framework does not apply. Material considerations do not therefore indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion

42. For the reasons set out above I conclude that that the appeal should be dismissed.

Benjamin Webb

INSPECTOR