
Appeal Decision

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

by Graham Chamberlain, BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2020

Appeal Ref: APP/C1435/W/19/3227196

Land off the B2203, Maynards Green, Sussex, TN21 0DE

- 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 Trinity Homes against the decision of Wealden District Council.
 - The application Ref: WD/2017/1132/MAO dated 26 July 2017, was refused by notice dated 26 March 2019.
 - The development proposed is 'Residential development comprising up to 26 dwellings including associated access from B2203, landscaping and parking'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for access. The appellant confirmed at the hearing that it is the vehicular and pedestrian access points into the site that have been advanced for consideration and not internal accessibility or circulation routes. In addition, it was confirmed that the layout plan is indicative. I have assessed the proposal on this basis.
3. During the hearing late evidence was produced by interested parties (listed at the end of this decision). It was not extensive or overly technical and was capable of being addressed by those present. Accordingly, no party was significantly prejudiced when I accepted it.

Main Issues

4. The main issues in this appeal are:
 - Whether the proposed development would be in a suitable location with reference to relevant development plan policies and the accessibility of services and facilities;
 - The effect of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty;
 - Whether the proposal makes adequate provision for affordable housing; &
 - The effect of the proposed development on biodiversity, with particular reference to reptiles.

Reasons

Whether the proposed development would be in a suitable location with reference to relevant development plan policies

5. In order to direct housing growth to settlements, prevent the intensification of development outside of villages and towns, limit the abnormal demands placed on services and protect the rural landscape, Policies DC17 and GD2 of the Wealden Local Plan 1998 (LP) do not permit development outside development boundaries unless it is permitted by other policies in the plan. These policies flow from Policy EN1, which seeks to secure sustainable development in a broad sense. The appeal scheme would not be isolated, but it would be outside a settlement boundary and not amount to any of the types of development exceptionally permitted by other policies in the LP, such as rural conversions. Thus, the proposal would be contrary to Policies DC17 and GD2.
6. Objective SP08 of the Wealden Core Strategy 2013 (CS) sets out a vision that additional growth will be used to enhance an effective network of villages that support the day to day needs of rural communities. This is encapsulated in a rural areas strategy in Policy WCS6 of the CS. The strategy is to direct housing to the Service Centres, Local Service Centres and Neighbourhood Centres specified in the policy because they are better served by services and facilities and therefore sit higher in the settlement hierarchy. At the same time, development boundaries were removed from other unclassified settlements such as Maynards Green. The negative corollary being that most new housing is not to be ordinarily directed to, or supported at, Maynards Green.
7. The Council's intention was to prepare a site allocations development plan document (DPD) which would identify housing sites at the Service Centres, Local Service Centres and Neighbourhood Centres in order to deliver the strategy in Policy WCS6. The DPD was never prepared but it would have gone against the grain of the rural areas strategy to allocate the quantum of development now proposed at Maynards Green, whilst removing its settlement boundary to inhibit infilling. As such, the appeal scheme is at odds with the rural areas strategy in Policy WCS6 of the CS.
8. In conclusion, the proposed development would not be in a suitable location when considering the relevant policies in the development plan outlined above. As such, the appeal scheme would harmfully undermine the adopted spatial strategy and thus the consistency that should ordinarily flow from a plan led approach to the location of new development.

The accessibility of services and facilities

9. There is a primary school in Maynards Green and therefore future residents of the appeal scheme may be able to attend this local facility. However, it is currently oversubscribed so this cannot be guaranteed. As such, primary school children residing at the proposed development may need to travel to other schools. There are no other facilities near to the appeal site apart from the Rut in Tun Public House, which is within walking distance. Accordingly, it would be necessary for future residents of the appeal scheme to travel to other settlements such as Horam and Heathfield to access employment and everyday services and facilities.

10. There are continuous pavements between the appeal site and Horam and Heathfield but the distances to these settlements is beyond an 800 metres (m) walk as recommended in Manual for Streets. It would take about twenty minutes to walk into these nearby settlements. The Cuckoo Trail could be used, which is a peaceful and pleasant route albeit a little enclosed. Although this is not a prohibitively long distance for occasional walking by those fit enough to do so, a return journey would be quite lengthy. Therefore, future occupants would likely have a predisposition to travel by car for regular journeys such as commuting to work or visiting shops. Vehicular journeys into nearby villages may be short in duration but the appeal scheme could result in twenty-six households occupying the site and this would result in a high number of vehicle movements over time, with the associated carbon emissions.
11. A cycling journey from the appeal site to nearby settlements would take around five to ten minutes and need not have to involve the road because the Cuckoo Trail is a surfaced route. This could encourage sustainable transport. However, future occupants of the appeal scheme may not have the fitness and proficiency to regularly cycle. Moreover, the Cuckoo Trail is unlit and therefore it is unlikely to be used after dark. This limits its use, particularly in the winter months. The appeal site is well within the optimum walking distance of a bus stop, which is 400m¹. The bus service is limited on weekends and in the evenings, but the Council confirmed at the hearing that the two-hourly service during the day (Monday to Friday) is comparatively good for the district. In addition, there is a dedicated school bus linking Maynards Green and the local secondary school.
12. The above analysis demonstrates that future occupants of the appeal scheme would be predisposed to use private motorised transport, but they need not be entirely car dependent. This is because they would have some travel options. Travel by bus and bicycle are potential alternatives but they are not comprehensive and have some notable limitations. Walking may be an option for some even though the distance means this is unlikely to compete on a regular basis with the convenience of travel by car. That said, some allowance must be made for the rural context of the site, where opportunities to maximise sustainable transport will be inherently more limited than more urban areas.
13. Accordingly, Maynards Green is not so inaccessible as to be inherently incapable of taking some modest additional residential development to support the rural community. Nevertheless, Maynards Green is not a particularly sustainable location in terms of accessibility to services and facilities. Therefore, it is not well placed to have significant levels of development given the identified limitations in the sustainable transport modes available. In this respect Paragraph 103 of the National Planning Policy Framework (the 'Framework') states that significant development should be focussed on locations that are, or can be made, sustainable.
14. There is no definition in the Framework as to what a significant development would be. Nevertheless, I do not share the appellant's view that development only becomes significant when it is a notable proportion of the housing need of the district. This is because Wealden is an area where high levels of housing

¹ Planning for Public Transport in Development 1999

will likely need to be delivered and therefore schemes much larger than that proposed may not be significant by such a measure.

15. To my mind a significant scheme is one of a size that is noteworthy. Thus, an increase in the size of Maynards Green by around 30% is a matter of importance and worthy of attention - it is significant. Moreover, the cumulative number of trips generated by the development would also be a matter of note and thus of significance. Consequently, development at the quantum proposed would be significant for the purposes of Paragraph 103 of the Framework. It should therefore be in a sustainable location which, on balance, I do not find Maynards Green to particularly be. Accordingly, the quantum of development proposed is not in a suitable location given the limitations previously identified in accessing services and facilities by sustainable modes of transport.

The effect of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB)

16. The appeal site encompasses a small field with a frontage onto the B2203, which is currently delineated by a thick hedge atop a high bank. The eastern boundary is marked by a former railway cutting that is now the Cuckoo Trail. Hill House/Solis to the north is set in a large and verdant plot, as is Barn Cottage to the south. Maynards Green is a small hamlet along the B2203. This affords it a predominantly linear character. The pattern of development on the western side of the B2203 north of Barn Cottage is characterised by sporadic housing interspersed by small fields and paddocks. In this respect, the appeal site is not a discordant gap in the street scene. The ribbon development on the eastern side of the road is more continuous, starting to tail off after Frary Walk.
17. The Council's 2014 Landscape Character Assessment did not assess the landscape around Maynards Green. The County Council's assessment was likewise at a high level. Nevertheless, the High Weald AONB Unit have highlighted some aspects of the locality and appeal site that contribute towards the broader landscape character of the AONB. The linear grain of Maynards Green is a historic pattern of development consistent with ridge villages in the High Weald. The appeal site is also part of an historic field, albeit truncated by the railway line and latterly by Hill House. Thus, it is not in its original form. Nevertheless, it is part of a discernible historic field network either side of the B2203. Furthermore, the bank and hedge along the site frontage adds to the wooded character of the area and reinforces the B2203 as an historic routeway.
18. The Council and appellant agree that the appeal scheme would not be 'major' development for the purposes of AONB policy given the context and I have no reason to disagree. The layout is a reserved matter, but the development would need to be arranged in depth in order to accommodate the proposal. This would jar with, and erode, the linear form of the settlement. It would not have the character of a natural infilling as it would be a comparatively intense form of development on the western side of the road. The development of the appeal site would also harm the field pattern, and in order to gain access to the site the hedge and bank along the site frontage would need to be breached. These aspects of the proposal would not adhere to Objectives S2, R1, W1 and FH2 of the High Weald AONB Management Plan 2019-2024.
19. In addition, the single entrance and in-depth character would likely result in an estate type cul-de-sac layout. This would amount to a suburban incursion into a rural setting. The proposal would be an efficient use of land, but the

development would also be a comparatively large body of estate housing at a village that is generally characterised by single depth linear infilling.

20. The indicative layout does not properly account for the presence of two large oak trees² outside the site that are of notable landscape value. The heavy pruning or loss of these trees would be harmful to landscape character. There would be pressure to do this if the trees were oppressive on future occupants or became a nuisance. However, if smaller dwellings were ultimately proposed it is likely that the site layout could be reconfigured from that indicatively proposed to take account of these trees. Accordingly, this is a matter that can be addressed at the reserved matters.
21. The indicative layout demonstrates that several principles of good urban design could be incorporated into the scheme with strong building lines, active edges and landscaped front gardens and recessed parking providing structure to the streets. In many locations the appeal scheme would amount to good design. However, the suburban character in a rural location on the edge of a linear settlement would be jarring. Overall, the proposal would result in moderate harm to landscape character.
22. Due to the existing boundary landscaping the urbanising impact on the rural character of the appeal site would be visually contained. Consequently, the visual effect of the proposal would be reasonably limited to vantage points and properties immediately around the appeal site. Housing broadly in the locations of Plots 20, 21 and 26 would be visible, but not prominent, from the B2203 through the hedge when it is not in leaf. Nevertheless, the hedge would provide an effective screen at other times. In this respect, the development would have less of a presence in the street scene than the housing across the road. With additional evergreen landscaping along the eastern boundary, the appeal scheme would not be prominent in views from the Cuckoo Trail.
23. Consequently, it is reasonable to conclude that the buildings would be relatively discrete in public views. Instead, the main impact of the proposal would be the access. It is difficult to judge the full impact of the access because section drawings have not been submitted. Nevertheless, it would be a highly engineered feature with retaining walls, curbs, road markings and pavements. It would look quite different to a low-key field entrance that could be explored as an exception under the Hedgerow Regulations³. As such, the access would appear stark and out of place given that West Street Lane and Tubwell Lane do not have pavements and this affords a more rural character.
24. That said, the development would leave much of the frontage hedge undisturbed. Furthermore, there would be opportunities to soften the impact of the proposed access. For example, the surface material could impart a rural character and the Council suggested that a pavement on only one side of the road may suffice. It may be possible to go further and provide a full shared surface with no pavements given that a separate pedestrian access is proposed. It may also be possible to omit street lighting as there is no apparent need - the wider village has no streetlights.

² Trees T8 and T3 in the Arboricultural Assessment. Plots 5 and 6 and 20 and shown on the indicative layout as being close to these trees and this is a concern of the Council's Tree Officer.

³ It is unclear whether the site is truly landlocked as access can be achieved through the driveway to Barn Cottage

25. In addition, the internal road off the access could be flanked by landscaping in front gardens and a belt of planting in the proposed position of the visitor parking spaces, which are unlikely to do much to alleviate the pre-existing problem with parking at the school. Thus, a rural character could be achieved when looking into the development along the access, thereby lessening the perception of a suburban cul-de-sac. Cottage style architecture could also add a rural feel. As such, the impacts of the access and views into the site along it, could be softened through design. Overall, the visual impact of the proposal would likely result in some limited harm to the appearance of the area.
26. In conclusion, the appeal scheme would result in moderate harm to landscape character and limited harm to the visual appearance of the area. It would therefore fail to conserve or enhance the landscape character and scenic beauty of the AONB. The proposal would therefore be at odds with Policies EN6 and EN27 of the LP, which seek to secure development that respects local character and conserves or enhances the AONB.

Whether the proposal makes adequate provision for affordable housing

27. In accordance with Policy WCS8 of the CS, a scheme of the size proposed would be required to provide 35% affordable housing. For affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced and that it remains affordable to first and subsequent occupiers. Some form of legal certainty would be necessary to achieve this, which is often provided by a planning obligation.
28. The appellant has not objected to the provision of affordable housing in accordance with Policy WCS8. The Council and appellant have recommended that this could be secured through the imposition of a planning condition. The condition recommended in the Statement of Common Ground is drafted to prevent occupation of the development until a 'scheme' for the provision of affordable housing has been submitted to, and approved by, the Council. The Council conceded at the hearing that the 'scheme' would need to be a planning obligation or some other form of legal agreement.
29. The Planning Practice Guidance⁴ advises that the use of such a condition is unlikely to be appropriate in the majority of cases. It states that in exceptional circumstances a negatively worded planning condition requiring a planning obligation or other agreement to be entered into before development can commence may be appropriate in the case of particularly complex development. The appeal scheme is not complex and therefore a planning condition along these lines would be inappropriate. Thus, in the absence of a planning obligation or other appropriate means of legally securing affordable housing, the appeal scheme would not make adequate provision for affordable housing. It would therefore be at odds with Policy WCS8 of the CS.

The effect of the proposed development on biodiversity, with reference to reptiles

30. As recommended by the Preliminary Ecological Appraisal, a further reptile survey at the appeal site was undertaken in 2017. A mitigation strategy was subsequently recommended as the site was found to have a good population of slow worms and grass snakes. The report prepared by PJC Consultancy states

⁴ Paragraph 010 Reference ID: 21a-010-20190723

that in order to mitigate for the impact of the proposal upon these species, a receptor site should be created at the appeal site and reptiles translocated to it. The receptor site would need to encompass about a third of the appeal site and be enhanced with hibernacula. The report also states that a legal agreement would be required between the landowner and local authority to ensure the receptor site is delivered, managed and maintained for the benefit of reptiles.

31. The appeal scheme is entirely incompatible with the mitigation suggested as the quantum of development proposed would require housing to be located within the receptor site. I have not been presented with any other form of mitigation to that proposed by PJC Consultancy, such as an alternative translocation site which could be legally secured to function as a habitat for slow worms and grass snakes. It would be inappropriate to seek to secure a translocation site through the imposition of a planning condition because this would be imprecise and legal obligations would need to be imposed upon the owners of the translocation site (such as on-going management to retain suitable habitat) and therefore a planning obligation is likely to be necessary. A condition requiring a planning obligation to be entered in to would not be appropriate for the reasons already given when considering the same matter in respect of affordable housing.
32. Accordingly, there is little prospect that Natural England would grant a license to disturb the protected reptile species at the appeal site. As such, a scheme at the scale proposed would significantly harm biodiversity. This would be contrary to Paragraph 103 of the Framework, which seeks to enhance the natural environment by securing development that minimises the impacts on, and provides net gains for, biodiversity.

Other Considerations

33. The Council cannot currently demonstrate a 5-year housing land supply and is therefore failing to significantly boost housing supply as required to by the Framework. At the hearing the Council suggested that the supply is around 3.67 years and the appellant did not challenge this proposition or offer alternative technical evidence. This renders the relevant policies DC17, GD2 and WCS6 out of date. Policy WCS14 of the CS sets out the mechanism for approaching decision making in such circumstances. However, Policy WCS14 is out of date as it reflects wording from an earlier version of the Framework. Instead, I have reverted to Paragraph 11 of the Framework, which states that planning 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 proposed.
34. With the foregoing in mind, Paragraph 172 of the Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs and that the scale and extent of development in these areas should be limited. The appeal scheme would fail to conserve or enhance the AONB landscape for the reasons already given. Therefore, the policies in the Framework provide a clear reason for refusing the appeal scheme. Consequently, it is unnecessary to consider whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
35. The Framework states that due weight should be given to development plan policies that predate it according to their consistency with the Framework.

Policies DC17, GD2 and WCS6 seek to promote sustainable transport, recognise the intrinsic character and beauty of the countryside and, by restricting development at Maynards Green, they are also protecting the AONB as a valued landscape. Accordingly, Policies DC17, GD2 and WCS6 are not entirely inconsistent with the Framework.

36. Nevertheless, Policies DC17, GD2 and WCS6 do not set out a housing strategy that would deliver the Council's objectively assessed housing need. Thus, the strict application of these policies would frustrate attempts to 'put right' the housing shortfall. The Council accepts that it will have to release sites outside the current settlement boundaries to deliver an adequate housing supply. Moreover, these policies set out a more restrictive approach than Paragraph 78 of the Framework. This is because they prevent housing at Maynards Green in a blanket fashion without robust up to date supporting evidence. They also fail to acknowledge that development at Maynards Green can support services in villages nearby and maintain the vitality of Maynards Green as a rural community. Accordingly, I afford the conflict with these policies limited weight.
37. The failure to conserve the AONB carries great weight. In addition, the proposal is significant development in an unsustainable location contrary to the Framework. It would also result in significant harm to biodiversity. Policies EN6, EN27 and WSC8 (in so far as it requires major schemes to provide affordable housing) are consistent with Paragraphs 62, 103, 127 and 172 of the Framework and therefore a conflict with them can be afforded full weight. Accordingly, the proposal's cumulative harm would be considerable even though the conflict with Policies DC17, GD2 and WCS6 is afforded substantially reduced weight. In its reasons for refusal the Council has referred to spatial planning objectives as if they were development plan policies, which they do not appear to be. As such, the proposal does not turn on adherence to these objectives.
38. Benefits of the appeal scheme would include a contribution to housing supply, although this would not include affordable housing. The shortfall is large and is unlikely to be addressed any time soon through a new development plan. The Council points to several large applications waiting to be determined but that does not mean they will be approved. The Council and appellant therefore agree that the contribution towards housing supply is a matter of substantial weight in favour of the proposal given the current circumstances. This is consistent with the findings of Inspectors in other appeal decisions (APP/C1435/W/17/3178137 and APP/C1435/W/17/3179061).
39. Added to this, the proposal would result in moderate economic benefits in the short term to the construction industry and long-term benefits from the 'spend' of future residents. However, in respect of the latter I have seen little to suggest local services are failing for lack of patronage. The local primary school is over-subscribed so the development would not be important in sustaining this facility. This is especially so as there has been a large amount of development at Horam, which is within the school catchment. Overall, the considerable harm that would occur would not be outweighed by its substantial benefits. This does not indicate the application should be approved.

Other Matters

40. Various concerns have been raised by interested parties including reservations regarding highway safety and living conditions. However, given my findings

above it has not been necessary for me to address these matters further as the appeal has failed on the main issues. Given my overall conclusion, the appeal scheme would have no effect on the Ashdown Forest and Lewes Downs Special Areas of Conservation and therefore I have considered this matter further.

41. I have been referred to the Council's emerging Local Plan and the proposals therein for Maynards Green to take at least twenty homes and for a Core Area Boundary to be established. However, the examining Inspector has written to the Council to confirm that the plan is based on flawed scientific evidence and was not prepared in accordance with the duty to cooperate. The Council have indicated an intention to withdraw the plan. In the circumstances, the emerging plan is a matter of very limited weight.

Conclusion

42. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Thus, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Marcas Cory
Mark Best
Henry Mackenzie

Trinity Homes
Parker Dann
Parker Dann

FOR THE LOCAL PLANNING AUTHORITY

Doug Moss
Cllr Susan Steadman
Cllr Bob Bowdler

Wealden District Council
Wealden District Council
Wealden District Council

INTEREST PARTIES

Tony Baker
Sue Lane
Michelle Lee
Vince Lee
Mike Woodhouse
Jennifer Woodhouse
Mr Cousins
Michael Axel
Mike Stedman
John Stanbridge

Parish Council
Parish Council
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident
Governor of the Local Primary School

DOCUMENTS SUBMITTED AT THE HEARING

Doc 1 Five photos provided by the residents of Hill House
Doc 2 Appeal Decision APP/C1435/W/19/3228019

DOCUMENTS SUBMITTED AFTER THE HEARING

Doc 3 Suggested conditions relating to biodiversity and land contamination