



Appeal Decision

Site visit made on 19 May 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/C1435/W/19/3238660

Duncroft, Street End Lane, Heathfield TN21 8RY

- 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 & Mrs Shaw against the decision of Wealden District Council.
 - The application Ref WD/2019/0224/F, dated 29 January 2019, was refused by notice dated 6 June 2019.
 - The development proposed is new build 2 bedroom bungalow.
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Decision

1. I allow the appeal and grant planning permission for new build 2 bedroom bungalow at Duncroft, Street End Lane, Heathfield TN21 8RY in accordance with the terms of the application, Ref WD/2019/0224/F, dated 29 January 2019, subject to conditions 1) to 8) on the attached schedule.

Preliminary Matters

2. The Reason for Refusal and the Officer's Report referred to the emerging Submission Wealden Local Plan 2019, the site lying within the Broad Oak Core Area as proposed to be defined in that Plan, with a windfall allowance for 50 units. It had previously been within the settlement boundary defined in the 1998 Local Plan, but this was removed on adoption of the Core Strategy Local Plan 2013.
3. In the event, and since the issue of the Refusal Notice, the emerging Plan had been found 'unsound' by the Examining Inspector and was subsequently withdrawn by the Council.
4. Consequently, the Council's Appeal Statement states that *'the proposal will no longer be located within a core area, where additional development is considered acceptable. In line with the current plan policies the development is considered to be situated outside any development boundary identified within the Wealden Core Strategy Local Plan and as such the proposal is considered to be located in an area where further development should be resisted'*.
5. The reference in the Report to isolated dwellings in the countryside and paragraph 79 of the National Planning Policy Framework is not now appropriate following the 'Braintree' judgments¹ taking account of the site's infill position within built-up frontages, notwithstanding being outside a settlement boundary.

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018.

Main Issue

6. In view of the findings of the Preliminary Matters, the main issues are;
- The effect of the proposal on the character and appearance of the Street End Lane and Uplands Park area of Broad Oak.
 - The weight to be attached to material considerations such as the supply of housing and the proximity of the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

Policy

7. Wealden Core Strategy Local Plan 2013 Policy SPO13 encourages high quality development and attractive living environments. Policy WCS14 states the presumption in favour of sustainable development. Saved Policies EN1 and EN27 of the adopted Wealden Local Plan 1998 set out, respectively, the requirement for sustainable development and criteria for layout and design.
8. The Council has published the Wealden Design Guide as a Supplementary Planning Document, and the purpose is to encourage a higher standard of design for development in the District.
9. Paragraph 68 of the 2019 National Planning Policy Framework states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should support the development of windfall sites through their policies and decisions giving great weight to the benefits of using suitable sites within existing settlements for homes. Paragraph 124 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Character and Appearance

10. The appeal site is currently part of the rear garden of Duncroft, a bungalow with its front elevation facing Street End Lane, but the plot has a long frontage to Uplands Park, the dwelling being on the corner. A fence of about 1.8m height runs from the corner of the bungalow nearest the road junction to turn at 90° and run the full depth of the plot to the boundary with number 41 Uplands Park. That latter property is semi-detached with number 39 and forms an attractive corner feature with front gardens on both frontages. On the south-east side of the appeal site there is a chalet-bungalow set slightly across the corner with a garden frontage that addresses both roads, and a short but more enclosed private garden and fence along Uplands Park. The effect of the arrangement just described is a somewhat enclosed and hard frontage to the entry to the side road, particularly on the appeal site side of the road.
11. The proposal is to separate off the rear part of the garden to Duncroft, adjacent to number 41, and to develop a bungalow on the appeal site which would have an open frontage onto Uplands Park in place of the present fence. The Officer's Report confirms that the resulting plot would have more than the minimum 50m² of amenity space recommended in the Wealden Design Guide, and drawing P/1904/04 shows the extent of remaining amenity space for Duncroft,

- and indicates the retention of the remainder of the fence to enclose it, together with a new fence on the mutual boundary. Trees would be removed although they are not protected and could be felled in any event.
12. The dwellings in the area are predominantly bungalows with some chalet bungalows, and whilst back garden length appears to vary in places, the width of the plots appears reasonably regular, at least on the straight parts of the roads and the plot width at the appeal site would not be significantly different.
 13. With regard to the arrangement of built form on the existing plots, a recurring theme is pitched roof bungalows separated by space to one side and a pair of flat roofed garages on the other, one for each adjoining plot. In the case of Duncroft the garage is to the south-west side, while the neighbour on Street End Lane has only a driveway, but the rhythm referred to remains evident. The proposed bungalow would be of similar width and position on the plot as others in the area and the resulting separation distance from Duncroft would again be similar to other examples. On the further side, the relationship with number 41 is of a garage and driveway on that plot and the space between the boundary and the proposed dwelling, and the bungalow on the adjoining plot would be similar to others in the area.
 14. Reference to separation distances being 'similar' and plot widths not being 'significantly different' is only an indication of the proposal being acceptable, the key consideration being the visual and spatial effect and whether the resulting design meets the standard sought in the Development Plan, Supplementary Planning Documents and national policy.
 15. In this case the proposed bungalow would sit well among similar single-storey dwellings, relating appropriately in design and scale to its neighbours. Any slight visual element of being closer to the side boundaries than others should be balanced against the benefits of opening-up the street frontage by the removal of the existing fence, which appears unlikely to be offered or achieved otherwise. In that balance, the slight adverse effects are substantially outweighed by the significant improvement in the presentation of the frontage.
 16. The overall effect would be an acceptable addition to the street scene that would not cause harm to the character and appearance of the wider area, and would accord with Policies SPO13 and EN27, and which reaches the standard of design sought in the Wealden Design Guide and the Framework.

Other Considerations

17. The site is stated to be outside of the 7km zone in relation to the Ashdown Forest Special Protection Area and Special Area of Conservation. The Council has supplied a full commentary on the matter, in relation to the now-withdrawn 2019 Local Plan.
18. An Appeal Inspector is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 and an Assessment is required. There are 7 steps to the Assessment and once one of the steps has been met there is no requirement to go on to consider the remaining steps;

Step 1, is the proposal directly connected with or necessary to the management of a protected site? No, that is not the case.

Step 2, is the proposal likely to have a significant effect on the interest features of the site, alone or in combination? The main issue is air quality and the effects of nitrogen deposition from vehicle journeys through the area. The Council had sought to provide 14,228 homes under the 2019 Local Plan and the proposed development is considerably less than the quantum of growth promoted and with specific regard to air quality, mitigation measures are not required for that quantum of development. As a result, it is concluded that the appeal development would not adversely impact the integrity of the protected areas, whether considered on its own or in combination with other sites.

19. As a result of this finding it is not necessary to consider the Assessment further and there is no need for mitigation measures. The appeal proposal would be acceptable in terms of its effects on the Ashdown Forest Special Protection Area and Special Area of Conservation.
20. The Council are unable to demonstrate a 5-year supply of specific, deliverable housing sites, and accept that the 'tilted balance' set out in paragraph 11 of the Framework would apply. The Reason for Refusal alleged that the adverse impacts of the proposal significantly and demonstrably outweighed the benefits of the infill of a single dwelling.
21. The conclusion in the first Main Issue was reached on the balance of slight visual harm against significant improvement to the street scene. The 5-year housing land supply situation is such that the policy harm of being outside any settlement boundary in addition would not significantly outweigh the benefits of providing a dwelling in an established residential area with access to transport and services, as demonstrated in this Decision. The proposal is sustainable development and planning permission should be granted.

Conditions

22. The Council has repeated at appeal the conditions set out in the Officer's recommendation to Committee, with the omission of those concerning the Ashdown Forest which are no longer appropriate. For that reason, previous references to the need for an Undertaking or Agreement are withdrawn.
23. It is essential to control surface and foul drainage, and this would take account of concerns over springs and ground water. In order to ensure an acceptable appearance to the building, materials should be submitted for approval, and in view of the sloping site and road levels, as well as the need to relate well to the existing buildings either side, it is appropriate to attach a levels condition.
24. The size and coverage of the building and site leads to the need to remove certain permitted development rights as set out in the suggested condition; this does not imply that such development would not be allowable but would give the Council the opportunity to consider any application for express consent.
25. A condition naming the 'as proposed' drawings is required for the avoidance of doubt.
26. The Council had not sought to control landscaping, and there is limited scope in any event. However, in view of the benefits that have been attributed in the planning balance to improvement to the street scene by the removal of the fence on this part of the frontage, it is reasonable to seek details of hard and soft landscaping to the front area.

Conclusions

27. The proposal would have an overall positive effect on the street scene and would aid the supply of housing in an established residential area with access to transport and services, and in a District where the Council is unable to demonstrate a five-year supply of housing. The proposal would be sustainable development and would accord with the economic objective stated in paragraph 8 of the Framework of being land of the right type in the right place to support growth, and is available now; the social objective of providing a home to meet the needs of present and future generations would be furthered; and the environmental objective would be met through making efficient use of land while protecting the built environment. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P/1904/01 Site Plan, P/1904/02 Block Plan, P/1904/03 Proposed Plans & Elevations, P/1904/04, Site Plan & Contextual Elevations.
- 3) Before preparation of ground levels of the development approved by this permission is commenced, full details of the hard and soft landscaping of the site, to include boundary treatment, planting and hard surfacing, together with a programme for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping is to be carried out as approved and in accordance with the approved programme.
- 4) Prior to commencement of any above ground works in association with the dwelling hereby approved, samples of materials to be used on the external surfaces of the development shall be made available on site for the written approval of the Local Planning Authority. The development shall be carried out only in accordance with the approved samples.
- 5) Before preparation of ground levels of the development approved by this permission is commenced, full details of the proposed means of foul drainage disposal shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be operational prior to the completion or occupation of any dwelling on site, whichever is the sooner.
- 6) Before preparation of ground levels of the development approved by this permission is commenced, full details of the proposed means of surface water disposal shall be submitted to and approved in writing by the Local

Planning Authority. The approved drainage works shall be operational prior to the completion or occupation of the dwelling on site whichever is the sooner.

- 7) Prior to commencement of any below ground works in association with the dwellinghouse hereby approved the finished ground floor levels of the building in relation to existing and proposed site levels, the adjacent highway and adjacent properties, together with details of levels of all accesses, to include pathways, driveways, steps and ramps, shall be submitted and be approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 8) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, classes A - H inclusive of that Order, shall be erected or undertaken on the site.