
Appeal Decision

Site visit made on 12 August 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 August 2020

Appeal Ref: APP/M2270/W/20/3250239

OS Plots 4974 and 5275, Crane Lane, Cranbrook, Kent

- 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 Park View Farm Self Build Group against the decision of Tunbridge Wells Borough Council.
 - The application Ref 19/03012/FULL, dated 10 October 2019, was refused by notice dated 19 December 2019.
 - The development proposed is three two storey detached houses with detached garages.
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Decision

1. I dismiss the appeal.

Application for Costs

2. An application for costs was made by Park View Farm Self Build Group against Tunbridge Wells Borough Council. This application is the subject of a separate Decision.

Main Issues

3. These are;
 - The effect of the proposals on the character and appearance of the area including within the High Weald Area of Outstanding Natural Beauty.
 - The effect of the proposals on the safe use of Public Rights of Way.
 - The effect of the proposals on protected species and trees.
 - The planning balance having regard to the 5-year housing land supply situation.

Reasons

Character and Appearance

4. The site is outside the Limits of Built Development and within the High Weald Area of Outstanding Natural Beauty. Core Policy 4 seeks to conserve the distinctive sense of place and character of the Borough while Core Policy 14 concerns development in the villages and rural area, with new development being generally restricted to within the Limits of Built Development and is to be appropriate in scale and character to the settlement. As pointed out at a previous appeal, the statement that the countryside will be protected for its own sake is not consistent with the National Planning Policy Framework. Local

Plan Policy LBD1 provides for development outside the Limits of Built Development only if in accordance with all relevant policies. Environment Policies EN1 and EN25 set out criteria for all development; and for development outside the Limits of Built Development respectively.

5. Paragraph 124 of the Framework 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. Areas of Outstanding Natural Beauty have the highest status of protection in relation to conserving and enhancing landscape and scenic beauty as stated in paragraph 172.
6. The site itself is relatively flat and extends from an entry at the end of the *cul-de-sac* Brookside as a parallel-sided drive, to widen-out as a roughly triangular plot of land. The red-line appeal site does not extend the full depth of a paddock, but the line of the south boundary was discernible.
7. To the east there is a substantial depth of open land with a hall and another building backing onto an area of medium-density housing. To the south and west there is undeveloped wooded land including a nature reserve set in a valley that extends to the boundary of the site. Also within that valley in the more open area is a playground and open skate-park with a seating shelter. On the far side of the valley is an extensive car park including that used by a supermarket, that building being associated with the continuous built form of the High Street, albeit at a markedly different scale.
8. The site is therefore part of a tongue of land that brings a green, vegetated appearance deep into the otherwise built-up hinterland of the historic High Street and this imparts a semi-rural character and appearance that is not presently seriously eroded by the presence of the hall, the shed on the appeal site, the playground and skate-park nor the car park and supermarket. The character of the Area of Outstanding Natural Beauty and its contribution to the setting of the town remains significant.
9. Before considering the significance of these observations it is appropriate to look at the planning history and present status of the land. An Inspector allowed appeal reference APP/M2270/W/15/3007591 in 2015 granting retrospective permission for a shed and the formation of vehicle hardstanding, ancillary to the use of land for agriculture (growing vegetables and fruit for personal consumption), it being agreed that the activity itself was agriculture. It appears that some things seen at the 2015 site inspection remained from an unsuccessful Enforcement Appeal in 2013 to do with an unauthorised use as a fencing contractor's yard.
10. The Officer's Report for that case and the Inspector's Decision variously describe the size of the storage shed and the amount of hardstanding that would remain, the latter being a reduction from the previous situation and was a requirement of the upheld Enforcement Notice, and both refer to the growing of fruit tree and vegetables. It is unclear whether the use of the shed and amount of hardstanding seen at the present inspection complies with that permitted in 2015 under conditions 2) and 3), or indeed whether condition 3) was ever complied with, and there was little or no discernible fruit or vegetable growing activity taking place, with hoof-prints indicating the use as a paddock, although all of these matters are for the Council to consider. Nevertheless, the nature of the 2015 permission and the reasons for the Inspector's findings are clear, as is the lawful status of the land.

11. Of particular note in relation to the current appeal is the previous Inspector's conclusions with regard to the size of the shed, which the Council had sought to have reduced and which was a significant part of their objection to that proposal; *'There might come a point when the scale of a development was so great that it should be resisted due to its adverse impact on the undeveloped character of the countryside within an Area of Outstanding Natural Beauty. However, as the proposal is not overly large that approach is not warranted here.....overall the shed and the area of hardstanding do not harm the character and appearance of the countryside within an Area of Outstanding Natural Beauty, as such, the proposal accords with Core Policies 4 and 14.'*
12. The current appeal proposal is to remove the shed, although being on a separate footprint to the development, that would need to be secured by condition, and the development of 3 identical chalets, the upper rooms being within steeply pitched roofs. These and their associated garages would be aligned along the eastern side of the site with a rear garden and open landscaped space to the west of the driveway. The land to the south within the site boundary is noted as *'existing paddock to be retained as existing'*.
13. It does appear to be a fact that the buildings themselves would not be seen from the lower path through the nature reserve, a fact stated by the previous Inspector with regard to the shed and confirmed at the present appeal site inspection. The present situation is of a fence along much of the west boundary, elevated above the valley and paths, while the appeal plan indicates a 'boundary fence' to the paddock and a 'boundary line' to the housing part. Whether more of a view would be available in winter and from the car park is unclear, but even then, it would be significantly filtered. The conclusion is that due to the proposed siting and design of the dwellings, the topography of the land and the well-contained nature of the site through vegetation, the buildings would not be prominent from public viewpoints, if seen at all.
14. However, the present agricultural use of the land and the restrictions placed on the use of the shed by condition 2) should result in a low-key and essentially agricultural use of land and hence effect on the character of the area. That taken together with the adjoining land to the east and west would retain a rural character and a buffer between the more urban character of the housing and car park. This character is presently entirely compatible with the designation as part of the Area of Outstanding Natural Beauty, and would be seriously eroded by the increase in activity, comings-and-goings associated with the proposed development of 3-bedroom family dwellings.
15. Returning to the findings of the Inspector in 2015, the effect of what is now proposed is such that the point has come where the scale and residential nature of the development should be resisted due to its adverse impact on the undeveloped character of the countryside within the Area of Outstanding Natural Beauty. It is concluded that the proposal would cause harm and would be contrary to Core Policies 4 and 14 and would not accord with Policy EN25 through the effect on the landscape character of the area and the landscape setting of Cranbrook.

Public Rights of Way

16. The Reason for Refusal was couched in the terms of their being insufficient information. Transport and parking Policy TP4 of the Local Plan requires a safely located access with adequate visibility. There are various footpaths

converging on the end of the made-up road Brookside and coinciding with the end of the driveway on the appeal site and the appellant has supplied drawing 2358/18/02A which shows the intended arrangement at this point. Posts were seen at the site inspection indicating that an increased width of driveway could be accommodated within the site boundary, although works would be required to stabilise the down-slope edge in places where cracking was apparent.

17. Works would be required to establish a proper connection to the highway and the previous Inspector writing in 2015 found no harm through that, albeit less intensive, use and there was reference then to an even earlier successful appeal which permitted a new base and surface to the driveway, finding that the alleged inconvenience and danger on the highway was not justified.
18. Having regard to the detail on drawing 02A it appears that a solution could be agreed and that the use of a 'Grampian' condition would be permissible, so that the proposal would not cause harm to the safe use of Public Right of Ways WC147A and WC110 or other users of the entry onto Brookside, and the requirements of Policy TP4 would be satisfied.

Protected Species and Trees

19. Core Policy 4 seeks opportunities for biodiversity enhancement and protection, while Local Plan Policy EN1 requires development not to result in the loss of significant trees and to not have a significant adverse effect on features of nature conservation importance. Protected trees are the subject of Policy EN13.
20. Both Reasons for Refusal on biodiversity and trees were again couched in the terms of their being insufficient information, and a Phase One habitats Survey should be to hand at application stage. It does however appear likely that the baseline situation would be of a limited level of biodiversity, the amount of hardstanding remaining is extensive and the paddock is largely trodden down by grazing.
21. The protected trees are off site and the Council accept that they are sited 6 to 8m below site level within the valley side. The passing place on the drive would however be under the canopy of T5 and T6 and the proximity of the works to the boundary and more abrupt down-slope to the west of the drive, together with the cracking seen all indicate that care would be required. The evidence is that a viable solution would be available.
22. Whilst it would have been desirable that more complete information be available at an earlier stage, it is not impossible that both concerns could be addressed through a pre-commencement condition, which would be fully justified in the circumstances of the case. However, in line with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, approval would need to be sought. Were all else found acceptable in the planning balance which follows, it is possible that Policy EN1 criterion 5 could be met through the use of conditions as stated in that criterion, so that Core Policy 4 and Local Plan Policy EN13 would be accorded with.

Planning Balance

23. The Council accept that they are unable to demonstrate a 5-year supply of housing land as required by the Framework and the 'tilted balance' and the presumption in favour of sustainable development could apply. Framework

- paragraph 11d).i states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, and footnote 6 includes policies regarding an Area of Outstanding Natural Beauty.
24. As set out in the Reasons above, the effect on the character of the High Weald Area of Outstanding Natural Beauty has been found to be harmful and that would, alone, be a clear reason for refusing the proposal in line with the Framework's statement on their high status of protection.
25. The application is stated to be for self-build, although whilst this might be seen as a low-cost method of providing housing for the people involved, no mechanism has been put forward to secure the resulting housing as 'affordable' in the future.
26. The Council explain the approach to the Self-Build and Custom Housebuilding Act 2015 and the identified need for 164 such dwellings. The Glossary to the Framework gives a short definition and refers to the legal definition in the Act itself. It appears entirely reasonable that applications for individually commissioned dwelling should be in this category, although weight does apply to the provision of 3 dwellings to meet both this need and the 5-year supply need.
27. Looking at the 3 dimensions of sustainable development set out in Framework paragraph 8, the proposal would further the aims of the economic objective as the land has ready access to the town centre and a supermarket by footpaths, and the additional residents would help support the facilities and businesses there in line with the social objective. However, the environmental objective would not be met as the proposals would not protect the natural environment of the Area of Outstanding Natural Beauty.
28. In the balance, the proposal is not sustainable development due to the harm to the High Weald Area of Outstanding Natural Beauty and the presumption in paragraph 11 does not apply. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR