



Appeal Decision

Site visit made on 8 September 2020

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/C1435/W/20/3253541

Squires Farm Industrial Estate, Palehouse Common, Framfield TN22 5RB

- 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 Squires Development Ltd against the decision of Wealden District Council.
 - The application Ref WD/2019/2450/O, dated 4 December 2019, was refused by notice dated 3 April 2020.
 - The development proposed is 4No new-build dwellings.
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Decision

1. I allow the appeal and grant outline planning permission for 4No new-build dwellings at Squires Farm Industrial Estate, Palehouse Common, Framfield TN22 5RB in accordance with the terms of the application, Ref WD/2019/2450/O, dated 4 December 2019, subject to conditions 1) to 6) on the attached schedule.

Main Issue

2. The application was in outline with all matters reserved and the main issue is whether the site is a suitable location for further residential development having regard to policies on sustainable development.

Reasons

Policy and Preliminary Conclusions

3. Saved Policy GD2 of the Wealden Local Plan 1998 states that outside development boundaries, development will be resisted, while Policy DC17 states similar with regard to residential development. The Council will pursue sustainable development under Policy EN1. The Wealden District Council Core Strategy Local Plan 2013 contains Policies SPO1, SPO7 and SPO8 on managing countryside resources, encouraging reductions in the need to travel, and maintaining the network of villages to support day-to-day needs. The presumption in favour of sustainable development is set out in Policy WCS14.
4. The Council have referred to various policies in the National Planning Policy Framework, including paragraph 8 which states the three overarching objectives of sustainable development, paragraph 11 on the presumption in favour of sustainable development, paragraph 78 on rural housing, section 9 on promoting sustainable transport and section 14 on meeting the challenge of climate change.

5. The site is accessed through the entry to the commercial area of the industrial estate, and the Reason for Refusal describes it as being on the periphery of that estate. Whilst the commercial uses, stated to be in Use Class B2, are a significant feature of the environment, both in terms of the visual effect and the activity generated, there are 5 detached chalet dwellings at the far end of the access road and immediately adjoining the appeal site.
6. The Council explain that the site of those existing dwellings was occupied by an office building and that a prior approval application under Class O of Schedule 2, Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 was not resisted (Ref WD/2015/0364/PDJ). Class O permits change of use from offices to dwellinghouses, but subject to exceptions in O.1, conditions in O.2 and interpretation in O.3.
7. It is the case that other than those listed at O.2(1)(a) to (d) as they stood at the time of the application, the Council would have had limited grounds for resisting the proposal. However, transport considerations at O.2(1)(a) do apply, separate from the highway impacts. It also is noted that one of the objections to the appeal proposal is the proximity of uses that have the potential for statutory noise, dust or odour nuisance to arise from the day to day activities undertaken, an issue that could have militated against the permitted development under O.2(1)(d). That objection however did not feature in the Reason for Refusal.
8. Be that as it may, subsequent to the prior approval permission, an application was made, and express permission granted, for the 5 detached houses seen at the site inspection (Ref WD/2015/2056/F). The Council explain the circumstances for that grant of express permission, including a view that the replacement of the poor-quality office building would be beneficial to the rural Low Weald landscape. Although the Officer's Report to the current application describes the Class O permission as having established the principle of residential development, that is not wholly correct as it would not have been judged against the Development Plan under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
9. The permitted development would however have been a legitimate 'fall-back' position as 5 dwellings were capable of being provided on the land, having been found acceptable under the O.2(1) conditions. The Council also refer to a 'more flexible approach' being adopted at that time and also to further applications on the appeal site and to the north of the permitted 5 dwellings.
10. Taking all of this background information into account, there appears cogent reasons why, once the Class O permitted development had been allowed unopposed, the application for express permission was granted. These include the replacement of the poor-quality office building, with the inference that the standard of accommodation may have been similarly poor quality, having mind to condition O.2(1)(e) on the need for windows only having been added more recently. That decision would therefore have been taken on the balance of considerations including the 'fall-back'.
11. This leads to consideration of the planning use of the appeal site; the Council consider the use seen at the site inspection as unauthorised and refer to historic aerial photographs, expressing the view that the agricultural land shown previously had been encroached upon between 2006 and 2012. The appellant suggests that the use commenced more than 10 years ago, but no

application has been made for a Certificate of Lawful Development or Use. However, the appeal site was included within the red-line site boundary of the express permission for the 5 dwellings, shown as open space. Whilst not indicating that further residential development would be acceptable, that does appear to set the planning use.

Sustainable Development

12. The site is outside built development boundaries for housing but is not in truly open countryside due to the proximity of the significant built form of the commercial uses, as well as the 5 existing dwellings. The access road is wide and Palehouse Common Road has good visibility along its largely straight course with ready access to the services at Uckfield without needing to use the busy A22 to the south, which by-passes the town centre. Having regard to there being no Council transport and highway objections to the original 5 dwellings, the addition of 4 more would not cause harm and many destinations are within the highway authority's cycling distances. The removal of the office under the 5-dwelling scheme would have permitted a replacement with 9 dwellings according to the appellant's TRICs data, and that claim has not been substantially rebutted.
13. The addition of 4 dwellings would benefit the operation and sustainability of the 5-dwelling group through increasing the possibility of shared car trips and social interaction within the group and aiding the sustainable credentials of the hamlet thus formed. In addition, the recent move to homeworking, albeit forced on many by the Covid-19 pandemic and amid concerns over the effect on town centre economies, may not be fully reversed. The previous assumption that all members of the households may need to leave the site for work no longer exist, and the possibility of people working in the adjoining commercial units should not be discounted.
14. Whilst appearance and landscaping would be considered as reserved matters, the land should be considered visually as part of the previous development of 5 dwellings although no weight should be attached to any perceived improvement over the condition seen at the site inspection. Nevertheless, as an area of land influenced by the larger built form of the commercial units on the slightly higher ground to the west and south, and taken together with the established character and appearance of the 5-dwelling scheme, the addition of 4 further dwellings would be readily assimilated within the Low Weald landscape, and the small site area reduces the options for significant alternatives to the indicative layout.
15. The development would take over a part of the 5-dwelling scheme shown as open space. Whether the landscaping scheme sought in condition 2) to that 2015 permission included the appeal site is unclear, certainly it has not yet been carried out if it was, and that condition did not safeguard the area of open space to be kept as such. There would remain private gardens and the Council's Reason for Refusal does not allege over-development or loss of open space through the development of the proposed 4 dwellings.
16. The Officer's Report considered the situation with regard to the Ashdown Forest Special Protection Area and the Special Area of Conservation, stating that the site was outside the 7km zone and setting out the fate of the proposed Local Plan to 2028. The Inspector is the competent authority in appeal decisions, but

the conclusion is that an Appropriate Assessment is not required in this case and no harm would occur to the Special Area of Conservation.

17. The location of the site is not remote, due to the existence of other buildings and residential uses close-by and certainly not in the sense determined in the 'Braintree' judgments¹. The statement in paragraph 79 of the Framework that planning policies and decisions should avoid the development of isolated homes in the countryside is of limited applicability to this situation.
18. As a result, the harm is limited to that by reason of being contrary to Development Plan policies that seek to resist residential development outside development boundaries, while the effect on countryside resources is acceptable, the need to travel may be limited, with total vehicle movements being similar to the previous office use, and there are likely benefits to the social wellbeing of the existing residential development.
19. The Council are unable to demonstrate a 5-year supply of housing land as required by the Framework and the policies which are most important for determining the appeal are out-of-date. Paragraph 11 of the Framework and the 'tilted balance' is engaged, which states that in those circumstances, 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; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
20. On the first limb, the list of exceptions in footnote 6 do not apply, and on the second, the conclusion now is that the limited adverse impacts would not significantly outweigh the benefits of providing 4 additional dwellings to assist the supply, and that has been demonstrated in the Reasons for this Decision. The planning balance is that outline permission should be granted.

Conditions

21. The application is in outline with all matters reserved, and there is a need for the standard conditions covering the submission of reserved matters and the relevant time limits. The Council's suggested condition regarding the risk of land contamination is essential in view of the nature of the vehicle breaking and parts storage activities which were being carried out on the land, whether authorised or not.
22. Details of foul and surface water disposal should be presented as suggested, but there is a need for this information to be provided sooner than the suggested 'above ground level' trigger, particularly since the restriction on the use of pre-commencement conditions does not apply in the case of outline applications, as set out in section 100ZA(8) of the 1990 Act.
23. The Council also suggest a list of plans, but since the application is in outline with all matters reserved and drawing 2015/017/PL2E is clearly marked 'indicative', there is no need for such a condition.

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

Conclusions

24. The 'tilted balance' in paragraph 11 of the Framework is engaged due to the lack of a 5-year supply of housing and the limited adverse impacts would not significantly outweigh the benefits. The additional 4 dwellings would assist in meeting the economic objective of the Framework in providing land for housing, the social objective through consolidating the social wellbeing of the original 5 dwelling, and the environmental objective through making effective use of land. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) In the event that land contamination is found at the site at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, with report submitted to the local planning authority, and where remediation is necessary to address land contamination, a remediation scheme must be prepared and submitted to and approved in writing by the Local Planning Authority before construction works recommence after the finding of land contamination at the site.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared and submitted to the Local Planning Authority for approval.

- 5) No development shall take place until details of the proposed means of foul drainage disposal have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the completion or occupation of any dwelling on site, whichever is the sooner.
- 6) No development shall take place until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the completion or occupation of any dwelling on site, whichever is the sooner.