
Appeal Decision

Site visit made on 29 September 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/C1435/W/20/3254759

Saxon Court, Pound Green, Buxted TN22 4DT

- 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 Grangewood Health Care against the decision of Wealden District Council.
 - The application Ref WD/2019/1335/O, dated 11 January 2019, was refused by notice dated 15 April 2020.
 - The development proposed is outline application for the erection of 2 no. houses, alterations to access road and part demolition of redundant care home buildings, e.g. laundry, shed.
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Decision

1. I allow the appeal and grant outline planning permission for the erection of 2 no. houses, alterations to access road and part demolition of redundant care home buildings, e.g. laundry, shed in accordance with the terms of the application, Ref WD/2019/1335/O, dated 11 January 2019, subject to conditions 1) to 13) on the attached schedule.

Main Issues

2. The Officer's Report states that all matters are reserved, while the appellant's Appeal Statement says that '*the proposals also include access improvements*' and that the application was submitted with '*most matters reserved*'. Although there is not a need for a new access, improvements are shown on indicative drawings, including that of the access in the Transport Appeal Statement. The appeal will be determined on the basis of all matters being reserved for future consideration.
3. The main issues are therefore;
 - The effect of the proposal on the character and appearance of the High Weald Area of Outstanding Natural Beauty.
 - The effect of the proposal on highway safety.
 - The effect of the proposal on the Ashdown Forest Special Protection Area and Special Area of Conservation.
 - The planning balance, taking account of the countryside location and the supply of housing land.

Reasons

Character and Appearance

4. Saved Policy EN6 of the Local Plan provides for development within the High Weald Area of Outstanding Natural Beauty provided it conserves or enhances the natural beauty and character of the landscape. Core Strategy objective SPO1 seeks to protect the distinct landscape of the District. The '*Wealden Design Guide 2008*' is a Supplementary Planning Document and Chapter 2 Part 2 contains guidance on development within the High Weald.
5. Paragraph 179 of the National Planning Policy Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.
6. The site is an open area of land to the east of a pair of houses nearer the road and to the north-west of the substantial built form of the care home. It is well screened with a backdrop of trees and hedgerow along the northern boundary and the bend in the driveway obscures views from the road, which would in any event be fleeting. The site is not within the setting of any listed building nor in a conservation area and the effect on the wider Area of Outstanding Natural Beauty would be acceptable through the containment of the land and the limited contribution it makes as vacant cultivated grassland to the landscape character of the area.
7. Whilst indicative only, the likely layout of the site would sit well with that of the existing dwellings and the removal of the poor-quality brick shed associated with the care home would be a benefit, which could be secured by condition. The suggested removal of a laundry building at the rear of the care home however carries no weight.
8. The proposal would make good use of previously developed land which is apparently underused at present, since the care home has access to other areas within its extensive grounds, further from the access drive and in more secluded and private areas.
9. On this main issue, the proposal would accord with Policies EN6 and SPO1 as well as paragraph 179 of the Framework. The proposal would not erode the established landscape character of the High Weald or upset the rural character by introducing urban elements, nor adversely affect the skyline, matters of concern set out in the Supplementary Planning Document.

Highway Safety

10. The existing 2 houses and the care home make use of an access onto the A272 road. The care home is stated as having a capacity of 49 residents and requires 24 members of staff, not all of which would be on-site at any one time. 24 car parking spaces are provided for staff and visitors, in addition to which there is a delivery area to the rear. The appellant has supplied a Transport Statement and data that indicates a present 160 vehicle movements. While there is some difference of opinion over the effect of 2 new houses, the appellant stating 8 additional movements, the effect would not be substantially more than a 5% increase which given the usual variations in traffic flows is not a material increase.

11. The existing entry is constrained by vegetation, but some clearance could be undertaken and there are no records of accidents from the existing configuration and use. However, there is room for improvement and the appellant's Transport Statement sets out visibility distances and the time from which vehicles would be visible, from the speed information. The proposed widening and extending along the highway edge would provide a more positive entry and exit lane.
12. With regard to visibility, there is no concern over the sightlines to the south-west where the required 215m is achievable, and that is where traffic would be leaving the 40mph area. But, that to the north-east, where vehicles would be approaching on the national speed limit section of road and closer to the nearside as seen from the exit, the visibility is stated by the Highway Authority to be 112m, and that is the dimension referred to in their suggested condition.
13. The 85th percentile traffic speed data available is either within the 40mph section and during the changed patterns of travel brought about by the Covid-19 pandemic, or some way to the north-east and well within the national speed limit section. These latter result in a requirement for 130m desirable and 120m absolute minimum as stated in the Design Manual for Roads and Bridges. The appellant accepts that this minimum cannot be met, but says that the difference in time, admittedly under ideal conditions, would be in the order of 0.3 of a second.
14. Observations at the site entry over a period during the appeal site inspection noted that the geometry of the road and the bend to the north contribute to speeds below the 60mph maximum permitted and no difficulty was perceived or experienced in driving from the site westbound after the inspection.
15. The forward visibility for divers approaching from the north-east, of any vehicle exiting, is stated to be sufficient to allow a reduction in speed and having mind to the visibility at that point of the 40mph sign, that would be a reasonable assumption.
16. To conclude on this issue, the entry is not a new access, and the increase in vehicle movements over that already taking place for the care home and the 2 houses is limited and below 10%. With modifications secured by condition the proposal would accord with Local Plan Policy TR3 in not creating or perpetuating unacceptable traffic conditions, and providing a satisfactory means of access, while the Core Strategy Policy SPO12 requirement to achieve significant improvements in the safety records of Wealden's roads would not be jeopardised. With regard to paragraph 109 of the Framework, the impact on highway safety is not unacceptable and is not a reason to withhold permission.

Ashdown Forest

17. The site is within 7km of the Ashdown Forest Special Protection Area and Special Area of Conservation and would introduce additional residents to the location. Core Strategy Policy WCS12 on biodiversity makes reference to the Ashdown Forest. The Council have identified likely recreational pressure and notwithstanding the open land associated with the care home and the ready access to a footpath, there is a likelihood of future residents making use of the Forest.

18. The Inspector is the Competent Authority at appeal and a Habitats Regulation Assessment is required. The proposal is not directly connected with or necessary to the management of the protected site, and for the reasons set out above, the proposal is likely to have a significant effect on the interest features of the site, alone or in combination through recreational visits and use. In view of these findings, an Appropriate Assessment needs to be carried out. The risks could be satisfactorily mitigated through a mechanism to secure contributions towards Strategic Access Management and Monitoring, and Suitable Alternative Natural Greenspace and there is no need to continue with the Assessment.
19. To conclude, contributions towards mitigation are necessary to make the development acceptable and would be fairly and reasonably related to the scale and nature of the proposed development. As a result, the proposal would not adversely affect the integrity of the Special Protection Area and would accord with Core Strategy WCS12.

Planning Balance

20. The site is outside any development boundary and in the open countryside in policy terms. Local Plan Policy GD2 resists development outside boundaries, and Policy DC17 says the same with regard to residential development, while Policy EN1 concerns sustainable development. Core Strategy objective SPO1 sets out to manage countryside resources and Policy WCS6 states the rural areas strategy with paragraph 6.44 of the supporting text stating that outside the towns and the rural settlements identified for growth development will be restricted primarily to that required to meet an essential rural need, support rural diversification and sustainability of the countryside, promote tourism or enhance the countryside. Policy WCS14 states the presumption in favour of sustainable development.
21. The Reason for Refusal referred to paragraph 79 of the Framework which states that decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply. The meaning of the word 'isolated' in that context was test in the 'Braintree' judgments¹, and the proximity and visual effect of the 49-resident care home and the 2 existing houses preclude this site from being considered isolated.
22. However, paragraph 103 of that document states that the planning system should actively manage patterns of growth in support of these objectives; significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
23. The site is not isolated and there is a footpath link to Buxted with its train service to Crowborough, London and Uckfield, and there are facilities in the village also. Unlike the situation in October 2019 when an appeal for a single dwelling on Framfield Road was dismissed (Ref APP/C1435/W/19/3232260),

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

there has been a greater emphasis on working from home and that may not readily be reversed even when things return more nearly to normal.

24. The situation is therefore that the proposed 2 houses can be assimilated within the landscape, the site and the road network without harm, but the location is contrary to policies which seek to direct residential development to particular places. By joining an existing group of buildings in residential or institutional use, the possibility should not be discounted of shared journeys or of employment at the care home, and significant weight attaches to the improvements to the access onto the A272 as a benefit to the existing site and road users that would not otherwise be achievable.
25. The Council do not consider the provision of 2 houses a significant addition to supply, but paragraph 68 of the Framework states that small sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly.
26. The appellant has cited the use of finances to improve the care home as a benefit of the scheme, and whilst with the appellant being named as the company, this may well be the case, no mechanism has been put forward to ensure that this occurs and no weight can be attached to that matter.
27. However, the Council are unable to demonstrate a 5-year supply of housing land, the figure last reported standing at 3.67 years, which is a significant reduction on the required figure and even that is not a maximum. The policies which seek to restrict residential development in the countryside should be regarded as being out-of-date and the 'tilted' balance in paragraph 11 of the Framework is engaged.
28. This 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.
29. On the first limb, whilst the site is within the Area of Outstanding Natural Beauty listed in footnote 6, the effect determined in this Decision does not provide a clear reason for refusal, and on the second limb, the conclusion now is that the limited adverse impacts through the location would not significantly outweigh the benefits of providing 2 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

30. The Council have suggested conditions requiring tree protection measures, parking and turning details, foul and surface water design and a scheme for biodiversity enhancement. These are reasonable and necessary and whilst parking may be regarded as part of the landscaping reserved matter, the condition should make clear that the details should be submitted as part of that design. That condition obviates the need for the suggested Highway Authority conditions on parking and turning.
31. The Highway Authority have suggested a condition requiring the access to be constructed in accordance with an attached drawing, *'to the satisfaction of the*

Local Planning Authority'. With access as a reserved matter the full layout and construction specification would be submitted and should only be approved if satisfactory. The requirement should be that the approved layout and construction is in place prior to commencement of the development, in view of the need to accommodate construction traffic.

32. In addition to the suggested conditions, the findings of this Decision lead to the need for a condition to provide the Strategic Access Management and Monitoring and Suitable Alternative Natural Greenspace as mitigation for the effects on the Ashdown Forest, and to secure the demolition of the existing shed only, as a visual benefit that has been taken into account.
33. Generally, there is a need for some information to be provided sooner than the suggested '*above ground level*' trigger to achieve a holistic design, 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.

Conclusions

34. The proposal would cause no harm to the character and appearance of the High Weald Area of Outstanding Natural Beauty, and the effect on the Ashdown Forest Special Protection Area and Special Area of Conservation can be mitigated. With improvements to the access the development of 2 dwellings would not jeopardise highway safety and would bring about material improvements in the current situation of use by the care home and the 2 existing dwellings. In a local authority area that is not able to demonstrate a 5-year supply of housing land, the balance with regard to paragraph 11 of the Framework is that there are no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. For the reasons given above I conclude 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) The tree protection fencing shall be erected in accordance with the approved details, indicated in the Arboricultural Report date stamped 9 October 2019, before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site.
- 5) No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:-
 - (i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - (ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - (iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - (iv). No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 'Trees in Relation to Design, Demolition & Construction – Recommendations'.
 - (v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
 - (vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of BS5837:2012 'Trees in Relation to Design, Demolition & Construction – Recommendations'.
- 6) Details of parking facilities and turning spaces, to be provided within the site shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matter of landscaping, and the parking and turning areas shall be laid out in accordance with the approved details prior to the occupation of the associated dwellings and thereafter retained for that use and shall not be used other than for the parking and turning of vehicles.
- 7) 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 the related dwelling on site, whichever is the sooner.
- 8) 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 provided in

- accordance with the approved details prior to the completion or occupation of the related dwelling on site, whichever is the sooner.
- 9) No development shall take place until a scheme for the enhancement of the site for biodiversity purposes, in accordance with recommendations in the Preliminary Ecological Appraisal dated 9 October 2019 shall have been submitted to and approved in writing by the Local Planning Authority. The scheme of enhancements shall include timescales for implementation. The development works shall be undertaken in accordance with the recommendations in the Preliminary Ecological Appraisal and the scheme of enhancement works shall be carried out/implemented in accordance with the approved details.
 - 10) Neither of the dwellings hereby approved shall be occupied until the brick shed has been demolished, all materials have been removed from site and the land made good in accordance with details which are to be submitted and approved under the reserved matter of landscaping.
 - 11) Neither of the dwellings hereby approved shall be occupied until measures have been put in place to bring about the mitigation of the effects on the Ashdown Forest, through the provision of Strategic Access Management and Monitoring, and Suitable Alternative Natural Greenspace
 - 12) The details to be submitted under the reserved matter of access shall provide for visibility splays of 2.4m by 112m to the northeast and 2.4m by 215m to the southwest and construction in accordance with the Highway Authority's details. The improved access is to be constructed and available for use prior to construction of the remainder of the development and shall be maintained thereafter.
 - 13) No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with East Sussex County Council parking standards. The areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.