
Appeal Decision

Site visit made on 13 July 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/P1425/W/20/3265944

Land to the north of Theobalds Road, Burgess Hill, East Sussex RH15 0SS

- 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 R Mellett of Nova Developments against the decision of Lewes District Council.
 - The application Ref LW/20/0210, dated 2 April 2020, was refused by notice dated 17 September 2020.
 - The development proposed is the erection of three detached dwellings, with garages and associated landscaping.
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This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 01 September 2021.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is an edited version of that provided on the application form. This omits unnecessary reference to a previous application.
3. The appellant submitted a number of additional and revised plans as part of the appeal, together with other information. The Council has expressed its general dissatisfaction at the submission of evidence with the appeal which was apparently missing at application stage. However, except insofar as it claims that the Highways Authority (HA) has not been consulted, it has not objected to the material being taken into account. I note that when consulted at application stage, the HA registered no wish to comment. I further note that interested parties had the opportunity of an extended period within which to make comments on the appeal. The above being so, I am satisfied that no prejudice would arise from my determining the appeal in accordance with the revised plans and other information submitted by the appellant.
4. Arising from the above, the Council has withdrawn its objections relating to provision of a surface water drainage strategy, and to sewer network capacity. It also states that the submitted Construction and Environment Management Plan resolves its objection relating to environmental harm arising from access during construction. Therefore, I shall consider these matters no further.

5. A revised version of the National Planning Policy Framework (the Framework) was published during the course of the appeal. The parties were given the opportunity to comment on the relevance of any changes, and I have taken any comments into account in determining the appeals.

Main Issues

6. The main issues are:

- whether the site would be a suitable location for the development with regard to its effect on the character and appearance of the area, including whether the development would preserve the setting of a Grade II* listed building; and
- the effect of the development on the living conditions of occupants of Woodside with specific regard to outlook and privacy.

Reasons

Character and appearance

7. The Lewes District Local Plan Part 2 2020 (the LP2) defines 'planning boundaries', which serve to focus new development on the land within them. Policy DM1 of the LP2 restricts development outside these boundaries, stating that in such locations the distinctive character and quality of the countryside will be protected. The supporting text makes clear that this does not represent an absolute restriction on development, and indeed other policies provide scope for rural development. As the appeal site does not lie within a planning boundary, it is located within the countryside. No corresponding need for a countryside location for the development has been demonstrated. The development would therefore conflict with Policy DM1 of the LP2.
8. The Council has not clearly linked non-compliance with Policy DM1 with the various harms that it has identified. As set out within the supporting text of Policy DM1 however, the reasons for defining planning boundaries see character and appearance as an underlying theme. This reflects the policy wording itself, as set out above. In this regard the Council's first, second, third and sixth reasons for refusal are clearly relevant to this matter, and I shall therefore deal with them together in this context.
9. The appellant has additionally drawn attention to the Council's Interim Policy Statement for Housing Delivery (IPS) published in March 2021. This document identifies a range of considerations that will be taken into account in applying Policy DM1 in the absence of a 5-year housing land supply (5YHLS). In essence, these criteria seek to establish whether any harm would be caused by non-compliance with Policy DM1. As these again include an assessment of whether the development would respond sympathetically to the existing character and distinctiveness of the adjoining settlement and surrounding rural area, the IPS does not alter my approach to this matter, or indeed the overall requirement to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.
10. The site forms a large plot accessed off Theobalds Road, on the rural fringe of Burgess Hill. It is currently largely overgrown, though some tree cover has recently been cleared. For several decades the site previously accommodated a

small nursery, but this ceased operation some time ago. The site's more historic use was as farmland.

11. Travelling east towards the site, Theobalds Road is characterised by a varied assortment of housing, within which the lane, planting and the generally spacious layout provide a semi-rural, but nonetheless suburban character. The site represents a point of transition, beyond which the character of Theobalds Road increasingly reverts to that of a rural lane. This is appreciable despite the intrusive presence of a recent housing development on the opposite side of the road further towards the east. Indeed, woodland and open space more directly adjoin and lie adjacent to the site in the same direction, and onward travel along the lane and adjoining rights of way is into open countryside. Thus, whilst the site has little exposure within the broader landscape, and a close spatial relationship exists between it and developed plots towards the west, it is more readily perceived as forming part of the rural setting of the settlement. It is likely that this was also true when the site was in active use as a small nursery, given the non-domestic character of the use.
12. Within this context, Theobalds, a Grade II* listed building, stands roughly opposite the site. At Grade II*, Theobalds is a designated heritage asset of the highest significance. Here the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and the more important the asset, the greater the weight should be.
13. Insofar as it is relevant to this appeal the special interest and significance of the listed building resides in its historic function as a farmhouse, and its historic design and fabric. The latter principally consists of 2 ranges; one dated to the C17th or earlier which is of vernacular character, and one more formal of C18th date on a different alignment. Some associated former agricultural buildings survive, including a timber clad 'barn' on the frontage.
14. The historic functional character of the group of buildings at Theobalds remains discernible, however the historic setting of the farmhouse within agricultural land has been substantially eroded by modern housing developments. This loss of the broader agricultural setting of the group compromises an appreciation and understanding of the historic role, function and place of Theobalds within the landscape. In this regard it is notable that the site itself historically formed part of the agricultural land attached to Theobalds, even if its ownership changed some considerable time ago.
15. At present Theobalds is partly screened from Theobalds Road by a high hedge. It was not always so, and may not be in the future. Either way the barn abuts the lane, and the oldest part of the house, together with attached structures, is visible from the lane across a largely open section of the boundary towards the east. This is the point at which the access to Theobalds is currently located, immediately opposite the site.
16. In light of my assessment above, the way in which Theobalds is currently experienced within its setting varies depending upon the direction of travel towards it along Theobalds Road. Travelled in either direction however the appreciably undeveloped state of the site, and its rural edge character, provide an immediate frame of both visual and spatial reference. This is most apparent from the lane, and at the point of access to Theobalds. It is also apparent in views from within the grounds of Theobalds, and in some limited views from within Theobalds itself. Notwithstanding the fact that the site is not currently in

active agricultural use, its provision of a last visual and spatial link between the listed building and its historic rural setting means that it makes an important positive contribution to the significance of Theobalds.

17. The development would see 3 dwellings with garages constructed on the site. It is likely that all would be visible along the access, and that that at the front of the site would be most immediately visible from the lane. The result would be suburbanisation, thus completing the envelopment of Theobalds by suburban development. As this would clearly not conserve the contribution that the site makes to the significance of the listed building, the effect would be negative.
18. The appellant places emphasis on the extent to which intervisibility between the development and the listed building would or could be screened by vegetation. Here I appreciate that the same considerations informed the Council's past approval of housing on the land to the south and east of the listed building. This however led to the loss of rural setting in these directions, and harm now acknowledged. As considered above, the contribution that the site makes to the significance of the listed building, and the way in which it is appreciated, extends beyond what is visible through the windows of Theobalds. Moreover, a reliance on screening assumes that planting can or would be maintained in perpetuity, which, aside from biological matters outside human control, cannot be guaranteed.
19. The appellant has also drawn attention to the recently approved enlargement of a dwelling located opposite the listed building, and to the lack of any objection both to this and the appeal scheme from internal consultees. Be that as it may, the nature of the scheme opposite is different to that subject of the appeal, and a detailed analysis of the appeal scheme was provided by Historic England. The latter was ultimately adopted by the Council, and so it is the most relevant assessment in this case.
20. In view of my findings above the proposed development would harm rather than conserve the contribution that the site makes to the significance of the listed building. That being so, the setting of the listed building would not be preserved. With reference to the Framework, the harm caused to the significance of the listed building would be less than substantial. Such harm attracts considerable importance and weight.
21. My findings above indicate that the site's appreciably undeveloped character, and its visual and spatial relationship both with the broader rural setting of the settlement, and to the countryside at large, form key components of its value. In these regards the site also makes a positive contribution to the broader character, appearance and distinctiveness of the surrounding area. It logically follows that the proposed development of the site would again fail to sustain this positive contribution.
22. The appellant has drawn attention to the fact that the Council did not explicitly cite harm to the 'countryside' within its reasons for refusal. However, whilst reference to the scheme's 'wider domestic appearance' can be taken to imply much the same, the identification of harm in relation to the listed building can only be properly understood in the context of the site's rural character.
23. The decision notice otherwise identifies a failure of the scheme to reflect the pattern of development in terms of siting and layout. This consideration of the acceptability of the development relative to other development, was apparently

notwithstanding the Council's more fundamental objection to development of the site itself.

24. The proposed layout would see 3 dwellings accommodated through the depth of the site, whereas the prevailing pattern towards the west is for individual dwellings to be accommodated on plots to either side. Most plots to the west are however less deep than the appeal site, whilst the already subdivided plots of similar size adjacent each contain 2 dwellings together with substantial outbuildings. A third more densely developed example containing 3 dwellings also occurs further to the west. Variation therefore exists along Theobalds Road, relative to which the proposed development would find some reference.
25. Given the size of the site, the plots provided would each be fairly spacious. Though it appears that their size would fall towards the lower end of the range along Theobalds Road, this would not be sufficient to cause the proposed development to appear generally at odds.
26. The 3 dwellings would lack any substantial differences in design, and would be served by a common point of access. But though the Council has criticised the estate-like character created, amongst development by lining and viewed from Theobalds Road, it would again not be unique in these regards.
27. The Council has separately identified potential for harm in relation to loss of the vegetation along the front boundary of the site. This largely comprises an overgrown hedge. The appellant has however provided splay and tracking diagrams which demonstrate that vehicles could manoeuvre in and out of the site access, with adequate visibility provided in either direction, without any need for loss of vegetation. No harm would therefore arise in this regard.
28. Assessed simply in relation to other suburban development along and adjoining Theobalds Road therefore, the development would achieve integration without any harmful loss of boundary vegetation. It would nonetheless result in loss of the site's rural character and value, whose importance in this case is greatly amplified by the role it plays in the setting of the listed building. Considered on balance therefore, the development would have strongly negative effect on the character and appearance of the area, including through its failure to preserve the setting of the listed building.
29. I have found above that the scheme would cause less than substantial harm to the significance of the listed building and have attached considerable importance and weight to the harm that would be caused. In accordance with paragraph 202 of the Framework, it is necessary to balance this harm against any public benefits that the scheme would deliver.
30. The development would provide 3 dwellings within an accessible location. In this regard the Council currently lacks a 5YHLS. This was established within an appeal decision relating to land at Mitchelswood Farm issued in February 2021 and a change in status appears to have been confirmed within the subsequent IPS. I have not however been provided with a figure by the Council. Whereas the Inspector in the Mitchelswood Farm appeal found that the supply was 4.5 years, the appellant asserts that the current figure may be as low as 2.5 years.
31. Whether the supply is 4.5 years, 2.5 years or somewhere between, the scale of the contribution that 3 units would make both towards the shortfall, and boosting housing supply more generally, would be very small in scale. So too

therefore would any linked benefits to the broader economy generated both during and post-construction. As such, the public benefits of housing provision attract limited weight in favour of the development.

32. The appellant states that the development would help to enhance or maintain the vitality of a rural community. However, whilst the site may have a rural character, its location on land immediately abutting the wider developed area of Burgess Hill indicates that it would not deliver such a benefit. As such this consideration attracts no weight.
33. In summary I have attached limited weight to the public benefits of the scheme, which is insufficient to outweigh the harm that it would cause to the significance of the listed building. This provides a clear reason for refusing planning permission.
34. For the reasons outlined above I conclude that the site would be an inappropriate location for the development given the adverse effect it would have on the character and appearance of the area, including through its failure to preserve the setting of a Grade II* listed building. Aside from conflicting with Policy DM1 of the LP2 as set out above, and as further informed by the IPS, the scheme would otherwise conflict with Policy DM33 of the LP2 which states that development affecting a heritage asset will only be permitted where the proposal would make a positive contribution to conserving or enhancing its significance.

Living conditions

35. Woodside stands on the north half of the plot adjoining the site towards the west. The proposed dwelling labelled 'Plot 2' forms the basis of the Council's concerns. This would be located roughly parallel with the driveway access to Woodside, which lets onto a large hard surfaced parking area. Clearly, the outlook from these spaces would be less open than at present were Plot 2 to be built. However, given that a reasonable distance would lie between Plot 2 and the boundary, and given the functional nature of the adjacent space at Woodside, Plot 2 would not appear harmfully overbearing. This would be the case whether or not the boundary was planted as proposed, which would itself create a more closed outlook.
36. The main dwelling at Woodside is located further to the north than Plot 2. In this regard the Council has provided an inconsistent measure of the distance between, noting this as 32-33 metres in its officer report, and 14 metres in its appeal statement. The reason for this discrepancy is unclear. It appears to me however that the original measure is most likely to represent the minimum distance, representing a gap of not insignificant size.
37. Furthermore, though the Council's figures are presented as front to back distances, the 2 dwellings would not be parallel. Plot 2 would stand towards the southeast of Woodside, meaning that any view possible from the first-floor bedroom windows of Plot 2 towards the dwelling at Woodside would be both increasingly oblique, and over an increasing distance. In this regard it is likely that little or no view into the large garden to the rear of Woodside would be possible. No unacceptable erosion of the privacy of occupants of Woodside would therefore arise through overlooking.

38. The Council also states that perceived overlooking of Woodside would arise. My findings above however indicate that the circumstances which might reasonably and logically give rise to such a perception, would not exist.
39. At appeal, and with reference to its sixth reason for refusal, the Council has additionally stated that ongoing access to the site would cause harm through disturbance. However, this appears to have little relevance to the content of its sixth reason for refusal, and to the policies that it cites. In this regard it has not otherwise been explained how the use of Theobalds Road by a small number of additional vehicles would give rise to noise sufficient to disturb the occupants of the dwellings along it. Indeed, many are set sufficiently far from the frontage that it is likely that the minor increase in vehicular movements would be barely noticed, if at all.
40. For the reasons set out above I conclude that the development would not have an unacceptable effect on the living conditions of occupants of Woodside. The development would therefore comply with Policy DM25 of the LP2 to the extent that this requires that a development will have no unacceptable adverse impact on the amenities of neighbouring properties. Whilst the Council also cited Policy DM30 of the LP2, this is not applicable to the location in question.

Other Matters

41. At appeal, and with reference to its sixth reason for refusal, the Council has asserted that the development would have a severe impact on the road network. Again, this in fact appears to have little if any relevance to the content of its sixth reason for refusal, and to the policies it cites. It also does not reflect the Council's reasoning when determining the application, or any input from the HA. Indeed, in the absence of any evidence to the contrary, there is no reason to believe that the very small number of vehicular movements that would be generated by the development would have anything more than a negligible effect on the road network.
42. In view of the Council's 5YHLS position, my attention has been drawn to the tilted balance set out in paragraph 11 of the Framework. Having regard to footnote 7 of the Framework however, my findings in relation to heritage policy provide a clear reason for refusing planning permission. That being so, the tilted balance does not apply.
43. Surveys have shown the presence of low populations of slow worms and grass snakes on the site. Each is a protected species, upon which the development would inevitably have an adverse impact. A translocation strategy has however been proposed. Had I been minded to allow the appeal, it would have been necessary to consider this matter in further detail. However, as I am dismissing the appeal for other reasons it not necessary to consider it any further.
44. Interested parties have raised a range of additional issues that I have not covered above, and which were not the subject of any objection by the Council. Again, given that I am dismissing the appeal for other reasons there is no need for me to consider such matters.

Conclusion

45. The scheme would have an adverse effect on the character and appearance of the area, including by its failure to preserve the setting of a Grade II* listed building. As such it would conflict with the development plan. There are no

other considerations which alter or outweigh these findings. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR