



Appeal Decision

Site visit made on 21 February 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/C1435/W/21/3277136

Rockys Place, The Street, Arlington BN26 6RX

- 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 Ms Sheila Evans against the decision of Wealden District Council.
 - The application Ref WD/2020/2062/F, dated 9 October 2020, was refused by notice dated 27 April 2021.
 - The development proposed is construction of a two storey four bedroomed house and associated access road, parking and turning spaces.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) whether the proposal would contribute to a sustainable pattern of development having regard to accessibility to services and facilities; and
 - b) whether the scheme would be acceptable in relation to flood risk.

Reasons

Whether the proposal would contribute to a sustainable pattern of development

3. The settlement of Arlington has no development boundary within the Wealden Local Plan (1998) (WLP). Policies GD2 and DC17 of the WLP stipulate that housing development will not be permitted outside development boundaries unless it conforms with other policies in the plan. Paragraph 5.91 of the WLP lists those categories of development which are acceptable in principle outside development boundaries, and the specific local plan policy which applies to each. The proposal would not fall into any of these categories and therefore it would be in direct conflict with WLP Policies GD2 and DC17.
4. Policy WCS6 of the Wealden Core Strategy Local Plan (2013) (WCS) sets out the Rural Areas Strategy. This lists four types of settlement: Service Centre, Local Service Centre, Neighbourhood Centre and Unclassified settlements. The policy makes provision for at least 455 dwellings within the first three categories and specifies the scale of development to be allocated to each settlement. Arlington is classified within the hierarchy as an 'Unclassified settlement' and as such Policy WCS6 does not identify it as being suitable for housing growth.

5. The lack of a development boundary reflects the fact that Arlington is a small settlement containing relatively few properties. Existing residents have access to a church, public house and village hall, plus a local tearoom and farm selling produce. However, they must travel further afield for most everyday requirements, including shopping, schooling, employment, leisure and healthcare. There is no daily bus service, the only bus being on a Wednesday. Although it would be possible to cycle to Berwick railway station, the journey on foot would involve walking along narrow unlit lanes. The probability is that occupants of the proposed dwelling would be dependent on the private car, with the most likely destinations being Hailsham or Polegate which are several kilometres away.
6. I have taken account of policy in the National Planning Policy Framework (the Framework) that where there are groups of smaller settlements, development in one village may support services in a village nearby. Whilst I cannot rule out the possibility that occupants of the development may frequent places such as Berwick, Caneheath and Upper Dicker, larger settlements to the east are likely to attract the majority of trips. The availability of broadband and home delivery services does not justify a dispersed pattern of development – this relies upon the unrealistic premise that people will not leave their homes.
7. The appeal site is not isolated in the sense that it lies within a village. However, the rural location and lack of realistic alternatives to the private car mean that occupants of the proposed dwelling would have poor access to services and facilities. The appellant has offered to provide electric vehicle charging points within the scheme but for reasons I shall go on to explain, these may be liable to flood and moreover there can be no guarantee that future residents would choose to own zero emission vehicles. I therefore conclude that the proposal would not contribute to a sustainable pattern of development.

Whether the scheme would be acceptable in relation to flood risk

8. The proposed dwelling would be constructed in Flood Zone 1 and therefore its accommodation would be at low risk of flooding. However, a large portion of the site falls within Flood Zones 2 and 3 (medium to high probability of flooding). This includes the parking area and the sole access onto The Street. Photographs supplied by local residents demonstrate how this stretch of road has been the subject of extreme flooding from a local watercourse to the extent that it was impassable for most vehicles.
9. There would be no safe means of access or egress to the appeal site during these flood conditions. The appellant contends that this is not a significant issue on the grounds that occupants of the development would be sheltering within the dwelling. However, I do not consider this to be a sensible stance, given that residents would be trapped within their home with no evacuation route and no certainty over how long it would take for flood waters to recede.
10. Paragraph 162 of the Framework sets out the requirement for a sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Residential development is classified as a more vulnerable use within the Planning Practice Guidance¹ (PPG). The guidance does not differentiate for

¹ Reference ID: 7-066-20140306

circumstances such as this, where part of the site lies within Flood Zone 1. Paragraph 167 of the Framework sets out various criteria to apply where development is allowed in areas at risk of flooding. However, it makes clear that these do not obviate the need for the sequential test where applicable.

11. The proposed access and parking area are integral to the appeal scheme. Given that this development would take place within Flood Zone 3, the sequential test should be applied. The appellant provides no information in relation to the sequential test and does not challenge the Council's assertion that Arlington and the wider Housing Market Area contain significant amounts of land unconstrained by flood risk. On the evidence before me, I am satisfied that the sequential test is failed and that there are no overriding reasons to develop the site in the manner proposed.
12. The Environment Agency did not object to the proposals. Although the advice of this statutory consultee must be taken into consideration, the PPG makes clear that the local planning authority is ultimately responsible for deciding whether an application passes the sequential test.
13. There is no policy requirement to apply the exception test if the sequential test is not met. Nevertheless, for the avoidance of doubt, I do not consider that wider sustainability benefits to the community would outweigh the flood risk in this particular case. The second part of the exception test would also be failed on the basis that the scheme would not allow voluntary or free movement of people, or vehicular access for emergency services during a design flood².
14. My attention has been drawn to the fact that permission was granted for the conversion of Copyhold Barn to a dwelling. The vehicular access in that case also fell within Flood Zone 3 but I note from the photograph on page 7 of the officer report that it is on higher ground. The circumstances are not identical and I am not bound by the Council's previous decision in any event. I have determined the appeal on its merits.
15. The appellant has offered to provide a separate pedestrian access to the road and this could be within Flood Zone 1. No details have been provided and there can be no certainty that the works to a roadside bank would be achievable without harm to the character and appearance of the Arlington Conservation Area. Furthermore, interested parties would be prejudiced by the introduction of an access without public consultation. For these reasons, it would not be appropriate to secure the access by means of a condition.
16. To conclude, the proposal conflicts with national policy and guidance in relation to flood risk. This is a significant material consideration which weighs against a grant of planning permission.

Other Matters

17. The appellant makes reference in their evidence to the draft Wealden Local Plan, arguing that it proposed 5 dwellings in Arlington. I have not been given sight of the draft plan or its evidence base, but note that the document was withdrawn in 2019 without completing its examination stage. The draft plan has no formal status and I have therefore attached it very limited weight as a material consideration.

² PPG Reference ID: 7-039-20140306

Planning Balance and Conclusion

18. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites, with a figure of 3.28 years being cited in the officer report. The authority concedes that development boundaries will need to be breached in order to deliver the level of housing required. Given this admission, I have attached very limited weight to the site's location outside development boundaries. The conflict with WLP Policies GD2 and DC17 is not reason in itself to refuse planning permission.
19. Notwithstanding this, I have attached substantial weight to the conflict with the settlement hierarchy within WCS Policy WCS6. Arlington is an unclassified village within the hierarchy and occupiers of the proposed development would be unable to go about their everyday lives without undue reliance on the private car. This goes against the principles of sustainable development and is a material consideration of significant weight in the planning balance.
20. Paragraph 11 (d) of the Framework states that where the requisite five year housing land supply cannot be demonstrated permission should be granted unless: i. 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 ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. The failure of the scheme to adequately address flood risk engages the first limb of the paragraph 11 (d). Even if I were to have accepted the appellant's submissions on flood risk, the harm arising from the poor access to services and facilities would significantly and demonstrably outweigh the very modest benefits of delivering an additional new home, supporting local businesses and enhancing the vitality of the rural community. I therefore find that the proposal would not constitute a sustainable form of development in terms of the Framework, WLP Policy EN1 and WCS Policy WCS14. Although I have had full regard to the housing land supply position and the need to significantly boost the supply of homes, there are no material considerations of such strength as to justify a decision otherwise than in accordance with the development plan.
22. For the reasons given above, and having regard to all other matters raised, including the Barham³ and Woolpit⁴ appeal decisions and the benefits of bringing forward small sites⁵, I conclude that the appeal should fail.

Robert Parker

INSPECTOR

³ APP/W3520/W/18/3217448

⁴ APP/W3520/W/18/3194926

⁵ Framework paragraph 69