



Appeal Decision

Site visit made on 21 March 2022

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/P1425/W/21/3281707

Land north of Brickyard Lane opposite 'Namron', Brickyard Lane, South Chailey BN8 4AD

- 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 Brian Shaw against the decision of Lewes District Council.
 - The application Ref LW/21/0078, dated 5 March 2021, was refused by notice dated 30 April 2021.
 - The development proposed is construction of a two-bedroom, two-storey cottage (the second storey set within the roof space) with two on-plot parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal process, the appellant submitted revised plans numbered 1.1D REV.C and 1.1F1 REV B, which include the omission of a dormer and its replacement with a rooflight. As the revisions are minor, and as I do not consider that anyone's interests would be prejudiced, I shall consider the revised plans.

Main Issues

3. The main issues are the effect that the proposed development would have on:
 - the character and appearance of the surrounding area,
 - the living conditions of the future occupiers, regarding noise and disturbance
 - the sustainable use of minerals, and
 - biodiversity interests on and near the site.

Reasons

Character and appearance

4. The Development Plan includes the Lewes District Local Plan Part 1 Joint Core Strategy 2010-2030, the Lewes District Local Plan Part 2 Site Allocations and Development Management Policies (LP), and the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan 2017 (WMP). The appeal site is outside the development boundary of any settlement designated in the Development Plan, so it is, in policy terms, in the countryside.

5. The irregular-shaped site includes an area of land on the roughly north side of the narrow Brickyard Lane. The site rises gently from roughly south to north. It includes an area of rough grass partly edged by hedges, an access and turning space, and an area including sheds and a greenhouse that the Council says has been used as a residential garden. There is a loose-knit row of dwellings on the roughly south side of the lane but none opposite. On the north side, a largely continuous vegetated strip of land within the brickworks, which includes tall trees subject to a Tree Preservation Order, wraps around the back and parts of the sides of the site, with buildings and grounds at the brickworks beyond that. To roughly east, beyond the few trees, there are reed beds and a lagoon, also within the brickworks. So, although the site is not within open countryside, and some activities within the fairly well screened brickworks can be heard, the street scene on the roughly north side of the lane has a rural character and appearance.
6. The proposed dwelling would be sited close to its north boundary in the east part of the site. The site would be larger than those of some nearby dwellings, but its west part would be on the other side of the access and turning area, which would be kept available for manoeuvring vehicles, so its use would be less convenient than that of the garden by the dwelling. The garden areas roughly east and south of the dwelling would be modest, but there would be sufficient room for its occupiers to, say, sit outside, dry washing, and tend a few plants, so its outdoor space would be useable.
7. Even so, as the proposal would be the only dwelling on the north side of the lane, it would be at odds with the established pattern of development. Because the dwelling would be almost entirely surrounded by tall vegetation including tall hedges by the lane and the access, and because there would be little outdoor space around it, the dwelling would look harmfully squeezed-in. Whilst the dwelling would not be so close to the slightly lower lying dwellings at Namron and Norcot on the opposite side of the lane that it would harm their occupiers' living conditions, the bulk of its built form and its incongruous siting would be harmfully out of keeping with the mostly undeveloped rural character by the north side of the lane.
8. It has not been shown that the dwelling would need to be in the countryside, or that it would be consistent with any other Development Plan policy. So, the scale and mass of its built form, and hard surfaces and domestic paraphernalia associated with the dwelling, such as parked cars, play equipment, washing lines, and so on, over and above the existing low-key garden on part of the site, would harm the intrinsic character and beauty of the local countryside.
9. Therefore, I consider that the proposal would harm the character and appearance of the surrounding area. It would be contrary to LP Policy DM1 which aims to protect the distinctive character and quality of the countryside and to only permit development where it is consistent with Development Plan policy or the need for a countryside location has been demonstrated, and LP Policy DM25 which seeks high quality development that contributes to local character, as well as the National Planning Policy Framework (Framework) which aims for development to be sympathetic to local character.

Living conditions

10. Noise sources at the brickworks include those associated with the brickworks factory and clay winning operations. The proposal would be closer than the

nearby dwellings to existing noise generating sources at the brickworks, including the use of its factory and its raw materials storage areas. Whilst the dwelling would not include habitable rooms facing towards the factory, the appellant says that a noise assessment, and implementation of measures, such as double glazed windows, and acoustic fencing, could be dealt with by conditions. However, as no acoustic assessment for the proposal has been put to me, and as the threshold for statutory nuisance is higher than that for occupiers' living conditions in terms of planning, there is insufficient evidence to show that the proposed noise attenuation measures would provide acceptable mitigation during the day and at night, indoors and outdoors, including if the future occupiers were to open windows or doors.

11. Moreover, the Framework advises that, existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the agent of change should be required to provide suitable mitigation before the development has been completed. As the dwelling would be closer to the consented minerals extraction boundary than any nearby dwelling, there is also insufficient evidence to show that the living conditions of its occupiers would be acceptable in the future.
12. Whilst there are existing dwellings on the opposite side of the lane, including the dwellings at Southdown View and Brickyard House, they are and would be further from present and future noise sources at the brickworks site, and most have private outdoor spaces on the far sides of their homes that are partly shielded by existing development. Orchard Cottage is set back from the lane, and as part of its grounds is on the far side of that dwelling, its occupiers can choose to use that instead of the appeal site as a garden for sitting outside. By contrast, the future occupiers would only have the shallow strip of garden by the lane, where their dwelling would partly shield noise and disturbance from the brickworks site. Moreover, because its effects on matters including biodiversity connectivity and character and appearance may not be acceptable, acoustic fencing could not reasonably be dealt with by condition.
13. Arboricultural Practice Notes APN6 explains that trees and shrubs can assist in mitigating noise, but it advises that, amongst other things, the noise barrier should be planted as close to the noise source as possible, gaps should be avoided, and wide belts of high densities are required to achieve significant noise reductions. So, due to the siting, character, and density of the existing vegetation by the site, it would not be likely to materially reduce existing noise from the brickworks. Also, as most of that vegetation is not within land controlled by the appellant, and as plants have finite lives, it could not be relied upon to mitigate noise in the long term.
14. Thus, I consider that there is insufficient evidence to show that the proposal would not harm the living conditions of the future occupiers, regarding noise and disturbance. It would be contrary to LP Policy DM20 which aims to resist development that would be adversely affected by unacceptable levels of noise, LP Policy DM23 which aims to only permit residential development where it can be demonstrated that its users will not be exposed to unacceptable noise disturbance from existing and future uses, and the Framework which seeks a high standard of amenity for existing and future users.

Minerals

15. Although it is not within the brickworks site next door, the site is located within a Minerals Safeguarded Area (MSA) designated in the WMP as Chailey Brickworks, Chailey. WMP Policy SP 8 states that proposals for non-minerals development on or near the MSA that would sterilise or prejudice the extraction of the mineral resource, or result in incompatible development, will be strongly resisted. The MPA (mineral planning authority) will consider whether the proposed development is in accordance with a site allocation in an adopted local plan or neighbourhood plan; the minerals development is no longer needed; the proposal is of a temporary nature; or, the capacity of the minerals development can be relocated elsewhere. None of these exceptions is relevant.
16. The Framework explains that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy, and goods the country needs. Since minerals are a finite resource, and can only be worked where they are found, best use needs to be made of them to secure their long term conservation. Planning policies should, amongst other things, safeguard mineral resources by defining MSAs, and adopt appropriate policies so that known locations of specific minerals are not sterilised by non-mineral development where this should be avoided. Great weight should be given to the benefits of mineral extraction, including to the economy. Moreover, the Framework's Glossary defines an MSA as an area designated by MPAs which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.
17. The brickworks is a significant local employer that produces and transports commercially important building materials and specialised brick products to housing and construction markets locally and nationally. Due to the siting of the dwelling, close to a consented (clay) extraction boundary on roughly 3 sides of the site, and due to the noise and disturbance associated with the business, including winning the minerals, quarry operations, manufacturing bricks, and transporting them, the proposal would be likely to prejudice the future minerals operation and development of the brickworks. Because its occupiers would live there, the dwelling would be an incompatible development within the MSA. It would be contrary to the Framework's aim to not permit other development in MSAs if it might constrain potential future use for mineral working.
18. As most nearby dwellings in Brickyard Lane are outside the MSA and are separated from it by Brickyard Lane, and the dwellings at Southdown View and Brickyard House are outside and set back from their boundaries with the MSA, their site specific circumstances differ from those of the proposal.
19. Thus, I consider that the proposal would not facilitate the sustainable use of minerals. It would be contrary to WMP Policy SP 8 and the Framework.

Biodiversity interests

20. The appellant's Preliminary Ecological Appraisal (EA) recognises that because the site is within Network Enhancement Zone 2, opportunities for ecological enhancement should be prioritised. The EA explains that the site is a domestic garden and that its key ecological features, including connectivity to an ecological corridor leading to areas of ancient woodland, log piles and compost heap, potentially support a variety of fauna species.

21. The site is considered to have potential for use by invertebrates, amphibians, reptiles, nesting birds, bats, badgers, dormice, and hedgehogs. Some ecological features would be lost during development, but as the features of interest are mainly man made, they can be replicated and enhanced within the proposal. The EA recommends mitigation measures in relation to trees and hedgerows, invertebrates, amphibians, reptiles, birds, bats, badgers, and other protected and notable species. The species referred to in the Council's statement are dealt with in the EA, and the appellant's tree survey of November 2020 includes details of their root protection areas. No further ecological surveys were recommended at this stage.
22. So, if the proposal were to be otherwise acceptable, subject to the imposition of suitable conditions to deal with ecological protection and avoidance, mitigation, compensation, and enhancement, including measures to safeguard the health and longevity of the nearby trees, the proposal would not be likely to adversely affect biodiversity interests on or near the site. It would satisfy LP Policy DM24 which aims to protect biodiversity.

Other matters and planning balance

23. Whilst pre-application advice was sought, it advised that responses are an officer opinion only and not binding on any future decision of the Council. The proposal seeks to resolve local concerns about the access and turning space within the site, but highway safety was not a concern of the Council in its reasons for refusal, and I see no reason to disagree. The appellant has suggested several planning conditions, which aim to make the proposal acceptable, but insofar as they relate to the first 3 main issues, they would not be enough to overcome the harm.
24. As the Council cannot demonstrate a 5 year supply of deliverable land for housing, the Framework's presumption in favour of sustainable development is engaged. The shortfall in housing land supply is significant, the welcome new home would not be isolated, and amongst other things, it would provide jobs during construction and its future occupiers' likely support for local shops and services. However, as the adverse impacts identified in the first 3 main issues would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, planning permission should not be granted.

Conclusion

25. I have found that the proposed development would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.
26. For the reasons given, the appeal should be dismissed.

J Reid

INSPECTOR