



Appeal Decision

Site visit made on 4 April 2022

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2022

Appeal Ref: APP/C1435/W/21/3273856

Land adjoining 10 Browns Path, Uckfield TN22 1LH

- 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 Chris Smith against the decision of Wealden District Council.
 - The application Ref WD/2020/2112F, dated 15 October 2020, was refused by notice dated 19 March 2021.
 - The development proposed is for a new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published a revised *National Planning Policy Framework* (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.
3. In certain circumstances a proposal can be amended through revised plans during an appeal. In this case the appellant wishes to replace the submitted drawing 2020.007.PL2 with drawing 2020.007.PL3. The revised drawing shows a re-positioning of the 'red-line' of the appeal site. As such, the proposal now includes the path running along the west side of the appeal site. In my view, notwithstanding the Wheatcroft principles¹, as this change is relatively minor the appeal can be determined on the basis of the revised plans. I have proceeded accordingly.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area,
 - protected trees, and;
 - the Ashdown Forest Special Protection Area (SPA)

Reasons

Character and appearance

5. The appeal site is located within 7km of the SPA and is a parcel of uncultivated land scattered with a number of trees to the rear of Nevill Road that is found to the side of a hedged footway adjacent to 10 Browns Path.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL, 1982, P37)

6. The footway provides access to the sloping appeal site via a wooden gate on the left-hand side as the path runs down from Nevill Road to Hempstead Lane. The character of the built environment in the surrounding area is typified by established two-storey, semi-detached and terraced, brick and tile dwellings with landscaped gardens to the front and back, some with parking or garages to the rear.
7. The proposal is to construct a two-storey, three-bedroomed dwelling on the appeal site that would face onto Nevill Road behind a parking and turning area. The proposed dwelling would be set into the ground and there would be a lower-level patio area to the rear that would be adjacent to Hempstead Lane.
8. The development is located in an established residential area which is known as the Manor Park Estate. Therefore, the general principle of development on the appeal site is not at odds with the surrounding area.
9. However, notwithstanding the absence of a specific requirement by the Council for a minimum garden space for new developments, the proposed garden for the new dwelling would not only be eroded by the on-plot parking and turning area, but also be surrounded by trees, hedging and other vegetation.
10. As a result the garden area that would remain for the future occupiers of the family-sized dwelling would be very limited for the purposes of, for example but not limited to, small scale gardening, sitting-out, children playing and drying laundry. Moreover, irrespective of the boundary-facing lower patio area, the orientation of the site and the proximity of the surrounding trees is likely to make the garden a gloomy place to linger.
11. Furthermore, whether a future occupier/s would prefer to have the security of a hedged boundary to the footway and a smaller garden or not, the fact remains that this constricted arrangement for the appeal site would be at odds with the relatively spacious landscaped gardens and the parking and garaging provision associated with the surrounding dwellings on Manor Park Estate.
12. As such, I conclude that the cramped proposal would be incongruous with the surrounding area and harm the character and appearance of the area.
13. Consequently, I find that the proposal is contrary to saved Policy EN27 of the adopted Wealden Local Plan 1998, (WLP) Spatial Planning Objective SPO13 and Policy WCS14 of the adopted Wealden Core Strategy Local Plan 2013, (WCS) as supported by the Wealden Design Guide 2008, which say amongst other things, that the development of high quality, safe and attractive living environments for communities will be encouraged, and the requirements of Paragraph 130 (c) of the Framework which is clear that development should be sympathetic to local character and history, including the surrounding built environment and landscape setting.

Protected trees

14. The appeal site is subject to a Tree Preservation Order. I noticed at my site visit that the site has a number of modest fruit-bearing and Cypress-type trees. I concur that these trees could be reasonably replaced/offset by the conditioned provision of new native hedging and other planting.

15. However, I cannot come to the same conclusion for the oak trees known as TP14 and TP15 that are located in the northern corner of the appeal site. These mature trees add some considerable verdant quality and attractiveness to the plot.
16. Moreover, while the appellant contends within his Arboricultural Impact Assessment (AIA) that the proposal would not detrimentally effect the Root Protection Areas (RPA) of these two trees, for example, through the use of a no-dig or reduced dig method of construction and permeable surfacing, or the acceptance of relevant tolerances contained within BS 5837:2012, the fact remains that the AIA relates to a previous proposal for the site.
17. Therefore, I have no convincing evidence before me to persuade me that the footprint of the proposed house in this case would avoid the RPA or not. My opinion is reinforced by the relative proximity of trees TP14 and TP15 to the parking and turning area at the northern end of the proposed development.
18. In addition, as trees TP14 and TP15 are likely to shade the garden at certain times of the day or year, produce considerable leaf-litter onto the proposed garden area and parked cars, as well as give concern for risk to life at times of high wind, they are likely to come under threat for felling or pruning by future occupiers.
19. Consequently, if trees TP14 and TP15 were to be removed or reduced following pressure on the Council from the occupiers of the new dwelling, the verdant qualities of the appeal site would be permanently eroded.
20. Therefore, taking a precautionary approach, I conclude that the proposal would not meet the aims of SPO1, WCS12 and WCS14 of the WCS, saved Policies EN12 of the adopted WLP, which require that the Council will seek to retain and enhance the contribution of trees and woodland areas to the landscape character of the district, including the amenity value of trees in built-up areas, and Chapter 15 of the Framework when read as a whole.

SPA

21. The appeal site is located in the SPA and is therefore, subject to the Habitat Regulations which protect the SPA. If I had come to a different conclusion, it would have been necessary for me as a competent authority to undertake an 'Appropriate Assessment' and the likely effectiveness of any mitigation measures, including the certainty or necessity of an agreed S106 agreement or a relevant condition being forthcoming.
22. However, notwithstanding the two schemes² that the appellant has brought to my attention in support of his case in respect of the SPA mitigation requirements, as I have found against the appellant on the main issues, and therefore planning permission is to be refused, this matter need not be considered any further in this case.

² APP/C1435/W/20/3249689 and APP/C1435/W/20/3254759

Planning Balance

23. The Council cannot demonstrate a five-year housing land supply, as such Paragraph 11 (d) of the Framework is engaged. However, while I acknowledge that the proposal would result in some limited economic, social and environmental benefits, including the provision of one new dwelling, the provision of new hedging and planting and the resurfacing of the adjacent path by condition, I find the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

Conclusions

24. For the reasons given above, I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR