

Appeal Decision

Site visit made on 9 March 2022

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2022

Appeal Ref: APP/Y9507/W/21/3280944

Land Adjacent Apple Acre, Plantation Road, Hill Brow, Liss GU33 7QB

- 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 L Lee against the decision of South Downs National Park Authority.
 - The application Ref SDNP/20/05646/FUL, dated 2 December 2020, was refused by notice dated 26 April 2021.
 - The development proposed is described as "Proposal for the erection of a single storey dwelling bungalow and carport with associated access and landscaping".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published after the determination of the application. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment on this matter as part of the appeal process, and I have had regard to the revised Framework in determining this appeal.
3. A Unilateral Deed of Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), signed and dated 22 February 2022, was provided during the course of the appeal. The Planning Obligation would secure a financial contribution towards the provision of cycle storage facilities at Liss Railway Station, which I shall return to later in this decision.

Main Issues

4. The main issues are:
 - Whether the proposal would be suitably located, having regard to national and local planning policies, which seek to restrict residential development in the countryside;
 - The effect of the proposal on the character and appearance of the area, included in respect of protected trees;

- Whether the proposal would provide satisfactory living conditions for future occupiers of the development, having particular regard to outlook and privacy; and
- The effect of the proposal on protected species.

Reasons

Location

5. Policy SD25 of the South Downs Local Plan¹ (SDLP) lists the towns and villages situated within the National Park area, where development proposals are considered acceptable, subject to a number of criteria. The supporting text to Policy SD25 explains that these settlements have been identified, having regard to their future sustainability, in terms of their facilities and services, but also their form and character within their landscape context.
6. Outside of settlement boundaries, development is only considered permissible in exceptional circumstances. Similarly, Policy Liss 1 of the Liss Village Neighbourhood Development Plan 2011-2028 (Liss NP) states that outside the settlement policy boundary, development proposals will only be permitted where there is a genuine and proven need for a countryside location in accordance with countryside policies of the development plan.
7. The appeal site comprises an area of undeveloped land located within the small village of Hill Brow. It lies outside the settlement boundary of Liss, which is not allocated for development or safeguarded for the use proposed as part of the Development Plan. No substantive evidence has been presented to demonstrate that there is an essential need for a countryside location. Moreover, the proposal does not include the provision of community infrastructure, and would not constitute an appropriate reuse of a previously developed site.
8. The appeal site does not appear to be sustainably located, which means that future occupiers of the development may need to travel further afield to access most of the local services and facilities associated with day-to-day living. Plantation Road is a relatively narrow and partially unmade road, with no continuous footway and/or cycle path. Overall, and in the absence of substantive evidence to the contrary, I find it highly likely that, taking into account of the site's location in relation to the existing network and settlements, future residents would, for the majority of trips, rely heavily on the private car, which is the least sustainable mode of transport.
9. The appellant would be willing to provide a financial contribution towards the provision of cycle storage facilities at Liss Train Station which, as detailed above, would be secured through the completion of a Planning Obligation. However, it remains unclear, having regard to the available information, whether there is a clear need for such infrastructure or a specific scheme which the contribution would provide for, and how it was calculated. I therefore consider that the planning obligation would not be directly related to the development, and fairly and reasonably related in scale and kind to the development, which would be contrary to the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (as amended).

¹ Adopted 2 July 2019.

10. The appellant has referred to a number of residential development schemes which have previously been approved within proximity to the appeal site. However, I do not have the full details of the circumstances that led to these particular schemes being accepted and cannot therefore be certain that they represent a direct parallel to the proposal before me, notably in respect of national and development plan policy.
11. For the foregoing reasons, the proposal would not be suitably located, having regard to national and local planning policies, which seek to restrict residential development in the countryside. It would therefore not constitute a sustainable form of development, contrary to Policies SD1 and SD25 of the SDLP and Policy Liss 1 of the Liss NP.

Character and appearance

12. The appeal site comprises an area of undeveloped land, which previously formed part of the garden area of Apple Acre and was once used as a kitchen garden for Malvern House (now known as Monks Hatch). The site forms part of a residential area predominantly characterised by dwellings of varying sizes and designs, set within reasonably spacious plots. The informal arrangement of the buildings, low density and established vegetation give the area a distinctive spacious and pleasant semi-rural feel, to which the appeal site makes an important contribution, by reason of its undeveloped appearance.
13. The effects of introducing residential development onto the site have previously been considered as part of an appeal in 2009 (APP/M1710/A/08/2081229), the Inspector considering that "the overall proposal, including the driveway and garage, would change the nature [of the site] into that of a developed plot", and that there is sufficient merit in retaining the site in its present form to outweigh the benefit of its use for housing".
14. Plantation Road has been described as a residential road with varied boundary treatments and vegetation obscuring the dwellings. Despite the level of screening provided by the wall, the shape and constrained size of the plot would offer relatively limited scope to create the luscious verdant setting which is found elsewhere in this area.
15. The appellant has sought to address the concerns raised as part of the previous appeal. However, the proposal would still constitute a significant intensification of development on the site, not only in terms of the massing and footprint of the dwelling and car port, but also the area of hardstanding required for the construction of the driveway.
16. The new dwelling would be sited within proximity to two of the site's boundaries, whilst the window serving bedroom 2 would look directly onto the proposed car port. The proposed layout and siting of the dwelling suggest that the site may not be large enough to accommodate a dwelling of this size, particularly in the context of the prevalent pattern of development in the area. As a result, the development would diminish the site's contribution to its surroundings, whilst eroding the spacious character of this semi-rural area.
17. My attention has been drawn to an appeal (APP/M1710/A/08/2072264) which was allowed in Rowlands Castle. However, this decision is of limited relevance to the proposal before me, particularly as it relates to a site located some distance away from the appeal premises.

18. The site area includes a Sweet Gum (*Liquidambar Styraciflua*), which is protected by a Tree Preservation Order (TPO) and was planted to replace an earlier tree covered by a TPO. Although the appellant suggests that the Sweet Gum would be retained as part of the development, this is not consistent with the submitted Arboricultural Survey Implications Assessment & Arboricultural Method Statement, which recommends the removal of this tree to facilitate the construction of the driveway.
19. The Authority raises no objection to the removal of this protected tree, which is relatively young, subject to being replaced by an adequate specimen, and there are no reasons for me to disagree with this approach. However, other than suggesting that it could be replaced by a named native species, the appellant has provided limited information regarding the proposed replacement tree and to indicate where it would be planted. In the absence of more detailed evidence in this regard, I am unable to fully assess the effect that this would have on the character and appearance of the area, which adds to my concerns in respect of the proposal.
20. The appeal scheme would cause unacceptable harm to the character of this area, contrary to Policies SD4 and SD5 of the SDLP, Policies Liss 4 and Liss 9 of the Liss NP, Policy 1 of the South Downs National Park Management Plan 2014, paragraph 130 of the Framework and the English National Parks and the Broads: UK Government Vision and Circular 2010. Amongst other things, these require development proposals to adopt a landscape-led approach and respect the local character, through sensitive and high quality design that makes a positive contribution to the overall character and appearance of the area.

Living conditions

21. The two-storey property known as Apple Acre is sited within proximity to the boundary which it shares with the appeal site. The proposed dwelling would be constructed at sufficient distance away from Apple Acre, which would ensure that this neighbouring property does not appear overbearing to future occupiers of the development.
22. However, the North-Eastern elevation of Apple Acre includes a number of first floor windows, one of which serves a habitable room. Regardless of its size, this opening would enable the occupiers of Apple Acre to overlook, and from a modest distance, the private garden area associated with the new dwelling. The overlooking and perceived sense of being overlooked would be detrimental to the living conditions of future occupiers of the development, by adversely affecting their enjoyment of their private amenity space. The height of the existing close boarded fence would not prevent overlooking from a first floor window, and this issue could not in my view be mitigated by existing additional planting, which would inevitably take a considerable length of time to mature before it could provide any effective screening.
23. Given the above, the appeal scheme would not provide a satisfactory living environment for future occupiers of the development, having particular regard to privacy. It would consequently fail to accord with the design aims of Policy SD5 of the SDLP and paragraph 130 of the Framework, which seek to ensure that development proposals create places with a high standard of amenity, and provide high quality outdoor amenity space appropriate to the needs of their occupiers or users. There would however be no conflict with

Policy SD54 of the SDLP, insofar as it primarily focuses on pollution and air quality issues associated with new development.

Protected species

24. The appeal site lies within proximity to Rake Hanger Site of Special Scientific Interest and consists of acidic grassland which, as detailed within the Preliminary Ecological Appraisal² (PEA) submitted by the appellant, contains habitat that may be suitable for common garden bird species and had moderate potential to support reptiles. The PEA recommends a number of precautionary mitigation measures and enhancement opportunities in respects of birds and roosting bats, as well as further survey work to confirm the presence or likely absence of reptiles on site.
25. As detailed within the Reptile Survey Report³ (RSR), the surveys which were undertaken between July and September 2021 found no evidence of reptiles. Having regard to the available evidence, there is no reasonable likelihood of reptiles being present on site. Subject to the implementation of mitigation measures and enhancement opportunities, it is therefore unlikely that the appeal scheme would have a harmful effect on protected species. Accordingly, I find no conflict with Policy SD9 of the SDLP, Policy Liss 5 of the Liss NP, Policy 5 of the South Downs National Park Management Plan 2014 and paragraph 180 of the Framework, which notably require development proposals to conserve and enhance biodiversity.

Other Matters

26. No concerns have been raised by the Authority regarding the effect of the proposal on the landscape character of the South Downs National Park, and on the South Downs International Dark Sky Reserve. Based on the available evidence, there are no reasons for me to disagree with this view.
27. The appeal site lies within proximity to the Wealden Heaths Special Protection Area (SPA) Phase II, which is recognised as an internationally important wildlife site. Residential development is thought to have a likely significant effect on the integrity of the SPA (either individually or in combination with other plans and projects). The Authority has considered the Habitats Regulations Screening submitted by the appellant and is satisfied that no mitigation is required in this particular instance.
28. As the appeal is being dismissed on other substantive grounds, this is not a matter which needs to be addressed further here. That said, had the development been considered acceptable in all other respects and whilst I have had regard to the comments provided by the Authority, I would have sought to explore the necessity for undertaking an Appropriate Assessment, to ensure the proposal's compliance with the Habitats Regulations.

Conclusion

29. The appeal proposal would provide a dwellinghouse for the appellant and its family, and I note that the scheme seeks to introduce a number of improvements, for example by replacing the existing gates. However, these considerations are outweighed by the conflict with the development plan and

² The Ecology Co-op, Project No: 4368 (dated 27 July 2021).

³ The Ecology Co-op, Project No: P4368 (dated 9 September 2021).

the harm which would result from the proposal. There are no material considerations, which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR