



Appeal Decisions

Site visit made on 6 July 2022

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2022

Appeal A Ref: APP/C1435/W/21/3277327

Moorings High Street, Buxted, Uckfield TN22 4JU

- 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 Verizun Land and Development Ltd against the decision of Wealden District Council.
 - The application Ref WD/2020/0748/F, dated 9 April 2020, was refused by notice dated 22 December 2020.
 - The development proposed is Demolition of existing garage and outbuildings, alterations to existing access and erection of 6 no. dwellings and garages.
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Appeal B Ref: APP/C1435/W/21/3281167

Moorings, High Street, Buxted, Uckfield TN22 4JU

- 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 Verizun Land & Development Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/0641/F, dated 13 March 2021, was refused by notice dated 23 July 2021.
 - The development proposed is Demolition of existing garage and outbuildings, alterations to existing access and erection of 3 no. dwellings and garages.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. During the course of the planning application in respect of Appeal A, the number of dwellings proposed on the site was reduced from 7 to 6. The description of proposed development above reflects this change. The Council determined the planning application on this basis, and I shall base my assessment of the proposal likewise.
4. During the course of the planning application in respect of Appeal B, the number of dwellings proposed on the site was reduced from 4 to 3. The description of proposed development above reflects this change. The Council determined the planning application on this basis, and I shall base my assessment of the proposal likewise.

5. During the course of the appeal in respect of Appeal A, the appellant submitted a *Noise Impact Assessment of the Proposed Access Road*¹ (NIA). The Council has indicated that its concern relating to noise and disturbance caused by the use of the proposed access road has been satisfactorily addressed. I will return to this matter later in these decisions.
6. Unilateral undertakings (UU) in respect of each appeal were submitted with the appeals dated 25 January 2022 which would make financial contributions towards mitigation measures in respect of the increased recreational pressures that the proposals would have on the integrity of the Ashdown Forest Special Protection Area (SPA). The Council has indicated that its concerns in respect of the SPA have been satisfactorily addressed in both appeals. I will return to this matter later in these decisions.

Main Issues

7. The main issues in both appeals are the effect of the proposal on:
 - the character and appearance of the area, and
 - the living conditions of nearby occupiers, with particular regard to privacy and noise.

Reasons

Character and Appearance

8. The appeal site is located within Buxted village where there are a range of services and facilities. It comprises a large, detached house with a detached garage/storage building to the side, set in a substantial plot. The host property is located within the defined development boundary for Buxted, but much of its rear garden is located outside of it. For planning policy purposes, the part of the site where the new dwellings are proposed in each of the appeals is countryside.
9. The appeal site slopes significantly from the front of the site adjoining the High Street to the rear of it where it adjoins woodland, as do adjoining residential plots. This side of the High Street is characterised by individual designed detached dwellings fronting the road, within roughly rectangular shaped plots, set behind landscaped front gardens with long rear gardens and served by individual accesses from the road. Mature landscaping is a feature of the area, particularly in the rear garden environment and provides an open setting between the dwellings on High Street within the vicinity of the appeal site and those off Limes Lane.

Appeal A

10. The appeal proposal would introduce substantial development and associated residential activity within the rear garden environment of the host dwelling which would be significantly at odds with the otherwise frontage development of the locality. Moreover, the plot sizes proposed and the resultant plot size to the host property would be uncharacteristic of the locality and would introduce a noticeably higher density of development to that which exists. The proposal would significantly erode the open, undeveloped character of the appeal site and would have a significant encroaching effect on the woodland beyond the

¹ Nova Acoustics dated 11 June 2021

appeal site. Collectively the proposal would result in the unacceptable urbanising of this part of the countryside.

Appeal B

11. The proposal for 3 dwellings would result in a density of development similar to nearby dwellings including Middleton House, the neighbouring property to Moorlands and Toad Hall, further along the High Street. However, the backland location would be at odds with the local distinctiveness of the area. The built form, driveway and parking areas would have a considerable urbanising effect on this area of countryside and would introduce built form and associated residential activity into the rear garden environment which would be uncharacteristic of the area.

Both Appeals

12. My attention has been drawn to residential developments in the area where the Council has granted planning permission. In respect of the two dwellings at Rowan, I observed that they front on to High Street, similar to other properties on this side of the road and involved the demolition of the earlier dwelling on the site. The development at Queenstock Lane is located within a part of the village with a tighter urban grain and appears as part of a larger development than that proposed in the appeals before me. It also has a street presence, similar to nearby development. Neither of these schemes are sufficiently similar to the proposals before me to justify the developments as proposed.
13. The site at Abbey House and Grasmere where outline planning permission was sought for 5 dwellings within the garden displays more similarities to the appeal site and surroundings that are before me, in terms of the rear garden location of the appeal site. However, whilst I have a copy of the Officer's report for this scheme, I do not have a copy of the decision notice, and thus there is no certainty that planning permission will be achieved in this case. Moreover, this site is located some distance from the appeal site and is unlikely to be directly comparable in terms of its character and appearance. These matters therefore limit the weight that I can give this matter in my overall assessment.
14. I note that both appeal schemes were recommended for approval by the Council's Planning Officer. A positive recommendation carries no weight in favour of the proposals because the Council's decision was to refuse planning permission for each scheme.
15. It is acknowledged that both schemes would retain substantial amounts of mature landscaping on the site boundaries and new landscaping would be provided upon the site, however, these matters would not provide mitigation for the harm identified.
16. Whilst not visible from the public realm, the proposed developments would be visible from nearby dwellings and would be likely to significantly erode the appreciation nearby occupants have of the quality of the environment within which they live.
17. I note that the appellant has reduced the quantum of development on the site and sought to address the previous reasons for refusal in respect of each appeal. However, given my findings above I conclude that both appeal schemes would not be sympathetic to local character and would significantly detract

from the overall quality of the area. Unacceptable harm would be caused to the character and appearance of the area, in conflict with Wealden Local Plan (WLP) Policy EN27 and Spatial Planning Objective SPO13 of the Wealden District Local Plan Core Strategy (WDLPCS) which collectively require good design in all development which respects the character of the area within which it is located, and the Wealden Design Guide (2008) which has similar design objectives. There would also be conflict with WLP Policies GD2 and DC17 which require development outside the development boundaries to comply with other policies in the Plan.

Living Conditions

18. On my site visit I observed that High Street was busy with vehicles including cars and lorries. It is reasonable to assume that within the front rooms of the dwellings facing on to High Street that vehicle sounds would be audible, particularly if front windows were open. To the rear of the dwellings within the rear gardens I observed that it was very tranquil with bird song being the predominant noise.
19. Both appeal proposals would see a new vehicular access drive being formed to the side of the host dwelling into its rear garden. Each of the new dwellings would have car parking spaces and both schemes would also have visitor parking spaces. The access road in both schemes would be separated from Acorn House by an area of landscaping and the parking areas would be at a lower level than the host dwelling, and both immediate neighbours.
20. Given the proximity of the rear gardens and rear elevations of Middleton House and Acorn House to the new drive and parking areas in both schemes, vehicles using these areas would be audible within the rear gardens and rear rooms of these properties. The appellant's NIA supports this finding, calculating that whilst audible, vehicles using the driveway would increase the ambient noise levels by 3 decibels within the rear garden environment of each neighbour, and by 2 decibels in the Appeal B scheme, and by 1 decibel within the rear rooms of Acorn House.
21. Given the above calculations, the likely frequency of the use of the access drive in both schemes and the likely low speed of vehicles using it, I find that its use would be unlikely to result in noise levels that would cause nuisance to or would change behaviours of nearby occupiers. Accordingly, harm to nearby occupiers' living conditions would not result.
22. I note that my colleague in dismissing the earlier appeal² on the site considered that a proposal for 8 dwellings would result in harm to the living conditions of the occupiers of Acorn House because of the position and use of the drive. Within this decision no reference is made to any report which assesses noise levels that would result from the development. This scheme also proposed a greater number of dwellings along with the corresponding number of vehicle movements. The circumstances in the cases before me are therefore different and it is not unreasonable for me to come to a different conclusion in this regard.
23. In both schemes the new dwellings would be sited at a lower level than the dwellings fronting High Street. The dwellings would be visible from the rear

² Ref: APP/C1435/W/18/3214340

windows and rear gardens of Middleton House, the host property and Acorn House.

24. The rear garden at Middleton House is largely private on account of the mature landscaping and relationship of neighbouring properties to it. From the first floor windows of the dwellings on plots 4-6 in Appeal A and from the first floor windows in the dwelling on Plot 3 in Appeal B, it is likely that views into the rear garden of Middleton House could be obtained. However, given the likely intended use of the windows that these rooms serve, the low likelihood of somebody standing in the windows for extended periods of time and the distance of the windows from the party boundary, I am satisfied that there would not be direct and invasive overlooking from them to the degree that privacy of the occupiers of Middleton House would be adversely affected, either within the rear garden or within its rear rooms.
25. For similar reasons, I reach the same conclusion in respect of the impact of the dwellings on plots 4-6 in Appeal A and plots 2-3 in Appeal B on the rear garden and rear rooms of the host property. Whilst the access road would run close to the side windows within the host property, there would be a degree of separation from it and landscaping could be planted to prevent views into this property from those using the new driveway.
26. The boundary between the appeal site and Acorn House comprises tall fencing and mature landscaping. There are gaps within the existing landscaping such that the new dwellings in both schemes would be visible from parts of this property's rear garden, including from the swimming pool area and from upper floor windows. The siting of the dwellings in Appeal A are however located some distance off the party boundary apart from the proposed dwelling on plot 1 which would be located towards the end of this garden. In this location there is tall landscaping and mature trees and there would be space to supplement this area with additional landscaping to ensure that there would be no direct views into Acorn House's garden. Given the above, I find that the privacy of the rear garden and rear rooms of this property would be maintained.
27. The new dwellings in Appeal B would be located some distance from the rear of Acorn House and whilst the upper floor windows of this dwelling would be visible from the front of these dwellings, I am satisfied that the intervening distance, landscaping and orientation of the new dwellings would ensure that there would be no loss of privacy to the rooms within Acorn House, or to its rear garden, including the area around the swimming pool.
28. I note that my colleague considered that the use of the access road would result in a loss of privacy to the occupiers of Acorn House, particularly through the use of a parking area close to the rear of this property. The parking spaces in both appeals on the access road have been reduced in number, aligned such that they are parallel to the road and would be located further away from the party boundary with Acorn House. It is also likely that these spaces would be used infrequently by visitors to the new dwellings rather than by occupiers on a regular basis, given the number of parking spaces proposed for each dwelling. Accordingly, these aspects of the schemes are materially different to that considered previously and I find that a loss of privacy from the use of the access drive by vehicles and pedestrians, and the parking areas would not result in a loss of privacy to the occupiers of Acorn House.

29. Given my findings I conclude that in both schemes the proposals would not result in harm to the living conditions of nearby occupiers. Accordingly, there would be no conflict with WLP Policy EN27 which, amongst other matters requires development to not have an unacceptable impact on the privacy and amenities of adjoining development and the neighbourhood, including through noise. Furthermore, there would be no conflict with the Wealdon Design Guide in respect of these matters.

Other Matters

30. The appeal site is located within 7km of the Ashdown Forest Special Protection Area and Special Area of Conservation. The UUs submitted with the appeals would make financial contributions towards mitigation measures from the recreational pressures on the protected sites that would arise from the proposed schemes. The Council acknowledge that the submissions of the UUs addresses its concerns in respect of the SPA. However, as I am dismissing the schemes for other reasons, it is not necessary for me to consider the implications of the proposals on the protected sites.

Planning Balance and Conclusion

31. The Council acknowledge that it is unable to demonstrate a 5 year supply of deliverable housing sites. In such circumstances the National Planning Policy Framework (Framework) makes it clear that the policies which are most important for determining the application are out-of-date. In these circumstances the Framework advises that permission should be granted unless, and of relevance to this case, 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.
32. The provision of housing would make an important contribution to the supply of housing in the locality and support the Government's objectives of significantly boosting the supply of homes, a matter to which I attach significant weight, given the Council's position on housing delivery.
33. The appeal site is located close to the services and facilities in Buxted, including the railway station and bus routes. In this regard it is sustainably located and there would be a choice of modes of transport that the occupiers of the new dwellings could use. The intended occupiers of the schemes would be likely to support nearby shops and services, and there would be economic benefits in terms of the jobs that would be created as a result of the developments. These matters also carry significant weight.
34. The new landscaping would be likely to have biodiversity benefits, as would the implementation of the recommendations contained within the Preliminary Ecological Appraisal. However, such matters would be required in most housing developments and carry limited weight in favour of the schemes.
35. Against these benefits is the harm that would be caused to the character and appearance of the area. This would be in conflict with the Government's aims of creating high quality, beautiful and sustainable buildings and places, through developments which function well and add to the overall quality of the area and are sympathetic to local character and history, including the surrounding built environment and landscape setting. The Framework makes it clear at paragraph 134 that development that is not well designed should be refused,

especially where it fails to take account of government guidance on design as contained within the National Design Guide and National Model Design Code. I attach substantial weight to the harm that would arise in this regard.

36. I find therefore that the adverse impacts of the appeal proposals would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development given by paragraph 11 of the Framework does not apply.
37. The proposals conflict with the policies in the development plan when taken as a whole and the Framework. There are no material considerations which outweigh this conflict.
38. For the above reasons, both Appeal A and Appeal B are dismissed.

RC Kirby

INSPECTOR