



Appeal Decision

Site visit made on 15 August 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2022

Appeal Ref: APP/U1430/W/21/3285183

'The Croft' ('Aurora'), Hurst Lane, Sedlescombe TN33 0PE

- 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 and Mrs G M and V G Slowman against the decision of Rother District Council.
 - The application Ref RR/2020/2116/P, dated 26 October 2020, was refused by notice dated 21 April 2021.
 - The development proposed is construction of a dwelling house and associated landscape and access works.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) the effect of the proposal on the character and appearance of the area, having particular regard to the location of the site within the High Weald Area of Outstanding Natural Beauty (AONB);
 - b) the effect on protected species; and
 - c) the effect on the living conditions of the occupiers of Fairview, with regard to privacy.

Reasons

Character and appearance

3. The appeal site lies within the countryside, outside of any development boundary. Policy RA3 (iii) (c) of the Rother Local Plan Core Strategy (2014) (RLPCS) allows the creation of new dwellings in the countryside in extremely limited circumstances which include the one-to-one replacement of an existing dwelling of similar landscape impact.
4. The site does not contain a dwelling at present, but it did at some point in the past. The officer report describes the former dwelling as an 'unobtrusive, very modest, single-storey building' set back from the road and to the east side of the plot. Permission was granted for a replacement dwelling under reference RR/2005/2453/P. The approved plans show that this would have comprised a bungalow and attached garage under hipped roofs. The officer report for that scheme describes the site as wooded; most trees have since been felled.

5. There is no Certificate of Lawfulness to support the appellant's assertion that the permission remains extant. Nevertheless, the Council does not appear to be resisting the principle of a new dwelling on the site; its concerns relate to the visual impact of the proposed dwelling relative to that of the original dwelling and the approved scheme. This is a pragmatic interpretation of development plan policy, but one which seems reasonable in the circumstances.
6. The approved bungalow would have a larger footprint than the original dwelling on the site. However, the articulated roof form with shallow hips and mellow roof tiles would help in making the building unobtrusive in views from Hurst Lane. The plans indicate that the (then) existing trees at the western end of the plot and along the road frontage would have been retained, with small areas given over to hard surfacing for the driveway and parking. This would have assisted in assimilating the development into its rural surroundings.
7. The proposed dwelling would share a similar sized footprint to the approved bungalow but it would be closer to the road and two storey. The mass and bulk would be visibly greater due to the full height eaves and box-like design. The white painted rendered walls would be stark and the coloration would draw attention to the scale of the building. Some planting is shown on the frontage but this would take time to establish and it would not be comparable to the approved scheme which sought to retain existing landscape features. The construction of a double garage and extensive areas of hard surfacing forward of the dwelling and tall, solid entrance gates would contribute to the creation of an overly urban character in this attractive rural setting within the AONB.
8. I acknowledge that falling ground levels into the site and proposed landscaping would provide some mitigation for the adverse visual impacts. However, new planting should not be relied upon to disguise poor design. There would still be public views of the development, including when the entrance gates are open. In these views, the dwelling would appear alien and incongruous.
9. There is no consistency in the appearance of dwellings along Hurst Lane. However, I noted during my visit that the most attractive properties are those traditional designs which take advantage of their treed setting. The High Weald Housing Design Guide (2019) emphasises the need for housing developments to be genuinely 'of the place'. This can be through a well-executed and detailed version of the local vernacular, or a contemporary interpretation, drawing out key elements. Therefore, whilst modern design is supported, it must have regard to local distinctiveness, particularly in the use of colours and materials. The proposed design would not integrate into its rural surroundings and it would have a materially greater landscape impact relative to the approved scheme.
10. I conclude that the appeal scheme would conflict with Policies OSS4, EN1, RA2 and RA3 of the RLPCS and Policies DEN1, DEN2 and DHG12 of the Development and Site Allocations Local Plan (2019) (D&SALP), insofar as these seek to ensure that development does not detract from the character and appearance of the locality or the landscape and scenic beauty of the High Weald AONB. Paragraph 176 of the National Planning Policy Framework ('the Framework') states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues.

Protected species

11. The appeal is accompanied by a Preliminary Ecological Appraisal. The ecologist conducting the walkover survey found no evidence of protected species within the site but identified several potential reptile and amphibian refugia. There is an acceptance that the site has the potential to support species of reptile.
12. The Council advises that the area has been identified as an 'Amber Impact Risk Zone' under the NatureSpace Partnership Scheme. This means the area provides a 'suitable habitat' for great crested newts. In such areas, applicants must set out how risks to great crested newts will be dealt with. This may be through the Council's District Licensing Scheme, or by following Natural England's Standing Advice and, where necessary, applying to Natural England separately for a standard mitigation license.
13. The ecological appraisal recommends measures aimed at preventing harm to protected species during construction and achieving biodiversity enhancement. However, the report does not address great crested newts in any detail, beyond recommending that the appellant calculate a Habitat Suitability Index (HSI) for ponds within a 500m radius of the appeal site. This would assess the ponds' suitability to support great crested newts and inform a decision on whether the site is likely to be used as foraging habitat. The Council considers that such assessments can be unreliable, but in any event it is not clear what additional steps should be taken in the event of the HSI producing a high score. It is conceivable that the measures identified in the report in relation to habitat manipulation and the creation of enhancement features such as log piles, south facing basking banks and hibernacula are sufficient. However, the report is ambiguous on this point.
14. Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It is also important that any necessary measures to protect species are in place through conditions and/or planning obligations, before permission is granted.
15. In this particular case there remains a degree of uncertainty as regards the presence of great crested newts, the impact of the proposed development on this species and any avoidance, mitigation or compensation measures required to secure compliance with legal obligations. As such, I am unable to conclude that the requirements of Policy EN5 of the RLPCS and Policy DEN4 of the D&SALP have been met in relation to the protection of biodiversity.

Living conditions

16. The Council is concerned that the proposal would lead to a loss of privacy for the residents of Fairview. The large window to Bedroom 2 would provide the occupants of the new dwelling with views towards their neighbours' garden and conservatory. The distance to the boundary is approximately 12 m. At the time of my visit there was dense hedging along the boundary and this provided some screening. However, the retention of this vegetation cannot be guaranteed in the long term and consequently there is a risk of creating opportunities for overlooking where none currently exist.

17. The bedroom in question is dual aspect and part of the window faces forwards towards Hurst Lane. It would be possible to install obscured glazing on the elevation facing Fairview whilst still retaining acceptable levels of daylight and outlook. This could be secured by condition and would ensure compliance with Policy OSS4 (ii) of the RLPCS.

Other Matters

18. The Highway Authority has withdrawn its objection to the proposal following the provision of additional information. It is content that adequate visibility is achievable at the site access and that this can be secured by condition. I concur that the development would not be detrimental to highway safety.
19. The site is the subject of a Restocking Notice, issued by the Forestry Commission, which requires the landowner to replant the site with trees. This notice is the subject of an appeal, the outcome of which cannot be predicted. The lack of trees does not assist the proposal in mitigating its adverse visual impacts but the existence of the Restocking Notice is not a determining factor.

Planning Balance and Conclusion

20. The Council concedes that it is unable to demonstrate a 5 year supply of deliverable housing sites with the appropriate buffer. The latest published data indicates that the authority is able to identify a 2.89 year supply. In such circumstances, paragraph 11 (d) of the Framework states that 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 scheme would cause material harm to the countryside of the High Weald AONB. Under the terms of Framework footnote 7, this would be a clear reason for refusing the development proposed. As such, the tilted balance within Framework paragraph 11 d) ii. is not engaged and the presumption in favour of sustainable development does not apply.
22. The proposal would conflict with the development plan taken as a whole in relation to its impacts on the AONB and protected species. Although there would be social and economic benefits arising from housing delivery, these would be very modest for a single dwelling (particularly on a site where the appellant is alleging that there is an extant permission) and they would not be sufficient to justify a decision otherwise than in accordance with the development plan.
23. For the reasons given above and having regard to all other matters raised, including the permissions granted for a detached double garage and entrance gates at Copse Cottage ('Lake View'), I conclude that the appeal should fail.

Robert Parker

INSPECTOR