



Appeal Decision

Site visit made on 12 September 2022

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

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/E2205/W/3285207

Rear of Poplar Farm, Poplar Road, Wittersham, Tenterden TN30 7PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Daniel O'Brien (Castlefort Homes Ltd) against the decision of Ashford Borough Council.
 - The application Ref 20/01782/AS, dated 14 December 2020, was refused by notice dated 30 April 2021.
 - The development proposed is for the erection of up to 23 dwellings together with all necessary infrastructure on land at rear of Poplar Farm, Wittersham.
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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. The planning application was submitted in outline form for up to 23 dwellings with all infrastructure considering access only with all other matters reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as indicative and show what may, not necessarily what will, be constructed.
4. A material consideration has been brought to my attention by the appellant. The appeal site was allocated for residential development under Policy 61 of the draft Ashford Local Plan 2019 (ALP). However, its inclusion was found to be unsound. Therefore, I have determined the appeal on the adopted planning policies contained within the ALP.

Main Issues

5. The main issues in this case are:
 - the effects of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB),
 - the effect of the proposed development on the setting of listed buildings,
 - whether the proposal is in a suitable location, and;
 - financial obligations.

Reasons

AONB

6. The appeal site is a tree and hedged lined pasture type field which is located outside a recognised settlement boundary in the AONB and the Oxney Lower Rother Landscape Character area, and is approximately 5 miles from the settlement of Tenterden. The AONB is characterised by tree and hedge-lined irregular fields with areas of woodland.
7. There are two footpaths to the northwest and east of the site in addition to the two 'desire lines' that criss-cross the site which provide links to the dwellings on Lloyds Green and Jubilee Fields. Adjacent to the tree and hedge-lined site there are a number of ponds and an area of ancient woodland to the northern boundary which in combination with the relatively flat adjoining pasture land contribute to the sense of spaciousness in the surrounding built form.
8. The site is accessed from a lane to the side of the Grade II listed Poplar Farmhouse which faces onto Poplar Road (B2082). The southern boundary of the appeal site is adjacent to the Grade II listed buildings known as White Cottage and Corner Cottage.
9. The outline proposal is to construct 23 new dwellings in traditional style materials on the appeal site. The development would also see the construction of an enlarged access road from Poplar Road that would be facilitated by the demolition of an existing detached garage. Permissive paths would be included across the site.
10. The proposed development would be in the AONB and for planning purposes located in the countryside. Therefore, the development should conserve and enhance the landscape and scenic beauty of the AONB as required by Paragraph 176 of the Framework, to which I attach great weight. Moreover, the development must comply with the relevant Ashford Borough Council development plan policies to be permitted.
11. When considering applications for development within an AONB, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. In this case the appellant disputes that the proposal would be major development and has included a number of schemes in support of his case.¹ Nonetheless, whether a proposal is 'major development' is a matter for the decision maker. Therefore, in the planning judgement, the quantum of development in the modest settlement of Wittersham would be relatively large-scale and therefore, for the purposes of this specific determination, a major development in the countryside.
12. However, even if I were to find otherwise, the proposed large residential development would be relatively dense on the space available with a wider access from Poplar Road. Moreover, although the dwellings would be set away from the site edges with non-urban type boundaries the scheme would nevertheless extend across the breadth and depth of the site which extends some way into the AONB.

¹ APP/E2205/W/16/3151327, APP/C1435/A/14/2223431 & WD/2017/2197/MAO

13. I acknowledge the surrounding built-form, and that the appellant contends that the effect of the proposal would be minor or neutral and is an 'infill site'. However, I find to the contrary. The unfettered appeal site provides a gentle and tranquil transition with the adjacent buffer zone to the countryside beyond which can be appreciated not only from the surrounding dwellings but also glimpsed from the nearby footpaths. The simple and expansive beauty of the appeal site would be eroded by the proposed suburban-style development and its enlarged access and other hard-surfaces in this semi-rural-type location.
14. My findings accord with the reasoning of a previous Inspector as part of his consideration of the ALP, including the excluded site allocations under Policy 61. The Inspector reasoned in this specific location within the AONB that the: 'land between Lloyds Green and Jubilee Fields is located within the High Weald AONB and abuts an area of ancient woodland. It forms part of an attractive area of open land which allows the countryside to penetrate the built form of the village. The site is therefore important in broad landscape terms and the overall character of the village. Even with the proposed buffer in place, the allocation represents an incursion into the countryside that would materially detract from the landscape quality of the AONB, contrary to national policy.' I see no reason to disagree.
15. As such, I conclude that the proposed development would harm the spacious beauty of the AONB. New landscaping in addition to retention of existing trees, hedges, pathways and a re-built access wall would not be adequate mitigation.
16. Accordingly, the proposal in respect of the character and appearance of the area including the AONB, is contrary to Policies SP1, SP2, SP6, HOU1, HOU5, HOU6, ENV3B, ENV13 and IMP1 of the ALP, and Paragraphs 130 and 176 of the Framework which require, amongst other things, that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty.

Listed buildings

17. The setting of a listed building contributes to its significance. Therefore, I have had special regard to Section 66 (1) and S16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
18. The Government's Planning Practice Guidance (PPG) explains that when assessing the impact of proposed developments upon the setting of listed buildings, it should include consideration of the degree to which proposed changes would either enhance or detract from the significance of the heritage asset and the ability to appreciate those assets.
19. The Grade II listed buildings adjacent to the southern boundary of the appeal site are known as White Cottage and Corner Cottage. The appeal site forms part of the setting of the historic farmsteads of Leeds Farm and Poplar Farm and an irregular Medieval field pattern. Its relationship to the listed dwellings is recorded on historic maps.

20. I acknowledge that a heritage asset's setting is not fixed and may change as the asset and its surroundings evolve. Nevertheless, while I note the development on Lloyds Green and the mature boundary treatments surrounding the site, the fact remains that the listed properties are located at the edge of a rural settlement adjacent to recorded historical field patterns. Therefore, I am not persuaded that the effect of the proposal on the setting of the heritage assets would be minor. Indeed, whether the dwellings can be glimpsed from the appeal site or not, as a consequence of the development, the characteristic pattern of the fields and their important relationship to the former farm workers' cottages would be diminished. Consequently, at this edge of village location, the proposal would significantly erode the setting of the two listed buildings to an unacceptable degree.
21. In addition, the Grade II Poplar Farm House lies to one side of the proposed access to the appeal site. I note the planning permission² for an altered garage associated with Poplar Farm House, and that the rural-type access to Poplar Farmhouse has been somewhat compromised with the use of tarmac surfacing. Nonetheless, the listed building is still a good example of an altered Wealden Hall house and the construction techniques used during the 14th-17th Century period.
22. From the limited evidence before me, at the very least, the proposed access would be widened to include a new footway and passing area. Therefore, even if new landscaping were to be provided or existing trees retained, the proposal would have a new engineered footway. In my view, in addition to the construction of 23 new dwellings at the end of the access lane, and whether they would be built in traditional materials or not, this would harm the character of the existing access and hence the setting of the listed building.
23. Accordingly, I conclude that the appeal proposal would cause harm to the setting of listed buildings contrary to Policy ENV13 of the ALP which is clear that development will not be permitted where it will cause loss or substantial harm to the significance of heritage assets or their settings unless it can be demonstrated that substantial public benefits will be delivered that outweigh harm or loss.

Heritage Balance

24. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
25. The appellant contends that the effect of the proposal on the listed buildings would be less than substantial harm at the lower end of the spectrum. However, for the reasons given above, I would agree that the harm to the significance of the listed buildings mentioned above would be less than substantial, but would, in my view, be at the moderate end of less than substantial harm. Irrespective, in accordance with S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, any harm must be given substantial weight and importance in the heritage balance.

² 21/00115/AS

26. The courts have also confirmed that less than substantial harm does not equate to a less than substantial planning objection,³ and this is supported by the PPG which requires that whether a proposal causes substantial harm will be a judgement for the decisionmaker, having regard to the circumstances of the case and the policy in the Framework. As such, Paragraph 202 of the Framework provides for a balancing exercise to be undertaken, between less than substantial harm to the designated heritage asset on the one hand, and the public benefits of the proposal on the other.
27. The proposal would provide 23 new homes with parking, thereby contributing to the Council's Housing Land Supply (HLS), including self or custom build plots. I attribute these social benefits some moderate weight.
28. Economic benefits would include employment opportunities connected to the construction of new homes and the patronage of local services by the new residents. I afford these benefits moderate weight even though the employment opportunities are likely to be short-term.
29. Environmental and bio-diversity gains would be provided in the form of new planting, trees, hedgerows, log piles, wildflower planting, ponds, bat and bird boxes and permissive paths. The development would also be outside the Stodmarsh Lakes 'embargo' area. In combination, I give this some limited weight.
30. The proposal would 'underground' the existing overhead line. As I cannot be certain that this would obtain all the necessary agreements I afford this little weight. Other benefits such as the use of land and financial agreements are the Council's regular strategic or policy considerations which therefore, have neutral weight in the planning balance.
31. In accordance with the balancing exercise contained in Paragraph 202 of the Framework, I conclude, even when considered in combination, that the benefits do not outweigh the 'less than substantial harm' to the significance and setting of the listed buildings.

Suitable location

32. The settlement of Wittersham has a limited range of day to day services including a village shop, church, village hall, a primary school and a public house/restaurant. More comprehensive services including a doctors surgery can be found further afield at Tenterden and Rye. I noticed at my site visit that the bus service running along the B2082 is relatively infrequent and does not run on Sundays. Therefore, given the distances involved it is likely that those day to day services would be accessed by a private motor vehicle rather than by public transport. Indeed, the limited availability of public transport in this location would inevitably result in a dependency on private motor vehicles by future occupiers of the new dwellings in respect of access to the day to day services in nearby villages.
33. As a result, in respect of a suitable location, the proposal would not meet the aims of Policies SP1, SP2, SP6, HOU1, HOU5, HOU6, ENV3B, ENV13 and IMP1 of the ALP, and the Framework when read as a whole.

³ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG (2014)

Financial obligations

34. I note a signed Unilateral Undertaking (UU), dated 26 April 2022 provided by the appellant that includes waste and NHS infrastructure contributions and the provision for affordable housing and self-build/custom housing, public open space, outdoor and indoor sport, the arts sector, voluntary sector provision, community learning, youth service, library book-stock and social care. However, in its current form the UU is unacceptable to the Council.
35. The PPG states that in exceptional circumstances, a negatively worded condition requiring a planning obligation to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. However, given my findings on the main issues above, there is no need for me to give this further consideration at this time.

Planning Balance

36. The Council cannot demonstrate a five-year HLS, as such Paragraph 11 (d) of the Framework is normally engaged. However, Paragraph 11 (d)(i) of the Framework says that where harm to areas and assets of particular importance such as the AONB and listed buildings provides a clear reason for refusal, the 'tilted-balance' does not apply. I therefore conclude, that there are no considerations of such weight as to warrant a decision other than in accordance with the aforementioned development plan policies and the Framework.

Conclusions

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

J E JOLLY

INSPECTOR