



Appeal Decision

Site visit made on 5 December 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/M2270/W/21/3286416

Pembrol, Cryals Road, Matfield, TONBRIDGE, TN12 7HH

- 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 Mr Rumsey against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/00563/OUT, dated 15 February 2021, was refused by notice dated 16 September 2021.
 - The development proposed is outline planning permission (all matters reserved) for the use of residential on land within the curtilage of existing dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the proposed site plan as illustrative only. I have also used the description of proposed development as provided on the planning application form given the application form clearly indicates all matters to be reserved, despite references to the erection of two dwellings and provision of shared access upon other documents.

Main Issues

3. The main issues raised in respect of the appeal are: -
 - a) Whether the site is a suitable location for the proposed development, having regard to the spatial strategy of the development plan;
 - b) The effect of the proposed development upon the character and appearance of the area and the landscape of the High Weald Area of Outstanding Natural Beauty (the AONB);
 - c) The effect of the proposed development upon the living conditions of the existing occupiers of Pembrol, having regard to privacy and disturbance;
 - d) The effect of the proposed development upon living conditions of future occupiers, having regard to the impact of noise from the adjoining A21 highway;
 - e) The effect of the proposed development upon existing trees and the living conditions of future occupiers;
 - f) The effect of the proposed development upon ecology; and

- g) The effect of the proposed development upon highway safety.

Reasons

Location

4. The development plan has set Limits to Built Development (LBD) and the site is located outside these defined limits. Policy LBD1 of the Tunbridge Wells Borough Local Plan 2006 (the Local Plan) is a restrictive policy to development in the countryside outside the LBD. The pre-amble explains that the policy aim is to direct new residential development within built-up areas to ensure sustainable development patterns and to prevent encroachment into the countryside. The location of the site is beyond the defined built-up area boundaries and is in the countryside. Therefore, the appeal site would not be an appropriate location for new dwellings, and this brings the proposal into conflict with the spatial strategy of the development plan. However, the Council does not have a five-year supply of housing sites in place. Having regard to paragraph 11 of the Framework, this reduces the weight that can be attributed to these policies.
5. Matfield is approximately 2km from the site and hosts a fast food restaurant, public houses, a post office, village hall and a butcher. Matfield is defined as a Tier 3 settlement within the Core Strategy as it has limited services and facilities with residents likely to have to travel further afield to meet their needs. The nearest bus stop is on the A21 not far from the site and provides links to Maidstone, Paddock Wood and Tunbridge Wells where services and facilities can be accessed. School buses pick up and drop children off on the lane. To the north on the A21 is a petrol station with supermarket, although there is no footpath link to this along the busy A21.
6. The future occupiers would have some travel choice that would not lead to complete dependency on private transport. Whilst some limited day-to-day facilities could be within walking distance, the walk to reach them would be precarious along a road without lit footpaths or via public rights of way in the area. This would not be convenient for the elderly or those with children, even if wearing high visibility clothing and using torches at night. To reach a range of shopping facilities, education and employment would require travel further afield. Cycling or using buses would allow travel further away but carrying shopping or inclement weather would likely discourage the uptake of these modes of transport.
7. Consequently, given the distance to services and facilities I find that future occupiers would be highly reliant upon private vehicle travel, the least sustainable mode of transport, to access services and facilities to cater for their day-to-day lives.
8. For this reason, the site would not be a suitable location for the proposed development, having regard to the spatial strategy of the development plan. This brings the proposal into conflict with Core Policies 1, 4, 5, 6 and 14 of the Tunbridge Wells Borough Core Strategy (the Core Strategy) 2010 and Policies LBD1, EN1 and EN25 of the Local Plan. These policies seek, amongst other matters, development to be delivered in a managed way focusing delivery of development to within the LBD to ensure sustainable development patterns and to protect the countryside from encroachment. The National Planning Policy Framework (the Framework) seeks to actively manage patterns of growth with

the objective of promoting walking, cycling and public transport use having regard to location of development.

9. Electric vehicle charging points could be conditioned that might encourage low carbon vehicle usage by future occupiers, however this would not reduce the need of future occupiers to travel.
10. I have been directed to a development at Tibbs Court Farm, Tibbs Court Lane, Brenchley said to be nearby that relates to the redevelopment of an existing storage building site. A reference from the Officer's report is provided which, in summary, finds that proposal to be a short drivable distance from services but it is also said that that site would not be considered fully sustainable. I have also been directed to a planning permission at Beech Lane, Matfield that was granted for the change of use and conversion of a workshop building to a dwellinghouse. I have not been provided the full details of either of these cases. Nonetheless, both those proposals hosted existing uses that would likely have generated some vehicle movements. The proposal before me seeks a new use that would intensify vehicular movements at Pembrol. The proposal is, therefore, different and should be considered on its own merits.

Character and appearance and AONB

11. Policy EN25 of the Local Plan requires development outside of the LBD to have a minimum impact on the landscape character of the locality. The Framework indicates that great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to these issues.
12. The site relates to the enclosed garden associated with Pembrol that currently hosts some outbuildings. The garden is largely undeveloped, although it is domestic in both character and appearance. Residential development, with its associated hard surfacing and outdoor paraphernalia, would intensify urban related development at this location. However, the site is well screened by existing trees, hedging and fencing and is somewhat contained from the wider open countryside beyond. Furthermore, there is a cluster of existing residential development in the area along Cryals Road and Beech Lane.
13. The site is relatively small. Policies EN1 and EN25 of the Local Plan require development within the rural area to have minimal impact on the landscape character, including the setting of settlements. They also require new buildings to be located close to existing buildings where practicable or be well screened by existing vegetation. Within the existing enclosed residential context of the site residential development would not substantially change the rural character and appearance of the surrounding wider countryside nor would it have a significant visual impact upon the field pattern of the wider AONB landscape.
14. For the above reasons, the proposed development would not have a harmful effect upon the character and appearance of the area and the landscape of the High Weald AONB. Therefore, the proposed development would not conflict with Core Policies 4 and 14 of the Core Strategy, Policies EN1 and EN25 of the Local Plan, the Borough Landscape Character Area Assessment 2002: Second Edition adopted October 2017 and the High Weald AONB Management Plan 2019 - 2024.

15. I acknowledge that the parameters of the residential development have not yet been fully defined at this outline stage. However, a subsequent reserved matters application would provide an opportunity to consider issues pertaining to layout and appearance, amongst other matters. There is no clear indication at this outline stage that a satisfactory development in respect of its layout and appearance at the site could not be achieved.

Living conditions of existing occupiers

16. Any residential development at the site would be located close to the existing dwelling where I saw there to be windows in the elevation that would face the proposed development area. There is also an outdoor living space relating to the existing dwelling in close proximity to the appeal site. Although the planning application was supported by a proposed site plan, the planning application form indicates that the proposal is in outline with all matters reserved. Therefore, the resulting development at the site may not take the form of that illustrated upon the proposed site plan. It may be that a development could be accommodated at the site with an acceptable relationship with the existing dwelling, Pembrol. If at a reserved matters stage this was not shown to be the case, then that application may potentially fail.
17. The red line site plan includes the existing access to the site with link to the garden where residential development is proposed. Although access is a reserved matter, the red line site plan indicates that access is intended via the existing access. Furthermore, the appellant's appeal statement indicates the intention to make use of the existing access and driveway to access the proposed development area.
18. There are a number of windows in the front and side elevations of Pembrol that serve habitable rooms. Vehicles accessing the residential development would pass in extremely close proximity to Pembrol throughout the day and into the evening. This would result in a substantial reduction in privacy for the occupiers of Pembrol. Vehicle noise and headlight intrusion during the hours of darkness would also cause disturbance. These intrusions would be harmful to the living environment that occupiers of the existing dwelling should reasonably expect to enjoy whilst residing within their home.
19. For those reasons relating to the access arrangement, the proposed development would have a harmful effect upon the living conditions of the existing occupiers of Pembrol, having regard to privacy and disturbance. This brings the proposal into conflict with Policy EN1 of the Local Plan that requires development, amongst other matters, not to cause significant harm to the residential amenities of adjoining occupiers.

Living conditions of future occupiers

20. Noise from traffic travelling along the adjacent A21 was clearly audible at my visit and this has the potential to cause disturbance to future occupiers. I acknowledge that the dwelling of Pembrol already exists and that the existing fence, hedgerow and trees could assist in reducing noise.
21. At this outline stage, there is insufficient information as to whether or not the impact of noise from the adjoining A21 highway would harmfully affect the living conditions of future occupiers that might bring the proposal into conflict with Core Policy 5 of the Core Strategy, Policy EN1 of the Local Plan and the

Noise and Vibration Supplementary Planning Document 2014. However, I have no substantive reason or evidence before me that would clearly indicate that this matter would be insurmountable. Therefore, I consider a suitably worded planning condition could be imposed that would require a noise survey to be undertaken to inform a subsequent reserved matters application. If it is found that unacceptable noise would be imposed upon the occupiers of the future development from traffic using the A21, the reserved matters proposal could potentially fail.

Trees and living conditions of future occupiers

22. The existing trees at the site make a positive contribution to the visual appearance of the appeal site, the area and the wider AONB landscape.
23. The trees would provide for a visual green outlook for future occupiers and privacy that would contribute to the enjoyment of the development. In this respect there would be a desire to retain the trees. Notwithstanding this, the existing trees around the boundary of the site are tall and are closely spaced within a row. Over a significant portion of the day the trees would shade the residential development. As a result, the trees would create a gloomy living environment for its future occupiers, both in respect of indoor and outdoor living spaces. This would be harmful to the living environment that future occupiers of the development should reasonably expect to enjoy.
24. Consequently, the trees are likely to be subject to pressure from the occupiers of the residential development to significantly reduce the canopies or to totally remove the trees to eliminate shading and improve light for enhanced enjoyment of the development. The effect on light would make it hard to resist future works to the trees or their removal. Either the reduction in size of the trees or their removal, individually or collectively, would diminish the valuable visual contribution these large prominent trees make to the character and appearance of the area and the High Weald AONB landscape. I do not consider that a suitably worded planning condition would obviate the harm sufficiently that could make the proposal acceptable in respect of this matter.
25. For these reasons, the proposal would have a harmful effect upon existing trees. This brings the proposal into conflict with Policies 4 and 14 of the Core Strategy, Policies EN1 and EN25 of the Local Plan, the Borough Landscape Character Area Assessment 2002: Second Edition adopted October 2017 and the High Weald AONB Management Plan 2019 - 2024. These seek, amongst other matters, development to have a minimal impact on the landscape character of the locality and require harm not to be caused to the living conditions of adjoining occupiers.

Ecology

26. The Council seeks a net gain in biodiversity on all sites. The managed residential garden would be unlikely to host ecology. However, other vegetation at the site may host ecology that could be impacted if the site were more intensively used or if existing vegetation around the site were to be reduced or removed. I consider a suitably worded planning condition could ensure appropriate biodiversity gain at the site. However, any loss of trees or other vegetation around the boundary of the site could have a negative impact on ecology. Therefore, I agree with the Council that insufficient information to

assess the impact of development on protected species and biodiversity has been made available.

27. Given the above, a precautionary approach must be taken given the sensitivity of the site to host protected species. The extent that ecology that may be present at the site and potentially impacted by the proposed development needs to be established prior to any permission being forthcoming. Without this in place, this brings the proposal in to conflict with Core Policies 4 and 14 of the Core Strategy and Policy EN1 of the Local Plan that requires the protection of biodiversity across the Borough.

Highway safety

28. The Highway Officer has raised concerns over trip generations, adequacy of visibility at the site access and parking. This information is required in order to ensure the proposal is acceptable in highway safety terms. The proposal, as noted above, would intend to make use of existing access, however the use of this access would intensify. There is no clear indication at this outline stage that adequate parking or turning within the site could be achieved. Furthermore, information relating to trip generation is linked to the suitability of the location of the site for new residential development.
29. Core Policy 3 of the Core Strategy and Policies EN1 and TP4 of the Local Plan seek development, amongst other matters, to ensure the intensity of a proposed use would be not cause significant harm in respect of safety or excessive traffic generation and that safe access with adequate viability should be provided. The Framework also indicates that where there would be impact on highway safety, development should be refused. At this outline stage, there is insufficient information in regard of these matters that would enable me to be satisfied that highway safety would be adequately addressed. Consequently, given there could be a risk to life the proposal should be resisted until it is demonstrated that it would be safe in highway terms.

Planning Balance

30. The Council advises that it does not have a five-year supply of housing sites in place and, therefore, this reduces the weight that can be applied to those development plan policies that relate to spatial strategy and other policies within the development plan. Paragraph 11 d) of the Framework indicates that where a five-year supply of deliverable housing sites cannot be demonstrated the development should be granted. Further to this, the Government's White Paper 2017 highlights the general undersupply of housing throughout the country and notably that of affordable housing particularly for young people.
31. The proposed development would not have a harmful effect upon the character and appearance of the area and the landscape of the High Weald AONB. Notwithstanding this, the adverse impacts arising from the proposal relate to the unsatisfactory location of the development, that includes the need for private travel, along with its harmful effect upon the living conditions of existing and future occupiers, trees, ecology and highway safety. This brings the proposal into conflict with relevant development plan policies.
32. On the other hand, the Government's objective is to significantly boost the supply of homes and recognises that windfall and the cumulative impact of

developing small sites can help meet supply. The proposal would make efficient use of the land, could provide housing for first time buyers or those wishing to downsize or indeed provide homes for the appellant's children. However, this would be a small development of one or two dwellings. It would make little difference to the overall supply of housing and the support one or two extra household would provide to the social and local economy would be minimal. Furthermore, any contributions to the vibrancy of the community and/or by providing council tax, local spend, employment during construction would also be minimal and would not significantly assist in redressing the economic impacts of Covid-19 locally.

33. Living at this location could provide the opportunity for future occupiers to enjoy a healthy rural lifestyle with access to the countryside. However, this would be a personal benefit for future occupiers and would not provide justification for the proposal.
34. The appellant has indicated this to be a self-build proposal. The Council has identified a need for 164 self-build plots. The Council acknowledges this but provides no evidence as to how this might be addressed. The provision of self-build homes would attract substantial weight in support of the appeal.
35. I have carefully considered the provisions of one or two self-build homes. However, the Self-build and Custom Housebuilding Act 2015 does not alter the development plan and although there is support for self-build within the Framework, this does not diminish other aspects of the development plan and the Framework that seek to deliver homes at locations that realise genuine opportunities to promote walking, cycling and public transport. The appeal site is within an area that, due to its location, would not provide appropriate accessibility, and therefore would not overcome the harm that I have identified in this respect.
36. The harm that I have identified relating to the unsatisfactory location of the development and its harmful effect on existing and future occupiers, trees, ecology, highway safety is not outweighed by the contribution to housing land supply, or those limited social, economic or self-build benefits associated with the proposal. Furthermore, I am not satisfied that all these issues could be overcome by the imposition of planning conditions. Consequently, the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

37. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provision of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

Nicola Davies

INSPECTOR