



Appeal Decision

Site visit made on 29 November 2022

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2023

Appeal Ref: APP/U1430/W/22/3295142

Wild Meadows, Chapel Lane, Guestling Green, East Sussex TN35 4HP

- 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 Ms Carol Adams against the decision of Rother District Council.
 - The application Ref RR/2021/2348/P, dated 23 September 2021, was refused by notice dated 10 January 2022.
 - The development proposed is demolition of existing stables and sand arena and erection for four new dwellinghouses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is in outline. Approval at this stage is sought only for access, with all other matters reserved. I treat any drawings or other material relating to the reserved matters as indicative of the proposal.
3. Planning law requires that applications for permission be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Rother District Plan (District Plan), Rother District Plan Core Strategy (Core Strategy), and the Development and Site Allocations Local Plan (DASA). The National Planning Policy Framework (the Framework) is a material consideration.
4. The site is in the High Weald Area of Outstanding Natural Beauty (AONB). I have therefore considered the duty under section 85(1) of the Countryside and Rights of Way Act 2000 to have regard to the purpose of conserving and enhancing the natural beauty of the AONB.

Main Issues

5. The main issues are:
 - The location of the proposed development when regard is paid to planning policy for housing.
 - The effect on the character and appearance of the area, including whether the proposal would conserve and enhance the landscape and scenic beauty of the AONB and the setting of nearby heritage assets.
 - Affordable housing provision.

Reasons

Location

6. Policy OSS2 of the Core Strategy confirms the use of development boundaries to control most forms of new development as part of the overall spatial strategy for the area, supported by Policy OSS3.
7. Areas that are outside of the defined development boundaries, such as the site, are regarded as countryside for the purposes of development plan policy. Paragraph 12.47 of the Core Strategy confirms that the term countryside includes not only farmland and woodland but also scattered development outside the main confines of villages. Development in such areas is to be normally limited to that which accords with specific plan policies or where a countryside location is demonstrated to be necessary.
8. Policy RA3 of the Core Strategy provides a criteria based policy against which to assess proposals for development in the countryside. There is no substantive evidence to demonstrate that any of the extremely limited circumstances in Policy RA3 (iii) that may allow for the creation of new dwellings exist.
9. I have paid regard to the Guestling Green development boundary as shown on Insert Map 16 to the DASA. I have also noted the location of the site in relation to the boundary. The proposed site plan indicates that the 'blue line' site ownership area would adjoin the boundary. However, the 'red line' site built development area that would contain the proposed dwellings would not adjoin it. As such, the built development would be divorced from the development boundary. In any event, no relevant policy exception has been drawn to my attention that applies to development that adjoins a development boundary.
10. Paragraph 12.9 of the DASA provides rationale for confining the Guestling Green development boundary to the main built up area, namely protecting adjoining open areas which visually relate to the countryside and the exclusion of less intensive development along Chapel Lane in order to protect the village's hinterland. In this respect, the purpose of the boundary does not appear to be simply confined to protecting the rural character of the village itself, it is also about wider countryside protection. I will address the relationship of the development with the settlement and countryside in the character and appearance section of this decision.
11. Policy OSS3 sets out matters (i) to (x) which will be considered when determining planning applications. I have paid regard to these, some of which relate to character and appearance and affordable housing which are covered in more detail in other sections of this decision. However, Policy OSS3 also requires accordance with the relevant policies of the Core Strategy. The proposal would not accord with the substantive policies that govern the location of new housing, as discussed above. Policy OSS3 does not therefore in itself assist with providing justification for the proposal.
12. In relation to Policy OVE1 of the DASA, I have noted that there is no Neighbourhood Plan covering Guestling Green currently in force. As such, subparagraphs (i) and (ii) of OVE1 become relevant. The proposal would contribute to housing targets. However, for the reasons set out above in relation to Policy OSS3 (which is also mentioned in OVE1) and in my conclusions relating to character and appearance, the proposal would not be 'otherwise suitable' within the

meaning given in subparagraph (ii). As such, Policy OVE1 also does not assist in demonstrating a lack of policy objection to the principle of the development.

13. For the reasons set out, the location of the proposed development would not accord with planning policy for housing. As such, there is conflict with policies RA3, OSS2, and OSS3 of the Local Plan and Policy OVE1 of the DASA which collectively governs the location of new housing development, including in countryside locations.
14. I will address the presumption in Paragraph 11 of the Framework in the conclusions section of this decision.

Character and appearance

15. The main part of the site is a sand area and buildings that are connected with a former commercial livery business. A grass paddock, within the wider site area, separates it from Chapel Lane. The main part of the site area is relatively flat. More obvious variations in topography are evident within the paddock. The slope towards Chapel Lane towards the southern end of the paddock is of particular relevance as it is also the location of the proposed access between the lane and the main part of the site.
16. The wider surroundings are predominantly a mix of residential and agricultural uses. Residential uses are mostly scattered at lower density with limited formality and consistency in terms of configuration and appearance. These characteristics are in line with the location, away from the more obvious core of the small settlement of Guestling Green. A notable nearby exception is Higham Gardens, a cul de sac to the north of the site that is more formally arranged and has more urban characteristics than residential parts of Chapel Lane.
17. The character of Chapel Lane itself also changes further away from the settlement, with less obvious built influence, increasing levels of boundary greenery close to the road edge, and greater variation in road width. These are characteristics that would be associated with a country lane that support the rurality of the surroundings.
18. I have paid regard to the sections of the AONB Management Plan that have been drawn to my attention. Although they relate to the entire AONB, they assist by identifying the important aspects of character and natural beauty. Although paragraph 12.9 of the DASA provides a rationale for the development boundary, I also find it a useful statement in forming a judgement about important aspects of character, in particular the importance of the relationship between the settlement and the open countryside in terms of preserving landscape and scenic beauty.
19. The principal impacts of potential significance relate to landscape and settlement character effects arising from the construction of dwellings in the proposed location and more localised effects on Chapel Lane and its surrounds due to the creation of the new access from the lane.
20. Wider landscape effects would arise predominantly as a result of the construction of dwellings within the main site area. The dwellings would be open to longer views from the north and east, including from the footpath that passes through the site and the field to the rear.

21. Dwellings in this location would be seen as a prominent feature in the landscape due to the elevated position. In longer views from the north and east they would be viewed as a continuation of the settlement of Guestling Green, at a built density that is more consistent with that evident within the settlement core. This would be in contrast to the current appearance of openness, greenery, and more scattered built forms that are consistent with the transitional location of the site between settlement and countryside.
22. I appreciate that configuration of the dwellings would be addressed at reserved matters stage. However, the site constraints and indicative plans lead me to conclude that only a limited number of possible configurations are likely. This would be based on placing the dwellings in a linear arrangement adjacent to the northern boundary of the site. It is here that prominence in the wider landscape would be at its greatest and the effects of settlement encroachment on the landscape would be most widely perceived due to the open nature of the views.
23. Additional natural screening along the northern boundary would reduce the impact of the development to a degree. However, in light of the elevated position, likely proximity of dwellings in relation to the boundary and openness of the views in the landscape, such screening would not reduce the effects to an acceptable level.
24. For the above reasons, there is not a reasonable prospect of achieving a layout that would satisfactorily address my concerns at the reserved matter stage. Nor could the effects be mitigated through detailed design, as my concerns arise from the built presence of the dwellings themselves in this location and the resulting effects on the landscape.
25. I acknowledge that there is an existing built influence within the main part of the site, notably the sand area the stable building. Such structures are of a scale and appearance that do not impact on the landscape or effect the relationship between the settlement and the wider countryside. As such, their presence does not provide justification for the proposal.
26. Although the scheme is minor in general planning terms, in the context of this smaller settlement and location beyond the settlement core, the development would represent a negative encroachment into the countryside. In this regard, the proposal would not be a natural extension of the existing village. This would be to the detriment of the wider landscape due to the level of built influence it would bring.
27. Turning to effects on the Chapel Lane surrounds. Notwithstanding my conclusions in relation to wider landscape effects, particularly from the north and east, the separation provided by the paddock and level of natural screening would be such that the impact of the dwellings themselves as seen from the lane would not be significant.
28. Potential effects instead arise as a result of the creation of the new access on to Chapel Lane, with the associated localised loss of boundary greenery, new hardstanding and changes in land form in order to resolve the differences in ground levels between Chapel Lane and the paddock.

29. I noted the variety in accesses along Chapel Lane that serve individual residences and groups of homes. My attention has also been drawn to the surfacing depot that is to the east of the appeal site. Such accesses are therefore part of the established character of Chapel Lane. In this respect, once established, the proposed access would not be inconsistent with the prevailing character of the area.
30. Boundary treatment and surfacing materials is a detailed matter that could be the subject of conditions. A detailed design could also be required to ensure that the differences in ground levels between the paddock and Chapel Lane would be addressed in a way that minimises the risk of an unnatural land profile resulting. If carefully considered, such details would assist with assimilating the access into the surroundings.
31. Regardless of whether it is seen as hedging or a collection of road side trees, the loss of natural boundary planting would erode the country lane character of Chapel Lane. Taken individually, the effect on the character and appearance of the area would be localised and not harmful as such accesses also form part of the established character. In reaching a view on this issue I have paid regard to the Appellant's arboricultural evidence, which provides a reasonable assessment of the likely impacts.
32. The effect of a range of accesses introduced over a period of time in an unplanned fashion risks causing cumulative harm. However, no specific evidence has been presented that allows me to conclude there is a serious threat in this instance. As such, resisting the creation of a further access due to this risk would not be a reasonable nor a proportionate response.
33. Turning to potential effects on the Grade II Listed Honeysuckle Cottage. The Cottage is separated from what would be the main developed part of the site by the paddock and natural boundary features. As such there are low levels of intervisibility between the two. The separation distance between the proposed development, coupled with intervening natural features, means that development of the scale and nature proposed would not impact on the rural setting of the Listed Building. Some impacts on setting would arise as a result of the creation of the new access. However, as such accesses are not uncharacteristic of the area, I am not persuaded that harm to the setting of the Listed Building would occur from this change. As such, the significance of the heritage asset would be preserved. As a consequence, there is no conflict with Policy EN2 of the Core Strategy relating to the historic built environment or the statutory duties relating to Listed Buildings¹.
34. For the reasons set out, the proposal would not have an acceptable effect on the character and appearance of the area when particular regard is paid to whether it would conserve and enhance the landscape and scenic beauty of the AONB. Consequently, there is conflict with policy OSS4, RA2, RA3 and EN1 of the Core Strategy and DEN1 and DEN2 of the DASA, which collectively seek to ensure that development with potential to impact on the landscape and rural character of an area, including within the AONB, will have acceptable effects.

¹ S66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

Affordable housing

35. A planning obligation under section 106 of the Town and Country Planning Act 1990 (s106) has been submitted as part of the appeal. The s106 includes obligations aimed at addressing reason for refusal number 4 relating to affordable housing.
36. Policy DHG1(iv)(a) of the DASA would expect 40% on site affordable housing provision. The s106 undertakes to provide a single unit on site, plus a financial contribution equivalent to 0.6 units to make up for the shortfall.
37. The intention behind the obligation is clear from a reading of the s106. The principle of a financial contribution to make up the shortfall, as opposed to overprovision on site that would amount to 50% of the development, is a reasonable and justified approach in the context of a smaller scheme such as the proposal.
38. The Council have provided no policy justification for their stance that an off site contribution would only be acceptable if on site provision was not possible, i.e. if following engagement no registered providers expressed an interest. The words 'in normal circumstances' in policy DHG1 suggest a wider range of possibilities that would need to be considered on a case by case basis.
39. The additional comments between the Council and the Appellant relating to the detail of the s106 are noted. There appears to be a level of disagreement on finer points of detail. In my judgement these matters do not materially affect the principle of the undertaking and have a reasonable likelihood of being resolved with further discussion between the parties.
40. However, in light of my conclusions in relation to other matters, resolving these finer details with the parties would not be expedient as it would not change the final outcome of the appeal and risks unnecessary delay to the final decision.
41. In light of the above, my final conclusions on the appeal are drawn from the standpoint that issues relating to affordable housing provision are reasonably capable of being resolved. As such, there is no resulting conflict with Policy DHG1(iv)(a) of the DASA in relation to affordable housing provision.

Other Matters

42. I have paid regard to comments from other interested parties, received both in response to the planning application and this appeal. Comments relating to the main issues have been considered as part of my reasoning elsewhere in this decision. Other comments are noted but do not affect my conclusions.
43. Whilst not appearing in their reasons for refusal, the Council's officer report suggested that the acceptability of the loss of the livery business and sustainability of the location were also matters in dispute between the Council and the Appellant. The Council subsequently confirmed that they were of the opinion that these matters could not sustain reasons for refusal. Considering these issues, including the comments of third parties, I take the same view. As such, neither of these matters has been elevated to a main issue.

Conclusions

44. The location of the proposed development would not accord with planning policy for housing. It would also not have an acceptable effect on the character and appearance of the area. There is consequent conflict with the development plan for the area that flows from this, in addition to statutory duties in the Countryside and Rights of Way Act 2000.
45. The exceptional circumstances test at paragraph 177 of the Framework does not apply as major development is not proposed. Nevertheless, conservation and enhancement of the landscape and scenic beauty of the AONB is a matter that attracts great weight, as per paragraph 176 of the Framework. This principle applies regardless of development scale.
46. Notwithstanding the conflict with the development plan for the area, I acknowledge that the proposal would bring with it benefits.
47. It would result in the provision of housing (including affordable), with associated social and economic benefits. The Council do not appear to dispute much of the Appellant's evidence relating to housing supply and delivery. Both of these fall well below expectations and there is no evidence to suggest that a significant improvement is to be expected.
48. Although the proposal would make only a modest contribution in housing delivery terms, I do not dismiss the contribution that such sites can play. Regard must also be paid to paragraph 69 relating to the important contribution that small and medium sized sites can make. Given the extent of AONB coverage in the Council area it is also reasonable to assume that small and medium sites have an important role to play.
49. The degree to which genuine ecological enhancements, as opposed to measures that mitigate the effects of the development, is not demonstrated by the evidence. As such, I regard these aspects of the proposal as a more marginal benefit of the scheme.
50. However, whilst I acknowledge the benefits, in this instance they come at the expense of significant harm to the character and appearance of the area. As such, taken as a whole, the benefits do not represent a material consideration that would justify taking a decision other than in accordance with the development plan. This is particularly in light of the statutory duties relating to the AONB and the policy weight it attracts in terms of protection.
51. The position relating to housing supply and delivery triggers consideration of the presumption at paragraph 11 of the Framework. For the reasons discussed above, the policies in the Framework relating to AONBs (particularly paragraph 176) provides a clear reason for refusing the development when balanced against the benefits. As such, by virtue of the exception at 11(d)(i) the presumption does not apply in this case.
52. In drawing my conclusions on this appeal, I have paid regard to other residential developments that have been approved in the area insofar as they are drawn to my attention. Each decision was reached on the basis of its own context and proposal. None of these decisions are material to the present appeal.

53. For the reasons given, and considering all the other points made, I conclude that the appeal should be dismissed.

D R McCreery

INSPECTOR