



Appeal Decision

Site visit made on 4 January 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/C1435/W/22/3301199

Mill House Farm London Road, Maresfield, Uckfield, E Sussex, TN22 2ED

- 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 R Flittner against the decision of Wealden District Council.
 - The application Ref WD/2021/1015/F, dated 19 April 2021, was refused by notice dated 21 December 2021.
 - The development proposed is Erect one 3 bedroomed, high energy efficient, self build dwelling and garage. Using the approved access for 19/1499 and 20/1962 and the STP approved by 20/1962.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr R Flittner against Wealden District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Development has been approved on the adjacent site to the north for 6 dwellings¹. The approved layout is included within the Council's officer report. This differs from the layout shown on the submitted site plan, which I understand is based on an earlier layout on the adjacent site for 9 dwellings. For the purposes of the proposal before me subject of this appeal, I have had regard to the approved scheme for 6 dwellings on the adjacent site.
4. A set of revised plans was submitted with the appeal. Annex M of the Procedural Guide Planning Appeals – England² states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. The plans seek to vary the proposed siting of the dwelling, alter its design by inserting additional openings and change the form of its roof. These changes significantly alter the proposal in a number of ways.
5. With reference to the Wheatcroft Principles³ I am of the view that the proposal is so changed by the revised plans that if I were to take them into account it would deprive those who should have been consulted on the changed

¹ Council Ref: WD/2019/1499/RM

² Paragraph M.2.1

³ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

development of the opportunity of such consultation. Therefore, I will base my assessment of the proposal on the plans originally submitted to the Council.

Main Issues

6. The main issues are:

- a) The effect of the proposal on the character and appearance of the area,
- b) Whether the proposal would harm or result in the loss of trees of amenity and ecological value,
- c) Whether the proposal would avoid harm to protected species and whether biodiversity net gain would be achieved, and
- d) Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Character and appearance

7. The appeal site is a parcel of land associated with an existing farm. It is well away from the road behind other development, which includes a range of agricultural buildings and dwellings. The site and the rest of the farm to the north and northeast is occupied by a mix of buildings, machinery and rubbish. Rough tracks run along the northwest and northeast boundaries of the site to connect the site to the rest of the farm buildings. Beyond the site to the southeast the land slopes away, with a small agricultural paddock that extends down to a stream at a lower level with mature trees. A mixed species hedge with some small trees separates the site from a large undeveloped field along its southwest boundary.
8. On the basis of the existing site context, the siting and fenestration of the dwelling would be broadly acceptable, and would relate comfortably to the rather eclectic mix of buildings at the site. Its orientation, with openings focussed on its south elevation, would seem to be an appropriate design solution that would maximise solar gain and the views over the countryside and lower land to the south.
9. However, I need to consider the proposal in light of the extant permission for 6 dwellings at the adjacent site to the north. In this context, the blank north side of the building would constitute a poor design response to the row of approved dwellings. The approved dwellings and the proposed dwelling would straddle either side of the access road, but unlike the approved dwellings the proposed dwelling would entirely turn away from this shared space owing to its blank north elevation.
10. Furthermore, the basic level of detail on the proposed plans gives me no confidence that the space to the north of the building would be treated appropriately, in a manner that would enhance the character and appearance of what would become a newly formed streetscene. The plans show a front door, but this does not appear to have direct access from the road. It is not clear whether the space between the north façade and the track would be an element of semi-public realm in the form of a front garden and would thus address the street properly, or whether the whole site would be enclosed and

serve as private curtilage, thus turning away entirely from the approved dwellings.

11. The proposed dwelling would face due south, which means it would sit diagonally across the site and would be at odds with the consistent alignment of approved dwellings. This would reinforce the impression that the design of the dwelling has been developed in isolation, without having proper regard to its context that includes the approved layout of the adjacent development.
12. The appellant suggests that the orientation and the placement of openings would maximise solar gain. This is a commendable aspiration and responds positively to the Council's declared climate emergency. However, it is an objective that can be achieved through a range of innovative and creative design solutions and should be developed in a manner that is balanced with the need to establish a strong sense of place.
13. The distance between the north elevation of the proposed dwelling and the southeast elevations of the approved dwellings is reasonable, and the space between would be over a shared access road. As such, if windows were added to the north elevation of the proposed dwelling they would not facilitate a harmful level of overlooking towards the approved dwellings, or vice versa.
14. The plain design of the proposed dwelling cannot be considered creative, innovative or notably contemporary. As such, these are not characteristics of the proposal that could outweigh the other design deficiencies that I have identified.
15. In summary, the proposal would harm the character and appearance of the area. It would be contrary to Saved Policy EN27 of the Wealden Local Plan 1998 (1998 LP), Policies SPO13 and WCS14 of the Wealden District Core Strategy Local Plan 2013 (2013 CS), the Wealden Design Guide 2008 and paragraphs 126 and 130 of the National Planning Policy Framework (the Framework). Together these seek to ensure that development proposals should be of a form and design that respects the character of adjoining development, of a high quality of design, be visually attractive and establish a strong sense of place.

Trees

16. There are no trees within the application site. The tall conifers referred to by the Council outside the application area to the east have been removed.
17. There are some small trees along the southwest boundary, beyond the red line. These are of some amenity and ecological value, and I note their position in relation to the stream. However, they are modest and stand on a bank that is at a lower level than the site, and are a good distance from the location of the proposed dwelling and garage. It is highly likely that their roots would mainly extend out to the adjacent field rather than the elevated and heavily disturbed land of the appeal site. Therefore, given their modest scale, position and distance to the proposed buildings, I am satisfied that the proposal would not have an adverse impact on their future growth or their root structure.
18. Some trees stand around the edge of the paddock to the southeast of the site. These are more substantial in scale but are much further from the location of the proposed buildings. I am satisfied that these are far enough from the site that the construction of the proposed dwelling and garage would not have an

adverse impact on their future growth or their root structure. None of the trees I have referred to are so close that there would be future pressure for removal if retained.

19. Some modest scrub vegetation exists along the bank that forms the southeast boundary of the site. I could see at my visit that this has been recently cut back. Whilst this could form the basis of a mixed species hedgerow as part of a landscaping scheme, there are no trees growing along this boundary that could be impacted by the proposal.
20. In the event that the appeal is allowed I note that the Council has suggested a condition that would require the submission of a full arboricultural method statement to be submitted prior to the commencement of any work on site. It is possible that areas beyond the site could be used for the storage of materials, or the routing of services, particularly as they are within the appellant's ownership. As such and taking into account my findings that the erection of the proposed buildings at the site would be sufficiently distant to avoid damage to offsite trees, I am satisfied that such a condition would be sufficient to make the development acceptable with regard to tree impacts.
21. In summary, the proposal would not harm or result in the loss of trees of amenity and ecological value. It would accord with Saved Policies EN12 and EN27 of the 1998 LP, Policies SPO13, WCS12 and WCS14 of the 2013 CS and Paragraphs 130, 131 and 174 of the Framework; insofar as they seek to ensure that proposals are resisted which would result in the loss of trees of landscape and biodiversity value.

Protected Species

22. At the time of my visit the site was overgrown in part with some low lying vegetation and occupied by several items including a small stack of wrapped bales, a camper van, a static caravan, a takeaway van and various items of machinery. The parts of the site that were clear were covered with tracks from large vehicles including tractors suggesting that the ground is regularly disturbed by large machinery.
23. A Preliminary Ecological Appraisal⁴ was not before the Council when it made its decision but was included in the appeal submissions. It recommends mitigation to include supervised habitat clearance on site including a hand search for reptiles, nesting birds and the presence of dormice. It also recommends that the small area of scrub and bramble habitat that would be lost can be compensated for through the re-planting of a hedgerow of native species along the site boundaries. This, along with additional carefully considered planting within the site that could be secured by an appropriately worded condition should be sufficient to secure biodiversity net gain, particularly as the site is currently so heavily disturbed and largely occupied by rubbish and machinery.
24. In the event that the appeal is allowed a condition could be imposed that would ensure the recommendations of the Preliminary Ecological Appraisal are carried out, sufficient to ensure that harm to protected species would be avoided or mitigated and that biodiversity net gain would be achieved. Thus, the proposal would accord with Saved Policy EN1 of the 1998 LP, Policies WCS12 and WCS 14 of the 2013 CS and Paragraphs 174 and 180 of the Framework. Together

⁴ The Ecology Co-op Preliminary Ecological Appraisal 1 June 2021 Project No: P4299

these seek to ensure that development proposals maximise opportunities to ensure habitats, biodiversity features and ecological networks are enhanced.

Flooding

25. The Council is of the view that the site is partly within flood zones 2 and 3. On this basis a Flood Risk Assessment (FRA) would be necessary. An FRA has not been submitted. The appellant is of the view that this is not required based on advice received from the Environment Agency (EA), which establishes that the flood map for the area is incorrect. Copies of this advice are before me. The EA suggests that an FRA is not required, based on the surface water flood risk map. The EA recommends that this map is used in this situation.
26. At my visit to the site I was able to see that the site is significantly elevated above the level of the stream. The land is built up, with banks to its lower sides to the southwest and southeast. As a result, and as can be seen on the submitted plans, the land drops steeply away from the site, particularly beyond the red line area to the south of the dwelling.
27. In summary, I am satisfied that the site is within flood zone 1 and thus has a low probability of flooding. The proposal accords with Paragraphs 159, 162 and 167 of the Framework, which set out when an FRA is required, seek to ensure that development in areas at risk of flooding is avoided and that flood risk is not increased elsewhere.

Planning Balance

28. The proposal would conflict with the development plan, as it would be contrary to Policies of the 1998 LP and the 2013 CS, which seek to ensure that development proposals should be of a form and design that respects the character of adjoining development, of a high quality of design, be visually attractive and establish a strong sense of place.
29. The tilted balance set out in paragraph 11d) of the Framework is engaged as the Council is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). In its statement it suggests that it can currently demonstrate a supply of 3.66 years. As a result, where the policies are out of date, which would be the case where a Council cannot demonstrate a 5YHLS, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
30. It is suggested that the proposal would be delivered on a self-build basis, however I give this little weight as there is no mechanism before me, such as a section 106 obligation, that would ensure that the proposal is delivered as a genuine self-build scheme.
31. The proposal would align with the Framework where it seeks to significantly boost the supply of housing. It would provide economic benefits during the construction process and from future occupiers accessing local services and facilities. It would also deliver biodiversity net gain. These benefits would however be limited by the small scale of the proposal for a single dwelling and the small site area.
32. The proposal would however fail to comply with the Framework insofar as it seeks to ensure that proposals are well designed, visually attractive as a result

of good architecture and layout, are sympathetic to local character including the surrounding built environment, and establish a strong sense of place to create attractive, welcoming and distinctive places. In considering these matters in the balance I find that the adverse impacts of allowing the development would significantly and demonstrably outweigh the benefits.

Other Matters

33. The site is within 7km of the Ashdown Forest Special Protection Area. The addition of a dwelling within this area has the potential to have an adverse impact on its features of importance as a result of the recreational impact arising from the future occupiers of the dwelling. This matter forms the basis of the Council's fifth refusal reason. The appellant has submitted a Unilateral Undertaking which secures a financial contribution towards the Council's Strategic Access Management and Monitoring Strategy and its site of Suitable Alternative Natural Green Space. However, as I am dismissing the appeal for other reasons, the impact will not occur in any event, and this matter does not therefore need to be considered further.
34. Adjacent to the site entrance stands a Grade II listed 18th century barn, known as Barn to the North of Mill House Farmhouse. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires 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 which it possesses.
35. I note that the Council's conservation specialist has not made any observations on this matter. The location of the proposed dwelling is a considerable distance from the listed building, with a number of intervening buildings. There is nothing before me, and nothing that I observed at my visit to suggest that the appeal site is a component of the listed building's setting that contributes to its significance. Accordingly, I am satisfied that the proposal would not harm the significance of the listed building. I am also not satisfied that the proposal would improve the building's setting, and this matter should not therefore weigh in favour of the proposal.
36. The appellant suggests that the alternative to the proposal would be to leave the site in its current use, which would not relate well to the extant permission for residential development adjacent. I give this no real weight however, as the Council accepts the principle of a dwelling at the site, so the prospect of the site remaining undeveloped in the context of the adjacent development seems highly unlikely.

Conclusion

37. In conclusion, the proposal would conflict with the development plan and there are no other considerations that outweigh that conflict. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR