



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: 23 January 2023

Appeal Ref: APP/C1435/W/21/3289619

Land to the rear of The Walled Gardens, Five Ash Down, TN22 3AG

- 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 Rookwood Trinity Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/1419/MAO, dated 24 May 2021, was refused by notice dated 15 December 2021.
 - The development proposed is development of site for up to 33no dwellings with amendments to existing access.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Rookwood Trinity Ltd against the decision of Wealden District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of development was changed by reducing the number of proposed dwellings from 39 to 33. It is on this basis that the Council made its decision and upon which I have considered the appeal.
4. The application was made to the Council in outline form. Approval is sought for matters relating to access. Appearance, landscaping, layout and scale are all reserved matters. A layout of the development is shown on the submitted block plan to show how the site could be developed for 33 dwellings, which is referred to as for illustrative purposes only. Accordingly, I will treat the layout details provided as illustrative only for the purposes of determining the appeal.
5. The Council refused the application for three reasons. During the course of the appeal it withdrew its objections relating to the location of the site with regard to policies in its development plan which seek to restrict the provision of new housing in areas that are considered to be countryside, and matters relating to the character and appearance of the area. Thus, the remaining refusal reason forms the main issue of this appeal.

Main Issue

6. The effect of the proposal upon the setting of the Grade II listed building, known as Coopers Cross House.

Reasons

7. The appeal site is to the rear of the extended garden of Coopers Cross House and is broadly to the northeast of the listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant permission in principle 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.
8. The listed building stands close to Coopers Green Road. It faces the road with a fine front façade, comprising an ordered placement of large sash windows with a central door, underneath a broad hipped roof with a deep cornice and sprocketed eaves. Together these give the impression of a gentry house that was planned in a formal manner to front the road. These characteristics are primary contributors to the building's significance that would have been seen originally in the context of open and undeveloped countryside to the rear.
9. Immediately to the north of the listed building stands Coopers Cottage. This would appear to have been built at a later date than the listed building, however it has a complementary form and appearance, and is shown on the historic maps to date from at least 1840. Indeed, the early OS maps show what looks like a form of shared entrance between the two buildings. Together the two buildings form a characterful stretch of historic streetscene.
10. Beyond this to the north is the area known as the walled garden. Four large detached dwellings were constructed here in the 1990s. They are broadly laid out in a similar manner to the listed building and adjacent cottage, respecting the linear form of development and facing out over the road. They appear to have been built in a way that has retained part of the walled enclosure, although there is no information before me relating to this or anything to analyse the heritage value of this remaining structure.
11. The brick wall fronting No. 4 and No. 3 is substantial. It connects with the high wall that fronts the Cottage. Its weathered appearance and overall form suggest it is of some age and unrelated to the modern dwellings that it fronts. From the road in the area of the proposed site entrance the brick wall and Coopers Cottage can be seen alongside Coopers Cross House.
12. The 1990s development within the walled garden has left the area behind undeveloped, maintaining the distinction between the walled garden and the historically undeveloped land behind. It follows the narrow strip of developed land parallel with the road as defined by Coopers Cross House, Coopers Cottage and the walled garden. Thus, whilst the erection of these dwellings has had an impact on the setting of the listed building, they have retained the linear setting and form of the walled garden, the cottage and the house, which has remained unchanged since at least 1840.
13. This surviving interrelationship which was evident at my site visit is supported by other evidence such as the historic maps that are before me. In addition, the 1947 ariel photo included within the heritage report prepared for the development at Coopers Row¹ appears to show a well defined walled enclosure.

¹ Council reference: WD/2021/1895/MAO

Therefore, with reference to Step 2 of the Historic England guidance², I am of the view that the front wall of the walled garden and the linear space that it once enclosed, Coopers Cottage and the undeveloped field behind are important spatial components of the listed building's setting that reinforce its historic context, including its landscape setting, and thus contribute to its significance.

14. The development of the site for up to 33 dwellings would seriously undermine this characteristic of the listed building's setting. Although the design matters do not form part of the outline application, taking into account the elevated level of the site in relation to the road, the addition of built form in the area proposed would be highly prominent. The definition of the walled garden area and the strong linear form of the development to the north of the listed building would be largely lost by a newly introduced depth of built form at the site.
15. Direct views between the site and Coopers Cross House are restricted by the presence of a substantial row of tightly planted conifer trees to the northeast of the building that are planted along the edge of an area of extended garden that was purchased in 1990. From within the site there are very limited opportunities to view the listed building. The trees also block views of the site from the roads to the west and south of the listed building. Great weight is given to the value of these trees in mitigating the effects of development at the site and it is suggested that this additional portion of land already provides a buffer between the listed building and the appeal site. I accept that the trees are mature landscape features that are well established and that the extended area of garden has increased the separation between the appeal site and the listed building.
16. However, the trees are outside of the site area. Thus, they cannot be secured as a landscape feature or as part of a wider landscape plan that would seek their ongoing retention. The current or a future owner of Coopers Cross House may seek to retain them as they provide privacy to the large garden that serves the dwelling. However, they have a natural lifespan and cannot be relied upon in perpetuity. It is quite feasible that an owner of the listed building could seek to have them replaced with a more suitable native species hedge or row of trees, as they are currently excessively scaled, and their replacement would better assimilate the environs of the listed building with the wider parkland character of the Buxted Park Estate to the south. Deciduous trees would not provide the same barrier to the development during the winter months when they are not in leaf.
17. Furthermore, the retention of these tall trees would not be at all compatible with the illustrative layout of plots 31-33, where the trees would be to the west and would have an overbearing impact on outlook and block significant light. The submitted Arboricultural Report³ suggests a root protection area that would be breached by the indicative route for the re-routed overhead cables and an access drive. Whilst I appreciate that the layout plan is illustrative only, it does nothing to support the appellant's case in this regard.

² Historic England, The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)

³ Arboricultural Report – Reference GRS/TS/TCP/AIP/TPP/AIA/05/20 dated 19 February 2021

18. If these trees are lost, or suffer because of nearby construction works, opening up a direct view between development at the site and the listed building would cause significant harm. Development in this area, particularly of the density that would be necessary to fit 33 dwellings on the site, would have an urbanising impact on the setting of the listed building. Its dense form would be at odds with the building's spacious setting, and there would be harmful secondary impacts arising from additional lighting and activity.
19. I have reviewed the Inspector's recommendation to the Secretary of State⁴ in respect of an earlier proposal at the site, where it is found that the development would be sufficiently distant from Coopers Cross House to safeguard its setting as a listed building. It is unclear how the Inspector reached this view, which would appear to have been made only on the basis of distance rather than taking on a more thorough analysis of the building's setting and the extent that it contributes to its significance.
20. I note that this scheme was for 15 dwellings with an illustrative plan that suggests it could be brought forward with only one plot extending into the southern spur of the site with a substantial buffer of planting along the eastern site boundary. It is thus quite a different proposal than that before me which is for up to 33 dwellings. Furthermore, the recommendation was made before the decision of *Steer (Catesby Estates Ltd and SSCLG v Steer* [2018] EWCA Civ 1697) where the Court of Appeal confirmed that the setting of heritage assets is not necessarily confined to visual or physical impact. For these reasons I give the position of the previous Inspector limited weight.
21. Following the Council's refusal, two nearby residential proposals were permitted. The Council approved a scheme for 40 dwellings on Land at Coopers Row⁵. The appellant makes a comparison between this scheme and the appeal proposal as the site at Coopers Row is close to three listed buildings at its southwest corner. The heritage statement that accompanied the submission considers the setting of these buildings and others in great detail. It suggests that the contribution that the setting of the three listed building's closest to the site makes to their significance is either low or negligible. All three are very different architecturally to Coopers Cross House and sit within a more densely developed area with very limited spatial and visual connection with the site. In contrast, the heritage report suggests that the setting of Coopers Cross House makes a moderate contribution to its overall significance.
22. This report suggests that Coopers Cross House is not known to have had a functional or agricultural relationship with the farmland to the north and east, and that its principal relationship with its surroundings has historically therefore been with Five Ash Down to the west, as well as with its large enclosed garden plot to the sides and rear. The appellant suggests that this disassociates the appeal site from the listed building. I am not however satisfied that this is a logical conclusion. Despite a lack of functional connection with the land, the appeal site is still a nearby component of the listed building's setting that is relevant to how it has been experienced since it was constructed and is still of some significance. In addition, I have identified that the interrelationship with Coopers Cottage and the walled garden are aspects of the listed building's setting that contribute to its significance.

⁴ Planning Inspectorate Ref: APP/C1435/V/06/1198477

⁵ Council Ref: WD/2021/1895/MAO

23. I have also reviewed the appeal decision on land to the southwest of the site, that granted permission for the development of up to 35 dwellings. This is separated from Coopers Cross House by the road junction, which is a significant visual barrier, and quite different from the relationship between the listed building and the land that immediately adjoins it to the north and east, which includes the subject appeal site. Accordingly, the grant of planning permission on land at Cooper's Green has no bearing on my findings on the impact of the appeal proposal on the significance of Coopers Cross House.
24. The proposal is for up to 33 dwellings. In theory, in the event that the appeal is allowed, a reserved matters application could be submitted for a much smaller number of dwellings than 33. A scheme for a significantly smaller number of dwellings, perhaps in a manner that occupies a much smaller site area, or which could be brought forward with a comprehensive and well integrated landscape proposal, has the potential to have far less impact on the setting of the listed building.
25. However, in allowing the appeal it would be accepted that the site could be developed for up to 33 dwellings. Furthermore, for economic reasons, a reserved matters application would most likely seek to maximise the development opportunity established by the grant of outline planning permission. As such, I give this matter little weight.
26. I have found that the proposal would cause harm to characteristics of the setting of the listed building that contribute to its significance. In terms of the National Planning Policy Framework (the Framework) the harm identified would be less than substantial. Paragraph 202 of the Framework establishes that any harm to a designated heritage asset should be weighed against the public benefits of the proposal.
27. The proposal would secure development at the site of up to 33 dwellings. In the context of the Council's housing land supply position, the delivery of this number of dwellings carries significant weight. Additionally, the proposal would deliver a mix of housing that is supported by the Council, which would include some self-build plots and affordable housing. There would also be some economic benefits arising during the construction process and from those occupying the dwellings accessing local services and facilities. Thus, taken together, the public benefits of the proposal attract substantial weight.
28. However, the proposal would significantly and permanently alter the character and nature of a large area of land that is close to the listed building. Development at the site would seriously erode the historic interrelationship between the listed building, the cottage to the north and the walled garden area, and the manner that the three components are experienced together. Furthermore, on the basis that the evergreen trees at the rear of the listed building cannot be relied upon in perpetuity, the development of the site would result in the significant urbanisation of the land to the rear of the listed building, which is at a higher level, whereby the presence of development would undermine its long established countryside backdrop.
29. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource and Paragraph 199 establishes that great weight should be given to the conservation of a heritage asset, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial

harm to its significance. On this basis, I am not satisfied that the benefits of the proposal would be sufficient to outweigh the degree of harm identified.

30. In summary, the development of the site for up to 33 dwellings would harm the significance of the listed building. It would be contrary to Policy SPO2 of the Wealden District Core Strategy Local Plan 2013 and Saved Policy EN27 of the Wealden Local Plan 1998, which together seek to ensure that development proposals protect the intrinsic quality of the historic environment, and respect the character of adjoining development.

Other Matters

31. The Council is unable to demonstrate a 5 year housing land supply and therefore a presumption in favour of sustainable development applies. However, with reference to paragraph 11 d) of the Framework, an exception is provided where policies in the Framework that protect assets of particular importance provide a clear reason for refusing the proposal. Footnote 7 establishes that this includes designated heritage assets. I have found that the proposal would harm an aspect of the setting of a nearby listed building that contributes to its significance. It would therefore not accord with the Framework. Consequently, the tilted balance does not apply.
32. The site lies within 7km of the Ashdown Forest Special Protection Area. The addition of up to 33 additional dwellings within this area has the potential to have an adverse impact on its features of importance as a result of the recreational impact of the development. The appellant has submitted a Unilateral Undertaking which would secure 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.
33. Late in the appeal process the Council referred to a motion by its members expressing concern in relation to foul sewerage across the district and the lack of action by Southern Water. I note that several of the local residents who commented on the proposal before me raised similar concerns, with many referring to incidences of flooding in the area owing to a build up of foul sewerage. The appellant suggests that this matter could be addressed by way of a condition in the event that the appeal is allowed. However, as I am dismissing the appeal for other reasons, the reported issues would not be exacerbated by the proposal, and this matter does not therefore need to be considered further.

Conclusion

34. 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