



Appeal Decision

Site visit made on 10 January 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal Ref: APP/M2270/W/22/3297402

Plummers Paddock, Biddenden Road, Sissinghurst TN17 2AB

- 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 E & E Brotherton against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/02911/FULL, dated 20 August 2021, was refused by notice dated 22 October 2021.
 - The development proposed is the erection of a dwelling and detached garage with associated orchard, landscaping and ecological enhancements.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An alternative design to the proposed dwelling's east elevation has been submitted with this appeal. Furthermore, following the Council's Statement, the appellant confirms their agreement to provide additional planting to the eastern boundary although no details or planting scheme have been provided.
3. Putting aside that an appeal is not the forum to evolve a scheme, these matters would significantly alter the proposal but interested parties have not been formally consulted on these details.
4. Furthermore, although the neighbour made comments about planting along the site's eastern boundary, these were in conjunction with the proposed dwelling being repositioned. Therefore, I cannot be sure that the above would address the neighbour's concerns.
5. In light of all this, my decision must be based upon the drawings and details that were considered by the Council at the time they determined the application and not these subsequent submissions.

Main Issues

6. The main issues are a) whether the site is a suitable location for a new dwelling having regard to local and national policies for the delivery of housing; b) the effect of the proposed development on the character and appearance of the area; c) the effect of the proposed development on the setting of a heritage asset; and d) the living conditions of neighbours.

Reasons

Location

7. In the interests of encouraging sustainable patterns of new development and protecting the countryside, the Tunbridge Wells Local Plan 2006 (Local Plan) and Tunbridge Wells Local Development Framework Core Strategy 2010 (Core Strategy) generally seek to avoid development, including new dwellings, being built outside of established settlements. Whilst this helps to protect the rural landscape, it is also in part because locations outside of settlements will generally require less sustainable forms of travel in order to access facilities. This approach is broadly reflective of the National Planning Policy Framework (the Framework).
8. The appeal site forms an existing grassed paddock. It fronts onto the A262 and there are existing dwellings adjacent and near to it. The site is approximately 300m from the boundary of the village of Sissinghurst. Nevertheless, in planning policy terms the appeal site is outside the settlement boundary and within the open countryside.
9. Although the route to the village is unlit, there is a footpath for much of the way, albeit on the other side of the road to the site. A verge, wide enough for one person, connects the footpath to the site, enabling some access to the village on foot, where amongst other things, there is a bus stop. The A262 becomes a 30 mph zone just past the site and despite the lack of street lighting, the route to the village by cycle may not be too daunting for some cyclists. Whilst this is less than ideal to meet day to day needs, particularly during periods of darkness or inclement weather, or for those with small children or impaired movement it does nonetheless provide some opportunities for walking/cycling.
10. Whilst future occupiers would undoubtedly be heavily reliant on the use of a private car, the opportunities for walking/cycling to facilities does help to temper the scale of harm which would be likely to occur. Nevertheless, taking these matters together, I conclude the proposal would not comply with local and national policies for the delivery of housing.
11. In particular, the proposal conflicts with the requirements of Policy LBD1 of the Local Plan and Policies 4, 6 and 14 of the Core Strategy, as well as the provisions of the Framework which, among other things, seek to direct development to defined settlements, thereby protecting the open countryside and minimising the use of less sustainable forms of transport.
12. The decision notice refers to Local Plan policies EN1 and EN25 but these do not appear to be directly applicable to this main issue. However, this does not alter my findings.

Character and Appearance

13. The appeal site is an irregular shaped piece of land which gently rises in level from its northern boundary with the A262. There are a number of dwellings located to the south, east and west of the site. Given the spacing between these other buildings and their proximity to the appeal site, they do not in my opinion visually enclose the site. Nonetheless, they do collectively form a loose-knit ribbon of sporadic development along the A262 and around the site.

14. Sporadic buildings leading to/from a settlement are not an uncommon feature of small villages and settlements. However, within the existing context, the site being an undeveloped gap is important to the character of the area and the transition between the more built-up area of Sissinghurst and the wider countryside.
15. Whilst the proposed dwelling would be set back within the site, away from the A262, it would be positioned on the higher part of the site. The eaves and ridge would be higher than those of Castlevew and the house would be a prominent feature. Whilst most domestic paraphernalia would be likely to be to the rear of the dwelling and so largely shielded from wider views, the parking area and garage/outbuilding would add to the domestication of the site.
16. All of the above would lead to the development as a whole being a conspicuous feature within the street scene and existing landscape. It would consolidate development in this area, and so would lead to built form becoming less sporadic and the area being less of a transition between the formal boundary of the village and the wider open countryside.
17. The scheme includes a proposal to plant what is described as a heritage orchard at the front of the site. Hedgerows and trees form boundary treatments to the properties along the A262 on either side of the appeal site. Whilst no doubt requiring some maintenance and management from time-to-time, they present as a less formal and very different boundary treatment to that of an orchard. The orchard would help to screen the dwelling. However, to my mind, this appears to be a form of mitigation of harm rather than being designed to integrate the development or be an enhancement of the landscape.
18. Overall, I find that the proposal would cause harm to the existing character and appearance of the area. As such, it would be contrary to Policies EN1 and EN25 of the Local Plan and Policies 4 and 14 of the Core Strategy which, amongst other things, seek to ensure any changes are sympathetic and thus the impact of development on the character and landscape of an area will be minimised.
19. The proposal would also be contrary to Paragraph 130 of the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character, including landscape setting.
20. I have not been provided with a copy of the Council's Landscape Character Area Assessment, adopted in 2017. However, as this is guidance which should be consistent with development plan policy, and as I have found the scheme to be contrary to such policy, it does not alter my decision.

Heritage

21. The Sissinghurst Conservation Area (SCA) encompasses the village and extends eastwards towards but does not include the appeal site. There is no statutory protection for the setting of a conservation area in the Planning (Listed Buildings and Conservation Areas) Act 1990.
22. However, Paragraph 200 of the Framework states that harm or loss to the significance of a designated heritage asset, or from development within its setting, should require clear and convincing justification. Policy 4 of the Core Strategy sets out that special regard will be had to the setting of heritage assets. Policy 14 of the Core Strategy and Policy EN25 of the Local Plan more broadly seek to ensure unsympathetic changes do not occur to heritage assets.

23. From what I have read and from what I saw when I visited the site and the surrounding area, the significance of the SCA, in so far as it is relevant to this appeal, is derived from it being a village within a rural setting that has expanded over time but retains many older, more traditional buildings. Its linear development and opportunities for views and connections through to the countryside beyond are contributory defining features to the significance of the SCA.
24. Whilst views into and out of the conservation area are a component of its setting, the setback position of the dwelling within the appeal site and the alignment of the A262, helps to limit the extent to which the proposed dwelling would be seen from within the SCA or in wider views of the SCA.
25. Nevertheless, the dwelling would be evident in views towards the SCA when approaching the site along the A262 from the east. Whilst the front part of the site would remain free of built form, the size and position of the dwelling would draw the eye and be an obvious incursion into what is currently an open area that helps to provide an understanding and appreciation of the significance of the conservation area.
26. Whilst there would be a limited negative effect, it would not preserve or enhance the character or appearance of the SCA. In this respect the proposal would not comply with the requirements of Policies 4 and 14 of the Core Strategy and Policy EN25 of the Local Plan which, amongst other things, seek to ensure that new developments respect the setting and significance of heritage assets. Similarly, insofar as the heritage aspects of the scheme relate to Policy EN1 of the Local Plan, which more broadly seek to protect the character of an area, there is conflict.
27. The decision notice refers to Policy 13 of the Core Strategy, which does not appear to be relevant to this main issue. It does not alter my findings.
28. Given my observations above, the level of harm I would attribute to this would be less than substantial. Nevertheless, considerable importance and great weight should still be given to the conservation of this designated heritage asset when balancing the harm against any public benefits. This is a matter I return to below.

Living Conditions

29. The eastern elevation of the proposed dwelling contains windows at first floor level which face towards the rear garden of Castlevue. Some of the windows would serve ensuite accommodation and would be relatively small. On their own the ensuite windows seem unlikely to cause harm to the neighbour.
30. Towards the front of the eastern elevation, windows would serve proposed Bedroom 3. Although described as secondary windows and set just over 11m from the boundary with Castlevue, they would nevertheless offer unobstructed views across the rear patio of this neighbour. The only windows serving proposed Bedroom 4 would all directly face towards and overlook the rear garden of Castlevue.
31. Whilst these bedrooms would not be the main living area to the house, they would nonetheless be habitable rooms. Given that this is accommodation that could be occupied by a family, a bedroom might not necessarily be used infrequently or only at night. Thus, the fact that they would be bedroom

windows on the first floor that would overlook the neighbour's garden does not mitigate the unacceptable overlooking that would arise.

32. Overall, I find that the proposal would cause harm to the living conditions of neighbouring occupiers. It would therefore be contrary to Policy EN1 of the Local Plan, which is relevant to this main issue insofar as it seeks to ensure new developments protect the privacy of adjoining occupiers.

Other Matters

33. Updated information in relation to reptiles and biodiversity net gain has been submitted as part of the appeal. It is intended to clarify the position and does not change the proposal itself.
34. The submissions conclude that there are no reptiles on site. Although the main parties disagree as to whether the development would produce a biodiversity net gain, I have no reason to doubt the evidence submitted in the updated assessment from the appellants nor the robustness of its findings. Therefore, on balance, I am satisfied that it provides a reasonable basis on which to conclude that the development would not cause harm to any protected species and would achieve a biodiversity net gain. In this respect the scheme would comply with Policy CP4 of the Core Strategy which, amongst other things, seeks to avoid a net loss of biodiversity. The development would also accord with an objective of the Framework which is to protect and enhance bio and geo diversity.
35. A number of issues which are not in dispute have been highlighted. I also note that the Council has not raised an objection to the design of the dwelling itself or palette of proposed materials. Similarly, the proposal is not said to cause harm to the High Weald Area of Outstanding Natural Beauty. However, these matters represent a lack of harm and so do not weigh positively in the scheme's favour.

Heritage and Planning Balance

36. Paragraph 202 of the Framework requires that where 'less than substantial harm' occurs it should be weighed against the public benefits of the proposal.
37. The Government's objective is to significantly boost the supply of housing. The proposal would accord with the Framework's support for windfall sites and would make a more efficient use of the land. However, the development is only for one dwelling and so overall these matters would attract moderate weight in support of the proposal.
38. The scheme would also lead to some, albeit time-limited, economic benefit during the construction phase, which may give rise to extra local employment. In the longer-term future residents may make a more general economic contribution towards supporting services in the surrounding and wider area. There may also be some social benefits arising from the proposal. However, given the scale of the development I attribute only limited weight to these economic and social benefits in support of the scheme.
39. The Framework advises that any harm to the significance of a heritage asset (including from development within its setting) should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm to the significance. I

have found that the public benefits of the proposal afford no more than moderate weight and I judge that they would not outweigh the harm to the setting of the SCA and its significance, which although minor, in accordance with the Framework, is required to be attributed great weight.

40. The harm to the designated heritage asset provides a clear reason for refusing the development. Therefore, notwithstanding the housing land supply position, there is no need to refer to the test in paragraph 11 d) ii) of the Framework. As a result, the presumption in favour of sustainable development does not apply.
41. Whilst there would be some beneficial aspects of the scheme, I have not found there to be justification for permitting the less than substantial harm to the heritage asset. Furthermore, I have found the proposal would cause harm to the wider character and appearance of the area, the living conditions of neighbouring occupants and would be contrary to policies for the delivery of housing.
42. For these reasons, the proposal would conflict with the development plan taken as a whole. There are no other material considerations, including the Framework, which lead me to determine the appeal other than in accordance with the development plan.

Conclusion

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

Stewart Glassar

INSPECTOR