



Appeal Decision

Site visit made on 22 November 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/C1435/W/21/3283342

Land west of Little Tye, Cat Street, Upper Hartfield, Hartfield TN7 4DX

- 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 D Halliwell against the decision of Wealden District Council.
 - The application Ref WD/2020/2542/F, dated 7 December 2020, was refused by notice dated 30 June 2021.
 - The development proposed is erection of detached dwelling and garage.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached dwelling and garage at land west of Little Tye, Cat Street, Upper Hartfield, Hartfield TN7 4DX in accordance with the terms of the application, Ref WD/2020/2542/F, dated 7 December 2020, subject to the conditions set out in the schedule below.

Preliminary Matter

2. The appellant has submitted a Unilateral Undertaking with the appeal, dated 22 March 2022 (the UU). I have had regard to this in determining the appeal.

Main Issues

3. The main issues are:
 - Whether the site is in a suitable location for housing with particular regard to accessibility to services and facilities;
 - The effects on the character and appearance of the area, and whether the proposal would preserve or enhance the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB);
 - The effects of the development on the Ashdown Forest Special Protection Area (AFSPA).

Reasons

Suitability of the Site for Housing

4. Policy WCS6 of the Wealden Core Strategy Local Plan 2013 (WCS) sets out the rural settlements that would accommodate growth in the District. This objective is supported by Strategic Planning Objective SPO3 of the WCS, which sets out the spatial strategy for delivering homes in the District, with a focus on existing towns and limited growth in villages. Saved Policies DC17 and GD2 of the

Wealden Local Plan 1998 (WLP) together resist housing development outside settlement boundaries, unless it conforms with other policies in the Plan.

5. While the site can be described as being within Upper Hartfield, this is not a settlement which is specifically defined by the WLP or the WCS. The site sits among other houses which line Cat Street and is a short walk from the cluster of homes and small number of services which form the centre of Upper Hartfield to the north east. Two bus stops exist immediately outside the appeal site, offering several services a day, including at weekends, towards Hartfield and Forest Road, which provide onward public transport links as well as some further services and facilities.
6. While it is not lit, Cat Street has a continuous footpath on its southern side which extends for a significant distance in both directions from the appeal site. To the east the path extends as far as Hartfield, which contains more services and facilities. The gradient of the path in this direction is gentle, and the speed limit on the highway varies between 40mph and 50mph. Together with the distance to Hartfield, this could be an attractive route for future occupiers, although this is unlikely to be the case in darker months and outside daylight hours. To the west of the appeal site, the footpath terminates before reaching any further services or facilities, and future occupiers would be unlikely to walk to services that way. These routes could, however, be attractive to cyclists.
7. Together these attributes make some sustainable means of transport attractive. However, given the rural location of the site and its distance from most services and facilities, there is still likely to be a significant reliance on private cars by future occupants to carry out their day-to-day activities.
8. Insofar as this main issue is concerned, the above factors result in the site being in an unsuitable location for housing in terms of its accessibility to services and facilities. The proposal would also conflict with the Council's spatial strategy for housing. In turn, the proposal would be in conflict with Policy WCS6 and Objective SPO3 of the WCS, as well as saved policies DC17 and GD2 of the WLP. Together these seek to focus development within existing settlements in order to protect the countryside and promote development in a sustainable fashion.
9. Paragraph 79 of the National Planning Policy Framework (the Framework) requires housing to be located where it will enhance or maintain the vitality of rural communities. Although not defined as a settlement for the purposes of the local plan, the proposal would support the existing rural community of Upper Hartfield. I do not therefore find conflict with this part of the Framework.

Character and Appearance and AONB

10. The site is currently undeveloped and comprises an area of woodland to its northern side, close to the road, and open grassland behind. The site sits between the residential properties of Little Tye and Pear Tree House, and forms a break in the houses which line Cat Street in a broadly linear arrangement. Houses along Cat Street are of varying scale and character, set within generous plots, and with varying degrees of set back from the road. The houses in the area are interspersed by areas of woodland and hedgerows, which give a verdant and spacious character to the area. At the time of my site visit some long views of the landscape to the south were possible in glimpses from the road between the trees, however these would likely be obscured by foliage for

parts of the year. The verdant character of the area, including its interspersed woodland and pattern of development along Cat Street contribute positively to the landscape character and scenic beauty of this part of the AONB.

11. The proposed new dwelling and garage would be set back on the plot, and positioned centrally, away from the site boundaries. Together, the footprint of the proposed buildings and their position on the plot would maintain a spacious quality to the site. The gaps either side of the proposed development would also maintain the possibility of glimpses from the street to the landscape beyond in winter months. The retention of existing trees along the site boundaries would also assist in maintaining the wooded character of the site and the verdant character of the area.
12. The development would be positioned behind the belt of woodland at the front of the site. While an area of trees would need to be removed to facilitate the new access, the remaining trees would continue to occupy the most part of the main frontage, thereby allowing the woodland to continue to contribute to the character of Cat Street and the appreciation of the landscape character of the AONB. The development would inevitably be visible from Cat Street, and to varying degrees across the year. However, by reason of its positioning on the plot and the nature of the surrounding developments, it would not appear out of character with the surrounding area nor visually harmful, but would sit comfortably within its surroundings.
13. Given the scale of the proposed house, some visibility of it may be possible in longer views from the south, particularly as the ground levels fall away to the back of the site. I do not have substantive evidence of this, nor details of the locations from which those views would occur. However, even if some visibility did occur from the south, the development would be seen in the context of the other residential properties which exist along the southern side of Cat Street. Together with screening from existing trees, this impact would not be harmful to the landscape character.
14. The proposed house would incorporate a traditional design and materials and its positioning would reinforce the established character of development along Cat Street. Taken together, for the above reasons I am satisfied that the proposal would both conserve and enhance the landscape and scenic beauty of the AONB.
15. For the reasons given, the proposal would not cause harm to the character or appearance of the area, and would preserve and enhance the landscape character of the AONB. It would comply with policies EN1, EN6 and EN27 of the WLP which together relate to the need for good design and require development to conserve or enhance the natural beauty and character of the landscape. The proposals would also comply with the objectives of the Framework relating to design and its objectives relating to AONBs where it states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs in paragraph 176.

Ashdown Forest Special Protection Area

16. The appeal site is in close proximity to the Ashdown Forest Special Protection Area (AFSPA), for which a qualifying feature underpinning its designation is the concentration of Dartford warbler and European nightjar. The AFSPA is a

European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended.

17. The proposal entails a new house within 7km of the AFSPA which would increase the local population and which, in turn, would increase recreational pressure and disturbance to the AFSPA through habitat damage and disturbance to ground nesting birds. The increase in traffic flows through Ashdown Forest would also give rise to effects on the AFSPA. As such, and adopting a precautionary approach, the proposed development would be likely to have a significant effect on the features of interest in the AFSPA. As such, the Habitat Regulations require an appropriate assessment to be carried out.
18. There is a strategic mitigation approach through Strategic Access Management and Monitoring (SAMM) and Suitable Alternative Natural Greenspace (SANG), and the Council seek financial contributions to these incentives, in line with its Ashdown Forest Mitigation Zone Background Paper.
19. The Council confirm the financial contributions would be used to improve visitor experience at the nearby SANG, to displace recreational trips away from the AFSPA, and the Council state this SANG has capacity to accommodate the additional recreational trips arising from the appeal scheme. The contribution to the SAMM would be used to monitor and limit recreational disturbance at the SPA. I am satisfied that a contribution to these measures would ensure that the proposal would not adversely affect the integrity of the AFSPA.
20. The appellant has submitted a signed UU which would secure financial contributions of £1,170 and £5,000 towards the SAMM and SANG respectively, in line with the Council's requirements. The Council have confirmed that the terms of the agreement are acceptable. Overall, I am satisfied that the agreement meets the tests for a planning obligation, as set out in the CIL Regulations and paragraph 57 of the Framework, and that the development would not adversely affect the integrity of the SPA.
21. For the reasons given, the proposed development would comply with saved policies EN1 and EN15 of the WLP and policy WCS12 of the WCS which, among other things, require consideration of effects of the proposal on the environment and safeguarding of designated nature conservation sites.

Other Matters

22. The site is also close to the Ashdown Forest Special Area of Conservation (AFSAC), designated for its presence of European dry heath, North Atlantic wet heath and great crested newts. This is vulnerable to atmospheric pollution including that from vehicle emissions, which could arise from new development. The Council state that the evidence which informed the emerging local plan, which sought to deliver 14,228 new homes and 22,500 square metres of business floorspace, demonstrated that the quantum of development would not adversely affect the integrity of the AFSAC, nor that of the Lewes Downs SAC and Pevensey Levels SAC and Ramsar site, in terms of air quality impacts. As such, the Council report that mitigation measures are not required. This matter is not in dispute and I have no reason to question this approach. As such, I am satisfied that the proposed development would not adversely affect the integrity of the AFSAC.

23. There is insufficient evidence before me to demonstrate that the proposed access would not be safe, or would cause harm to highway safety on Cat Street. There is little evidence before me regarding the local need for housing of this size, however the proposal would contribute to the supply of housing.
24. Given the relationship with, and distances to, the neighbouring properties, the development would not cause harm to the living conditions of the neighbouring occupiers.
25. Concern has been raised for impacts on ecology on the site. The Council describe the site to be predominantly mown grassland of low ecological value. I do not have evidence which would lead me to a different conclusion and conditions can ensure protection of those trees to be retained. While there are concerns regarding local infrastructure, I do not have substantive evidence to demonstrate that it could not accommodate the proposed development. Similarly, the emissions from vehicles associated with the site would not be likely to have a significant impact on local air quality.
26. A local resident has drawn my attention to an appeal decision relating to a site at Gallipot Hill to the east where the main issues were similar¹ to the appeal before me. However, the circumstances of that appeal differed in terms of the nature of the highway, relationship to services, and the quantum of housing proposed. The Inspector for that appeal also identified harm to the AONB, and consequently the presumption in favour of sustainable development did not apply. As such, I find the circumstances of that appeal to be different to the appeal scheme before me.

Planning Balance

27. The proposal would cause harm through failure to align with the Council's spatial strategy for housing, due to being outside any settlement defined by the local plan. While the proposal would conflict with paragraph 84 of the Framework, as above, it would not conflict with paragraph 105, which seeks to focus significant development in sustainable locations. This is not significant development and this paragraph acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Given that some choice of transport modes would exist, and as the proposal is for a single house in an area characterised by other dwellings along Cat Street, I afford moderate weight to this harm.
28. The proposal would contribute a dwelling towards the District's housing supply, as well as making a positive contribution to the national objective to boost the supply of homes, albeit this contribution would be limited to one new home. This nonetheless weighs in favour of the development, particularly given the shortfall in the Council's housing land supply. In addition, the development would bring economic benefits in terms of construction jobs and ongoing local expenditure by new residents, which could support the vitality of the nearest settlements. Taken together, and in light of the scale of the proposal, these positive attributes attract moderate weight.
29. While the proposal has been found to be policy compliant in other respects, including in terms of AONB and biodiversity impacts, these are neutral matters and do not weigh in favour of the proposed development.

¹ APP/C1435/W/20/3261701

30. The Council accept that it does not have a five year land supply for housing, and states it has a 3.66 year supply. The Council is also progressing towards a new Local Plan and has a housing action plan intended to address the housing shortfall.
31. Nonetheless, in the absence of a five year land supply, and as I have not found that the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed, the provisions of paragraph 11d)ii are applicable to the appeal. This states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
32. For the reasons above, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would benefit from the presumption in favour of sustainable development and paragraph 11d) of the Framework states that planning permission should be granted. In turn this complies with Policy WCS14 of the WCS which reiterates the presumption in favour of sustainable development in the Framework. In the case of this appeal, this is a material consideration of sufficient weight to indicate that planning permission should be granted notwithstanding the conflict with the development plan.

Conditions

33. The Council has provided a list of conditions that it considers would be appropriate. I have considered the recommended conditions in light of the Planning Practice Guidance (PPG).
34. The PPG advises that a shorter time period for commencement may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts. Given the appeal in this instance relates to the delivery of only one home, together with the need for a pre-commencement condition to be satisfied, and in the absence of evidence of negative impacts of non-implementations in the District, I am not convinced that such a tight timescale for implementation is necessary here, and I have imposed a 3 year time limit.
35. It is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. To protect the character of the area, details of tree protection measures are necessary and this condition needs to be satisfied prior to commencement to ensure the relevant protection measures are in place for the duration of the works.
36. In the interests of visual amenity, conditions are imposed to secure details of the final materials as well as schemes of hard and soft landscaping for the site and delivery of the refuse storage areas. To safeguard highway safety, conditions to secure the access and on site parking are imposed, and to encourage biodiversity, ecological enhancements are also conditioned.
37. The Council have not provided details of the extent of the visibility splays they require from the point of access. As the officer report acknowledges the site is on a straight section of road with good visibility in each direction, I do not have evidence that a further condition relating to visibility splays is therefore

necessary. Given the size of the site and the proposed parking areas, it is not necessary to condition the minimum sizes of the parking areas or specific cycle parking areas.

38. Electrical charging points are now a building regulations requirement and I do not have details of a need for them to make the development acceptable in planning terms. In light of the scale of the development, and the size of the site as a whole and its relationship to the neighbouring properties, I do not find that a requirement for a construction management plan meets the test of necessity here.
39. The PPG advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In the absence of details as to why such a condition is necessary, I have not imposed such a restriction. Similarly, in the absence of evidence that mitigation is required for biodiversity on the site, I have not imposed such a condition.

Conclusion

40. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: OS Map dated 9 September 2020, D1875.1A, D1875.2A, D1875.3D, D1875.4, D1875.6, D1875.7, D1875.8,
- 3) No site clearance, preparatory work or development shall take place until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. This shall include: details of the trees on the site and its boundaries to be retained, and a scheme for the protection of those trees and the appropriate working methods in accordance with British Standard BS 5837: 'Trees in relation to design, demolition and construction'. The development shall be carried out in accordance with the approved details and all tree protection measures shall be maintained in accordance with the approved details throughout the construction period.
- 4) Prior to the commencement of development above the damp proof course level of the house or garage hereby approved, details of the materials to be used on the external faces of the house and garage shall be submitted to, and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of the development, the site access, car parking areas and recycling and refuse areas shown on drawing

D1876.3D shall be constructed and available for use. They shall remain available for use as such at all times.

- 6) Prior to the first occupation of the development, details of schemes of hard and soft landscaping for the site, boundary treatments, and a timetable for their implementation, shall be submitted to and approved in writing by, the local planning authority. The hard and soft landscaping shall be implemented in accordance with the approved details and the timetable for implementation.
- 7) Prior to the first occupation of the development, details of biodiversity enhancements for the site shall be submitted to and approved in writing by the local planning authority. Those enhancements shall be installed in accordance with the approved details within six months of their approval in writing and so maintained.

End of Schedule