



Appeal Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Appeal Ref: APP/U1430/W/22/3309165

Villa Flair, Union Street, Flimwell TN5 7NT

- 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 L Sutton against the decision of Rother District Council.
 - The application Ref RR/2021/2804/P, dated 17 November 2021, was refused by notice dated 6 September 2022.
 - The development proposed is erection of a detached bungalow with three bedrooms and a detached store and double garage together with associated hardstanding, turning area and use of existing access on to the B2087.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached bungalow with three bedrooms and a detached store and double garage together with associated hardstanding, turning area and use of existing access on to the B2087 at Villa Flair, Union Street, Flimwell TN5 7NT in accordance with the terms of the application, Ref RR/2021/2804/P, dated 17 November 2021, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by L Sutton against Rother District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Both main parties have referred, in written evidence, to several policies which were not included within the reasons for refusal as listed on the Council's decision notice. Therefore, at my request, the main parties agreed a list of development plan policies which they considered relevant to the reasons for refusal in an addendum to the Statement of Common Ground (SoCG).
4. These include policies contained within the Ticehurst Neighbourhood Development Plan 2018-2028 (Made 8 July 2019) (The Neighbourhood Plan). I have had regard to these policies in considering this appeal. During the Hearing, the Council also confirmed that Core Strategy¹ Policy EN3 and Local Plan² Policy DHG9 are not relevant to the main issues of this appeal.

¹ Rother Local Plan Core Strategy (Adopted 29 September 2014)

² Development and Site Allocations Local Plan (Adopted 16 December 2019)

Main Issues

5. The main issues are:

- Whether the site is a suitable location for the proposed development with regard to the Council's strategy for the location of residential development and access to services and facilities.
- The effect of the proposed development on the character and appearance of the area with specific regard to the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

Location

6. The appeal site comprises an area of grassland, including an existing stable building, adjacent to a single storey detached dwelling known as 'Villa Flair'. The appellant has indicated that the land is used as a paddock. The appeal site is outside of, but directly adjacent to, the settlement boundary of Flimwell as defined within the Neighbourhood Plan³. The appeal site is therefore located in the countryside for planning purposes.
7. Local Plan Policy DIM2 states that development in the countryside will be limited to that which accords with specific Local Plan policies or where a countryside location is demonstrated as necessary. Neighbourhood Plan Policy H1 similarly requires that in locations outside the development boundaries a countryside location must be demonstrated as essential with reference to Core Strategy Policy RA3.
8. Core Strategy Policy RA2 sets out the general strategy for development in the countryside. Part (iii) of this policy states that development will be strictly limited to that which supports local agricultural, economic or tourism needs and maintains or improves the rural character.
9. Core Strategy Policy RA3 also relates to 'development in the countryside' and in terms of economic development it refers to supporting employment and the growth of business. In this regard, when policies RA2 and RA3 are read together it is clear that the economic benefits of the proposed development do not amount to those supported within these policies. Indeed, Core Strategy Policy RA3 has separate criteria for residential development and it states that residential development in the countryside will be allowed only in 'extremely limited circumstances'. The policy lists the types of residential development which are permissible in the countryside, none of which apply to the proposed development.
10. The evidence before me indicates that these policies collectively seek to ensure that development is located in locations with good access to services and facilities. In this regard, Core Strategy Policy TR3 is also relevant and it seeks to ensure that new development minimises the need to travel and has good access to employment, services and facilities.
11. Whilst the appeal site is located in very close proximity to Flimwell, this settlement has a very limited range of services and facilities. As such, future

³ Ticehurst Neighbourhood Plan 2018-2028 Made 8th July 2019

occupiers of the proposed development would inevitably need to travel further afield to access services and facilities.

12. The settlements of Ticehurst (to the west) and Hawkshurst (to the east) both have a wider range of services and facilities, including shops, schools, public houses and churches. Nonetheless, there is no footway for large stretches of the highway between Flimwell and these neighbouring settlements. This makes walking an unlikely means of travel for future occupiers, particularly given that each settlement is more than 1 mile from Flimwell.
13. Whilst it may be possible to cycle to these settlements, this mode of transport might not be suitable for those with mobility impairments, for example elderly or disabled people. It would also not be an attractive means of travel in inclement weather conditions. Furthermore, whilst there is a bus stop a short walk from the appeal site, I have not been provided with substantive evidence to demonstrate the exact frequency, duration or destinations of such services and as such I give this consideration little weight.
14. In summary, the proposed development would be located in the countryside in a location with poor access to services and facilities. It would therefore be contrary to the strategy for the location of residential development as set out within Core Strategy Policies RA2 and RA3, Local Plan Policy DIM2 and Neighbourhood Plan Policy H1. There would also be a conflict with Core Strategy Policy TR3, which outlines that new development should minimise the need to travel and support good access to services and facilities.
15. Core Strategy Policy OSS2 relates to plan-making and there is no conflict with this policy.
16. The relevant provisions of the National Planning Policy Framework (the Framework) are discussed in relation to the planning balance later in this decision.

Character and Appearance

17. The appeal site comprises of grassland, a stable building and a small area of hardstanding. The site is part of a wider parcel of grassland which is physically separated from the wider countryside to the south by a band of mature trees. There are also several neighbouring gardens which extend up to the boundaries of this area of grassland. In this regard, the appeal site is relatively well contained from a physical and visual perspective.
18. Flimwell is predominantly characterised by a range of residential development of varying architectural styles and scales. Whilst many of these properties front Union Street in a linear manner, there are many examples of development in depth, particularly on the opposite side of Union Street. More pertinently, Villa Flair and the Glen are residential properties in close proximity to the appeal site which are set back behind the linear properties fronting Union Street.
19. The appeal site is also located within the High Weald AONB. Under section 85(1) of the Countryside and Rights of Way Act 2000 (as amended) I am required to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. Furthermore, Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of an AONB.

20. The evidence before me⁴ indicates that the key characteristics of the AONB include the verdant and rural landscape which comprises an undulating mosaic of woodland and farmland set within sandstone ridges and clay valleys. In terms of settlement character, the AONB is notable for the absence of large urban extensions. It comprises of picturesque hamlets and villages with a prevalence of valuable historic architecture.
21. The proposed development is for a small single-storey detached building with a very modest footprint. The scale of the development is limited, even in comparison to the small scale of Villa Flair. The outbuilding already exists and as such it's conversion would not add to the scale or prominence of the development. Similarly, an area of hard standing already exists in the approximate location of the driveway.
22. The proposed dwelling would be located at the north-eastern end of the paddock and as such would assimilate with the existing residential development when viewed from the south. Indeed, the layout of the development whilst not linear, would be similar to the existing residential properties directly to the east.
23. Whilst the proposed garden would be larger than the neighbouring dwellings to the east, it would still remain within the confines of the mature trees surrounding the paddock. Furthermore, the pattern of residential curtilages is by no means consistent along the settlement edge, as emphasised by the irregular shapes of the neighbouring gardens to the west, which extend up to the boundary with the golf club. Furthermore, the Council's concerns with regard to permitted development rights being exercised can be addressed through the imposition of a suitably worded condition.
24. The large mature trees which surround the paddock would significantly restrict views from further south. In this regard, the visual impact of the development would be largely confined to the wider paddock, much of which would remain. Given the physically contained nature of the paddock, the small-scale of the proposal and its location close to existing residential development, it would not be harmful to the visual transition between the settlement and the wider countryside. Neither would the development result in settlements perceptually or physically merging, given the contained nature of the site. In this regard the proposal would not conflict with Objective S2 of the AONB Management Plan which, in part, seeks to ensure that the physical and perceived separation between settlements is maintained.
25. The mature trees which surround the site are attractive and they create an important verdant and rural character. They also serve to soften the transition between the wider countryside and the settlement. In this regard they are a valuable element of the natural beauty of the AONB. However, the arboricultural report submitted by the appellant shows that these trees would not need to be removed or pruned to facilitate the proposal. Furthermore, a condition could be imposed to ensure that they are retained. The proposed dwelling would be sufficiently far from the mature trees that I see no reason why there should be any additional pressure for their removal from future occupiers.

⁴ The High Weald AONB Management Plan 2019-2024

26. In summary, the proposed development would conserve the landscape and scenic beauty of the AONB given that appeal sites limited contribution to the key characteristics of the AONB, the contained nature of the site and the small scale of the proposal. The trees to the south of the appeal site, which do serve an important role, would not be removed or pruned subject to appropriately worded planning conditions. Indeed, through the imposition of conditions to ensure that the existing verdant character of the appeal site is bolstered through additional planting, the scenic landscape and beauty of the AONB would also be enhanced by the proposal. The layout, design and orientation of the dwelling would also be in keeping with the prevailing character of nearby dwellings.
27. The proposed development would therefore comply with Core Strategy Policies EN1 and OSS4, Local Plan Policies DEN1 and DEN2 and Neighbourhood Plan Policies R1 and H5. Collectively, these policies seek to ensure that development is in keeping with local character and in particular, that it conserves and enhances the landscape and scenic beauty of the AONB.
28. For the same reasons the proposed development would comply with the objectives and guidance contained within the AONB Management Plan. The parties have both also referred to Policy DEN7, but this policy relates to environmental pollution and is not relevant to this main issue. The relevant provisions of the Framework are discussed in the 'planning balance' section of this decision.

Other Matters

29. Interested parties have raised objections pertaining to the level of residential growth that Flimwell has already accommodated and have highlighted that the site was rejected when considered through the Neighbourhood Plan Process. However, neither of these considerations would result in harm beyond that which I have already identified in relation to the site's location beyond the settlement boundary of Flimwell.
30. Furthermore, the prospect of additional development on the wider site is not a factor which has a bearing on my conclusions given that there is no strong evidence to suggest that this is the appellant's intention and even if there were, any such future application for planning permission would be determined on its own merits.
31. Concern has been raised that the widened access could not be accommodated within land owned by the appellant. However, there is no substantive evidence before me which suggests that any planning permission could not be implemented for that reason. As such, it is not a consideration which alters my findings from a procedural or planning perspective.
32. I also note the close proximity of the access to neighbouring dwellings on Union Street. However, given that only one dwelling is proposed the noise associated with any occasional vehicular movements would be commensurate with what one might expect in a residential area.
33. The Council has provided a listing description in respect of a Grade II listed building known as Yew Tree Cottage. This building is opposite the proposed access and primarily derives its significance from its attractive architecture.

Indeed, it comprises well preserved features including a slate roof, first floor weatherboarding and glazing bars which give it a distinctive appearance.

34. Whilst the access to the appeal site would be located opposite this listed building, it does not currently make a significant contribution to the building's setting, given its small size and relatively fleeting visual appearance when passing by car or on foot. The proposed access would be widened. However, given the limited scale of this part of the development and the numerous access points and driveways which already front Union Street, there would be no harm to the setting of the heritage asset, nor its significance. Similarly, the proposed dwelling would result in no harm to the setting of the listed building, given the paddock's lack of physical or functional relationship with it. The proposal therefore complies with the relevant provisions of the Framework in relation to heritage assets.
35. In reaching this conclusion I have had regard to my statutory duty under section 66 (1) and section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which require me to have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest.
36. Both main parties have referred to an appeal decision⁵ for a site in Whatlington, where the Inspector allowed an appeal which centred on similar main issues to those of this appeal. However, that appeal concerned a development which included different site-specific circumstances to this case. Furthermore, the Inspector still found that proposal to conflict with the development plan policies concerning the settlement boundaries. In addition, harm to the AONB is subjective and very much related to site specific circumstances. For these reasons, this appeal decision has no significant bearing on my findings.

Planning Balance

37. The Council's most recently published Housing Land Supply (HLS) position confirms a HLS of 2.79 years. As such, Framework Paragraph 11d is engaged. The proposed development would not however conflict with Framework Paragraph 176 or any other Framework policies which seek to conserve and enhance landscape and scenic beauty of AONBs. For this reason, there are no policies in the Framework which provide a clear reason for refusing the development in the context of Framework Paragraph 11d)i.
38. As such, Framework Paragraph 11d)ii applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
39. The Neighbourhood Plan is more than two years old and the Council's HLS is less than three years. As such, Framework Paragraph 14, which deals with conflicts with neighbourhood plans where Paragraph 11d is engaged, does not apply.
40. There would be some harm as a result of the proposed development, owing to its location in an area with poor access to services and facilities. To this extent, the proposal conflicts with Framework Paragraphs 105 and 112 which seek to

⁵ PINS Ref: APP/U1430/W/21/3285269

direct development to sustainable locations, limit the need to travel and prioritise sustainable modes of transport. Indeed, I have identified a conflict with the relevant development plan policies in this regard. However, the harm which would arise from this conflict would be of moderate weight, given the small scale of the development and the fact that Framework Paragraph 105 acknowledges that sustainable transport solutions will vary between urban and rural areas.

41. The appeal site is not located within an isolated location within the context of Framework Paragraph 80, given its close proximity to the settlement of Flimwell. As such, there would be no additional harm in this regard.
42. The main benefits of the proposed development would arise from the provision of one dwelling. This would result in an increase in the housing stock. Indeed, I afford the economic and social benefits of the proposal substantial weight within the context of a HLS shortfall. There would also be some limited economic benefits associated with the temporary support for construction jobs and the small increase in the local population.
43. The development would also lead to a small enhancement to the natural beauty of the AONB, with the existing boundary planting retained and bolstered through the imposition of appropriately worded conditions. Nonetheless, the scope for such enhancements is modest and as such, these environmental benefits can only be afforded limited weight.
44. Overall, within the context of the existing HLS shortfall, the harm which would be caused by the proposed development would not significantly and demonstrably outweigh the social, economic and environmental benefits of the development which I collectively afford substantial weight.
45. The appellant also asserts that the appeal site is previously developed land. However, there is insufficient substantive evidence before me to come to a definitive conclusion on this matter. However, even if I were to find that the site was not previously developed, it would not alter the conclusion I have reached with regard to the planning balance.

Conditions

46. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), the appellant has given written agreement to the pre-commencement conditions suggested by the Council and where I have modified these it has had no material bearing on their function.
47. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty. The plans condition specifies that the garage floor plan is not approved for reasons discussed in relation to condition eight.
48. A condition requiring that a Construction Ecological Management Plan shall be submitted is necessary in the interests of highway safety and biodiversity [3]. A condition pertaining to details of the widened access track [4] is also necessary in the interests of highway safety.

49. Conditions requiring the submission of details pertaining to retained trees [5], samples of materials [6] and details of hard and soft landscaping [7] are necessary in the interest of the preserving the character and appearance of the area and conserving the natural beauty of the AONB.
50. The main parties agreed at the hearing that sufficient parking could be implemented and controlled through the imposition of a condition requiring submission of a revised floor plan of the garage/store showing suitable cycle and vehicular parking provision. Such a condition is necessary in the interests of highway safety [8].
51. The Council recommended a condition pertaining to the implementation of the ecological enhancement measures as set out within the appellant's Ecological Mitigation and Enhancement Strategy. However, the only measures which are sufficiently precise relate to the provision of an external lighting scheme. And no justification has been provided for any of the other required measures briefly described in the strategy. As such, it is only necessary to impose a condition requiring the submission of a lighting scheme [9] prior to the installation of external lighting in the interest of preventing harm to protected species (bats).
52. The appellant suggested a condition removing permitted development rights for buildings incidental to the enjoyment of the dwellinghouse to overcome the Council's concerns with regard to potential future development within the curtilage of the dwelling and the associated prospect of harm to the AONB. Given the size of the proposed garden and that the dwelling has been deliberately located away from the southern boundary of the appeal site, I consider it necessary and reasonable to remove such rights [10] (removing the potential for additional buildings to the south of the site) in order to conserve the natural beauty of the AONB.

Conclusion

53. The proposed development would conflict with the development plan insofar as it would be located outside of the defined settlement boundary of Flimwell in a location with poor access to services and facilities. However, this harm is limited given the small scale of the proposed development. Furthermore, the development would conserve and enhance the natural beauty of the AONB.
54. Taking into account the approach in the Framework at Paragraph 11d, within the context of a HLS shortfall, the harm would not significantly and demonstrably outweigh the social, economic and environmental benefits of the development. This is a material consideration which indicates that a decision should be made other than in accordance with the development plan. As such, the appeal is allowed and planning permission is granted.

Luke Simpson

INSPECTOR

CONDITIONS SCHEDULE

- 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: BDS-VF-P01 REV B – Dated April 21, BDS-VF-P03 REV D dated April 21, BDS-VF-P04 dated April 21, BDS-VF-P02 – Dated April 21 and Arboricultural Report GRS/TPP/AMS/74/21 Dated 1st May 21, except in respect of the proposed garage/store floor plan shown on plan references BDS-VF-P03 REV D and BDS-VF-P04.
- 3) No development shall take place until a Construction and Ecological Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
 - a) A plan indicating the parking of all vehicles associated with the widening of the access, the clearance of the site and the construction of the new dwelling.
 - b) A plan indicating the storage area for the construction rubble, construction materials, machinery and equipment.
 - c) A time management plan for (a) and (b).
 - d) Details of precise measures for ecological management during construction in accordance with the recommendations contained within the submitted Ecological Mitigation and Enhancement Strategy (Native Ecology, May 2022).

The development hereby permitted shall thereafter be carried out in accordance with the approved details for the duration of the construction period.
- 4) No development shall take place until details of the specification and design of the widened vehicular access from Union Street have been submitted to and approved in writing by the local planning authority. The access shall be laid out in accordance with the approved details prior to commencement of any other part of the development hereby permitted. The access shall thereafter be retained in accordance with the approved details.
- 5) No development shall take place until a plan indicating trees to be retained has been submitted to and approved in writing by the local planning authority. Within five years of the date of first occupation of the dwelling hereby permitted, no retained tree shall be cut down, uprooted, topped, lopped or destroyed. If any retained tree is removed, uprooted, destroyed or dies, another tree of the same species shall be planted in the same place within the first available planting season and retained as such thereafter.
- 6) No development above slab level shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development hereby approved shall be carried out in accordance with the approved samples and retained as such thereafter.

- 7) No development above slab level shall take place until details of a hard and soft landscaping scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to occupation of the dwelling hereby permitted and shall thereafter be retained as such.
- 8) Prior to occupation of the dwelling hereby permitted, a floor plan for the proposed garage/store, which includes two parking spaces with a combined width of at least 6 metres and length of 5 metres and an area for secure cycle storage of 2 bicycles, shall be submitted to and approved in writing by the local planning authority. The vehicle and cycle parking shall be laid out in accordance with the approved details prior to occupation of the dwelling hereby permitted and retained as such thereafter.
- 9) No external lighting shall be installed until a "lighting design strategy for biodiversity" for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The installation of any external lighting shall thereafter only be undertaken in accordance with the approved strategy and shall be retained as such thereafter.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no development permitted by Class E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected within the curtilage of the dwelling hereby approved.

APPEARANCES

FOR THE APPELLANT:

Paul Nicholls	Planning Consultant
Leslie Hutchinson	Architect

FOR THE LOCAL PLANNING AUTHORITY:

Asma Choudhury	Senior Planning Officer
Sarah Shepherd	Team Leader
Miles Joyce	Development Manager

INTERESTED PERSONS:

Cllr Mary Barnes	District Councillor
Cllr John Barnes	District Councillor
Anthony Lloyd	Vice-Chair, Ticehurst Parish Council