



Appeal Decision

Hearing held on 15 February 2023

Site visit made on 15 February 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/C1435/W/22/3310319

West Ridge House, Goldsmiths Avenue, Crowborough TN6 1RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Chailey Homes Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/3110/F, dated 17 December 2021, was refused by notice dated 4 May 2022.
 - The development proposed is construction of 1no. detached residential property, integral garaging with associated new vehicle access and circulation space to front of the property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A unilateral undertaking pursuant to Section 106 of the Act (the UU) is before me. This is dated 14 February 2023, signed by the landowner and a representative of the appellant, and secures the payment of contributions towards measures intended to mitigate recreational pressures placed upon the Ashdown Forest Special Protection Area (the SPA). The Council confirmed at the Hearing that, due to the UU's submission, it no longer wishes to defend its sixth reason for refusing planning permission. I shall formulate the Main Issues on this basis and shall return to the UU later in this Decision.

Main Issues

3. The main issues are:
 - The effect of the proposal upon the character and appearance of the area, including consideration of the effect upon protected trees;
 - The effect of the proposal upon the living conditions of neighbouring residential occupiers, having particular regard to outlook;
 - The effect of the proposal upon biodiversity, having particular regard to the effect upon protected species; and
 - Whether or not adequate arrangements for the disposal of surface water have been demonstrated.

Reasons

Character and appearance, including the effect upon protected trees

4. The appeal site is comprised of residential garden and is located, for the most part, to the rear of West Ridge House and thus in a setback position relative to Goldsmiths Avenue (the Avenue). The site contains a range of planting, including various trees of differing species and ages, whilst long-established mature trees of visual prominence are often located along its boundaries. There are Tree Preservation Orders applicable to the site including one¹ (the Woodland TPO) that relates to a woodland area that closely reflects the shape and extent of the appeal site.
5. Saved Policy CR2 of the Wealden Local Plan (December 1998) (the Local Plan) refers specifically to the Crowborough Warren area within which the site is located. The supporting text to this policy indicates that the area has a distinctive character created by large, detached properties set in extensive gardens where mature tree cover, hedgerows and landscaping are the dominant visual elements. These give the area an attractive arcadian quality, which was readily apparent upon inspection. Whilst West Ridge House is a semi-detached property, the site and immediate surroundings, being well-vegetated and featuring dwellings set upon spacious and verdant individual plots, are reflective of the typical characteristics of Crowborough Warren.
6. The large, two-storey, five-bedroomed dwelling that is proposed would, in terms of its scale, its site coverage, and its siting relative to the Avenue and other properties, reflect the defining characteristics of the area. Indeed, in the locality, there are other similarly large dwellings and not dissimilar forms of 'backland' development. Furthermore, the generous size of the site dictates that the expected plot size requirements of saved Policy CR2 would be respected, and that the area's low-density character would be suitably emulated. It is also the case that merely limited glimpsed views of the new dwelling would realistically prevail from publicly accessible vantage points.
7. However, the existence of the Woodland TPO is an important material consideration in this case. This is particularly as saved Policy CR2 is clear that proposed development should not result in the loss of trees, shrubs, hedges or other features that contribute to the special character of the area. The Woodland TPO's purpose is to safeguard the woodland as a whole, which is dependent upon regeneration or new planting. As such, all trees and saplings of whatever size within the identified area are protected. This includes those planted or growing naturally after the Woodland TPO was made.
8. Some fifty-six trees covered by the Woodland TPO were removed from the site without prior consent in 2006. Whilst no formal Tree Replacement Notice was ever served by the Council, it is apparent that an informal written agreement (which detailed a scheme of replanting) was reached between the Council and landowner in 2007. Most of the replanting that was agreed² was centred upon a defined area (the replanting area) that overlays the main body of the appeal site including the intended location of the proposed dwelling and associated areas of hardstanding. Upon inspection I observed, across a significant portion

¹ including Wealden District Council Tree Preservation Order (Withyham/Crowborough) No. 72/1989, Trees at Westridge House, Goldsmiths Avenue, Crowborough, confirmed 11 December 1989

² as depicted upon an accompanying Location Plan, dated 17 January 2007

- of the replanting area, various young trees and saplings. Some of these are likely self-seeded specimens, as opposed to having been planted in accordance with the aforementioned written agreement.
9. It has been suggested by the appellant that the trees now growing within the replanting area are insignificant specimens that have not benefited from regular management or maintenance. I have no reason to doubt that limited active management has occurred, which is reflected in growth rates over time and the branch form of some of the trees observed. Even so, many of the trees within the replanting area have grown reasonably well in accordance with their own individual circumstances. Moreover, most of the young trees I witnessed have, to my mind, the potential to develop into large and fully established specimens appropriate to their species, and to make a considerable contribution to the visual amenity of the protected woodland. Any stance to the contrary has not been clearly or convincingly demonstrated.
 10. I accept that the scheme would not necessitate the loss of any established tree visible from any publicly accessible vantage point. However, the proposal would compromise the future ability of a protected woodland to regenerate and re-establish over time. This is not least due to the extensive ground coverage of development (including hardstanding) and the direct conflict that would ensue between new development and a significant central/core portion of the area covered by the Woodland TPO, which currently contains a considerable number of growing trees. Moreover, the woodland was originally designated as a whole and not on the sole basis of the amenity afforded by its perimeter trees.
 11. It has been suggested that a scheme of soft landscaping could be secured via condition and that new planting could mitigate the tree losses necessitated. However, especially in the context of a significant central swathe of the site becoming unavailable for new planting, I do not accept this to be the case.
 12. My attention has been drawn to advice contained within the National Planning Practice Guidance related to the making of new TPOs, and it has been suggested that a woodland TPO would not be made at the site based on current circumstances. However, even should this be the case, it remains that the Woodland TPO was made and confirmed historically in the interests of safeguarding the amenity of the area. As discussed above, the designation endures and offers statutory protection to all existing trees on the site.
 13. The private access driveway that is proposed would run a narrow corridor, be of no-dig specification, and result in very limited planting losses. Whilst noting its intended positioning within the calculated root protection areas of various mature and protected trees, I am, following inspection, satisfactorily content that the access driveway's introduction would be unlikely to prejudice the long-term health of any tree of meaningful value. Nor would the new access compromise the amenity function of the wider Woodland TPO area.
 14. I am similarly content that the dwelling itself would be adequately distanced from mature trees to avoid future day-to-day living arrangements at the site being unacceptably compromised by the effects of tree cover and/or undue pressures to heavily prune or remove mature trees materialising. A Daylight, Sunlight and Overshadowing Report (August 2022) has been helpfully provided to assist in offering assurances in this regard. Moreover, the site is spacious and not heavily treed to all stretches of its perimeter.

15. Nevertheless, despite my findings with specific respect to the new access driveway and future day-to-day living arrangements, as well as my assessment that the proposed dwelling per se would reflect the defining characteristics of the Crowborough Warren area, the proposal, through unacceptably compromising the future ability of a protected woodland to regenerate and re-establish, would cause significant harm to the character and appearance of an area defined by its attractive arcadian qualities. The scheme conflicts with saved Policies EN27 and CR2 of the Local Plan in so far as these policies require development proposals to promote local distinctiveness and protect the established character of the Crowborough Warren housing policy area.

Neighbouring living conditions – outlook

16. The site is situated such that it abuts various neighbouring residential plots, and a dwelling of considerable bulk and mass is proposed. Even so, the spacious nature of the site and its surroundings offers the opportunity for typically generous separation distances to be achieved between the proposed dwelling and other properties in the locality. This includes with respect to Westridge Cottage to the northwest, where an unacceptable overbearing relationship would be avoided even should existing intervening established conifers be cutback or removed in the future.
17. The closest property would be Endways, a large two-storey detached dwelling located eastward of the site. Nevertheless, the precise positioning and orientation of the new dwelling would ensure that no direct back-to-back or side-to-back relationship would ensue. It is also relevant that mature planting offers a considerable and established soft buffer along the eastern boundary of the site. Moreover, I do not consider that the proposed dwelling would be experienced as unduly imposing or overbearing when experienced from Endways. This similarly applies to any other adjoining premise. I have had regard, where relevant, to changing land levels in coming to this finding.
18. For the above reasons, having particular regard to outlook, the proposal would not cause harm to the living conditions of neighbouring residential occupiers. The scheme accords with saved Policy EN27 of the Local Plan in so far as this policy sets out that proposed development should not create an unacceptable adverse impact on the amenities of adjoining developments and the neighbourhood by reason of scale, height and form.

Biodiversity – protected species

19. The proposal is supported by an Ecological Scoping Survey (the ESS), compiled in October 2020, which concludes that there was no evidence of, or habitat suitable for, protected or notable species within the survey area except for potential bat roosting sites under the tiles of the main roof of West Ridge House. The ESS recommends the carrying out of at least one bat emergence survey, which I find to be a justified and commensurate approach for safeguarding this particular species, and the production of a Wildlife Enhancement Plan to incorporate the introduction of various wildlife conservation measures.
20. However, specialist consultees have identified shortcomings with the ESS. NatureSpace, who oversee a District Licensing Scheme for great crested newts, has highlighted the ESS's datedness and that part of the site lies in an identified red impact risk zone where there is suitable habitat and a high

likelihood of great crested newt presence. Having noted anecdotal evidence provided by interested parties with respect to the existence of ponds in neighbouring gardens (which I was able to verify in-part upon inspection), NatureSpace has requested the submission of further information to potentially include assessments of neighbouring ponds and details of appropriate mitigation/compensation should adverse effects upon great crested newts be unable to be ruled out. To my mind, these requests are reasonable and could not be suitably dealt with via condition when considering the uncertainties and statutory protections that apply.

21. Meanwhile, the Council's Biodiversity and Arboricultural Officer, amongst other concerns, has queried how there is no identified impact on badgers (or need for mitigation) where badgers, as stipulated in the ESS, are known in the area and probably forage from time to time on the site. An indication that the site is unsuitable as habitat for reptiles has also been challenged by the Council's specialist Officer. Moreover, consistent with my own observations, the site supports various potential habitats for reptiles, including grassland, high biodiversity value heathland, and open areas for basking. No cogent written or oral evidence is before me to clearly justify why there would be no impact upon badgers or why the survey site is unlikely to host reptiles. These points, alongside any associated intentions for mitigation/compensation, require clarification prior to any potential grant of planning permission for the development proposed.
22. In the interests of providing robust assurances that the proposal would not have an adverse effect upon protected species and to relatedly establish a tangible net-gain in biodiversity as supported by the National Planning Policy Framework (July 2021) (the Framework), the ESS requires updating. More specifically, further information is required to demonstrate that the proposal would have an acceptable effect upon great crested newts, reptiles and badgers. Thus, in the absence of clear and convincing evidence to the contrary, the proposal, having particular regard to its effects upon protected species, would cause harm to biodiversity.
23. The scheme conflicts with Policy WCS12 of the Wealden District Core Strategy Local Plan (February 2013) (the Core Strategy) in so far as it promotes that habitats, biodiversity features and ecological networks are maintained, restored, enhanced and where possible created to achieve a net gain in biodiversity and sustain wildlife in both rural and urban areas. For the avoidance of doubt, saved Policies EN1 and EN15 of the Local Plan are of limited relevance to this main issue of the appeal. This is because EN1 relates to the achievement of sustainable development in a broad sense and EN15 refers specifically to designated nature conservation sites.

Surface water drainage

24. The Council has raised concerns that no detail of a surface water drainage scheme has been produced, including no infiltration/percolation testing to demonstrate that a soakaway on site would be a feasible option. References to historic surface water flooding issues in the area and to the site and its neighbouring lands exhibiting differing levels also appear in the submitted evidence before me. I note here that I have not had sight of any written correspondence from the relevant Lead Local Flood Authority.

25. As already discussed above, the site covers a generous area. Further, the main body of the site, as experienced upon inspection, does not exhibit any stark change in level. I am also unpersuaded that existing planting to be retained provides any undue constraint to the potential future effectiveness of surface water management at the site, via infiltration or otherwise. To my mind, the particular site and case circumstances dictate that a scheme of surface water management could be satisfactorily secured by way of planning condition, should the appeal be successful, without exacerbating surface water flood risk either on or off site.
26. For the above reasons, adequate future arrangements for the disposal of surface water have been satisfactorily demonstrated such that I am content that the proposal would not cause harm in a flood risk context. The scheme accords with saved Policy CS2 of the Local Plan in so far as this policy requires adequate provision to be made for surface and foul water drainage.

Other Matters

27. The site lies within a designated zone of influence where likely significant effects upon the SPA from net increases in development due to recreational impacts cannot be ruled out. It also lies in proximity to the Ashdown Forest Special Area of Conservation (SAC), the heathland habitat of which is vulnerable to atmospheric pollution. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on (a) European site(s) (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have found the proposal to be unacceptable for other reasons, it is unnecessary for me to consider undertaking appropriate assessments (AAs). As such, neither am I required to assess the suitability of SPA mitigation measures secured through the UU. For the avoidance of doubt, even had I undertaken AAs and identified no adverse effect upon the integrity of either the SPA or SAC, it would not have affected my overall conclusions on this appeal.
28. Historic planning applications³ that relate to an area of land that incorporates the appeal site have been brought to my attention. Each application related to residential development and was refused planning permission. Even so, the most recent (refused in October 2012), which related to three dwellings, was deemed acceptable save for its impact upon the SPA and SAC. However, it is apparent that a larger site was under consideration at that time and that the proposed dwellings were positioned in such a way to limit conflict with the replanting area. When also factoring in the length of time that has now passed and the associated evolution of the development plan, these historic applications are of limited relevance to my considerations.
29. I have noted objections/concerns raised by interested parties with respect to matters including the effect upon neighbouring living conditions having particular regard to privacy and overshadowing. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore such matters further here.

³ WD/2011/0954/O and WD/2011/2763/O

Planning Balance

30. As indicated at paragraph 11 to the Framework, the presumption in favour of sustainable development is engaged in circumstances that include where the policies most important for determining a scheme are deemed out-of-date. This includes, with respect to proposals for housing, where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites.
31. The Council has accepted that it cannot currently demonstrate a five-year supply of deliverable sites. Its latest published⁴ position is a housing supply figure of 3.92 years, whilst the appellant identifies an even lower figure of 3.04 years. In any event, a significant shortfall is apparent. As such, supposing no adverse effect upon the integrity of either the SPA or the SAC as habitats sites, the presumption in favour of sustainable development is engaged. For decision making this means 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's policies taken as a whole.
32. I have identified conflicts with saved Policies EN27 and CR2 of the Local Plan. Each is consistent with the Framework in so far as it sets out that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting. I thus apportion significant weight to the conflicts I have identified with saved Policies EN27 and CR2 and to the associated harm that would be caused to the character and appearance of the area.
33. I have also identified conflict with Policy WCS12 of the Core Strategy, which is broadly consistent with the Framework in so far as it prioritises the avoidance of significant harm to biodiversity. I thus attach significant weight also to the conflict I have identified with Policy WCS12 and to the associated harm to biodiversity.
34. Turning to the scheme's benefits, it would deliver an additional residential unit in a District where there is currently a significant housing land supply shortfall. Moreover, it is my understanding that a shortfall has been identifiable for a sustained period and that recent housing delivery has been at a level that fails to fully satisfy corresponding housing need. I also acknowledge that the location and scale of future development in the District is influenced and constrained by the existence of such designations as the High Weald Area of Outstanding Natural Beauty (the AONB) and the South Downs National Park (the NP), and that the emerging Local Plan (which is anticipated to designate new housing allocations) is some way off formal adoption.
35. In this context, noting that the proposal would make an effective use of land outside of the AONB and the NP within the settlement limits of Crowborough in proximity to a range of facilities and services, the benefits associated with delivering one additional family-sized windfall unit, that could realistically be constructed quickly, attract considerable weight. For the avoidance of doubt, as merely a single additional housing unit would not make a noticeable difference to the extent of the supply shortfall, I cannot fairly apportion very significant or substantial weight to these benefits. This is the case even were I to accept the appellant's submissions upon the precise extent of the current housing supply shortfall within the District.

⁴ December 2022

36. The development would also create jobs during the construction phase and would, most particularly once occupied, provide support to the local economy and local community facilities. These benefits attract limited weight due to the scale of development under consideration. For the same reason, any New Homes Bonus to be accrued attracts limited weight. The Community Infrastructure Levy to be obtained would help deliver infrastructure needed to support development on a levied/proportionate basis and, as such, would weigh neutrally rather than positively in the planning balance.
37. Having considered the benefits and adverse impacts of the scheme that is before me, I conclude that the significant harms I have identified, to the character and appearance of the area and to biodiversity, would significantly and demonstrably outweigh the proposal's benefits when assessed against the Framework's policies taken as a whole. The presumption in favour of sustainable development, as set out in the Framework and at Policy WCS14 of the Core Strategy, does not apply therefore. The scheme conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

38. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mark Best	Director, Parker Dann Chartered Town Planning Consultants
Ben Larkham	Director, Ben Larkham Associates Limited (Arboricultural and Horticultural Consultants)

FOR THE COUNCIL

Declan Redman	Senior Planning Officer
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INTERESTED PARTIES

Giles Haig	Local resident
Ian Hurst	Local resident