



Appeal Decision

Site visit made on 14 February 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/C1435/W/21/3287775

Lynton, Five Ash Down, Uckfield TN22 3AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Sturt against the decision of Wealden District Council.
 - The application Ref WD/2021/2129/O, dated 10 August 2021, was refused by notice dated 25 November 2021.
 - The development proposed is a phased development of three self-build dwellings and provision of a new vehicular access, landscaping and other associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for a phased development of three self-build dwellings and provision of new vehicular access, landscaping and other associated infrastructure at Lynton, Five Ash Down, Uckfield TN22 3AH in accordance with the terms of the application, Ref WD/2021/2129/O, dated 10 August 2021, subject to the following conditions set out in the schedule below.

Preliminary Matters

1. The proposal seeks outline permission, with all matters reserved except for access. I have considered the appeal on this basis and have treated any plans in relation to all other matters as illustrative.
2. The appellant has submitted a Unilateral Undertaking with the appeal, dated 28th June 2022 (the UU). I have taken this into account in my determination of the appeal.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the area,
 - living conditions of the occupants of 1 Coopers Row and Lynton, with regard to noise and disturbance, and;
 - the Ashdown Forest Special Protection Area (SPA).

Reasons

Character and Appearance

4. The appeal site comprises the garden of Lynton, a detached bungalow, which reaches to the west and extends behind the gardens of other properties to the

north. The site comprises a landscaped and cultivated garden, with open grassland beyond, and the site includes a number of outbuildings. The site is bound by a belt of woodland and the A26 to the rear, and by a public footpath to the southwest.

5. Five Ash Down is characterised by residential properties which generally follow a linear arrangement and are set back from the road with generous front gardens, giving a spacious and verdant character to the area. There are some examples of development behind the main building line further to the north of the appeal site.
6. The proposal would entail new housing behind the properties fronting Five Ash Down, and would inevitably entail a different pattern of development and different plot sizes and shapes. However, the indicative site layout shows how each of the houses could still be positioned within suitably sized plots, albeit of irregular shapes.
7. Due to the set back of the building plots from the road, together with the lowering slope of the land to the west, the proposal would appear as a visually distinct development, separate to the existing properties which surround it. For these reasons the proposed development would not appear visually prominent in views from the street and would not compete with, or detract from, the prevailing character of Five Ash Down. Views of the development would be possible from the public footpath to the south, however in those views it would similarly appear as a visually distinct form of development, separate to the linear development on Five Ash Down.
8. Certain forms of development on the appeal site may cause harm to the character and appearance of the area, for example depending on its scale and final layout. However, I do not consider this matter to be insurmountable and a solution appropriate to the character and appearance of the area could be achieved through subsequent reserved matters submissions.
9. Insofar as this main issue is concerned, the proposal would not cause harm to the character or appearance of the area. The proposal would comply with policies EN1 and EN27 of the Wealden Local Plan 1998 (the WLP), strategic objective SPO13 of the Core Strategy Local Plan 2013 (the CS) insofar as they relate to design quality and layout, which should promote local distinctiveness.
10. For the reasons given the proposal would also comply with the design objectives contained in the National Planning Policy Framework (the Framework).

Living Conditions

11. The proposed access would run between the properties of Lynton and No.1 Coopers Row and the access would be used more frequently in serving three houses than the previously approved two¹. However, I do not have evidence that this increase would be unacceptable or cause adverse effects. Details of the site layout and landscaping would be submitted under reserved matters, however the indicative plan indicates that space for landscaping and boundary treatments could reasonably be accommodated alongside the access road, which would assist in reducing any impacts on those neighbouring occupiers.

¹ WD/2020/1316/O

12. Given the scale of the proposal, in combination with the opportunity for boundary treatments and a reasonable distance of separation between the access and those neighbouring houses, the intensity of the use of the access would not result in unacceptable harm to the living conditions of their occupants.
13. In conclusion on this main issue, the proposal would not cause unacceptable harm to the living conditions of the occupants of those properties adjoining the proposed access. The proposal would comply with Policy EN27 of the WLP insofar as it requires development not to have an unacceptable adverse impact on the privacy and amenities of adjoining developments. I do not find conflict with the Framework where it requires healthy living conditions.

Ashdown Forest SPA

14. The appeal site is within the 7km zone of influence of the Ashdown Forest SPA which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). This SPA is designated for its populations of breeding Dartford Warbler and Nightjar.
15. One of the principal threats to the above mentioned birds is visitor disturbance including during their breeding period. The appeal concerns new housing and there is a reasonable likelihood that its residents would access the SPA for recreational purposes. When considered in combination with other residential uses, and adopting a precautionary approach, a significant effect on the integrity of the SPA would occur.
16. The Council has a strategic approach to mitigation for such effects, in considering schemes such as Suitable Alternative Nature Green Spaces (SANGS) which would provide alternative places for recreation and dog walking of a comparable experience. The Council deliver such sites in combination with Strategic Access Management and Monitoring (SAMMS) on the Ashdown Forest to ensure no likely significant effects arise from residential development, comprising a number of measures including dog control within the Forest. The Council report that the delivery of SANGS and SAMMS has been supported by Natural England.
17. The appellant has submitted a legal agreement to secure financial contributions towards the SANGS and SAMMS for each of the proposed new houses and the Council have confirmed the terms of the agreement are acceptable. I do not have reason to disagree with this approach and I am satisfied that compliance with the planning obligation would enable it to be ascertained that the proposal would not adversely affect the integrity of the site. I also find the obligation to meet the tests for planning obligations contained in the Framework.
18. Consequently, the proposal would comply with policies EN1 and EN15 of the WLP and policy WCS12 of the WCS which together relate to the effects of development on the environment, biodiversity and designated conservation sites in the District.

Other Matters

19. While not raised in the Council's officer report, its appeal statement raises concerns for the standard of amenity of future occupiers of the development, arising from the alleged cramped layout. Given the proposals at this stage are

in outline with all matters reserved except access, and in the absence of further evidence to the contrary, I have no reason to believe that good living conditions for future occupants could not reasonably be achieved.

20. The Council accept that it cannot demonstrate a 5 year land supply for housing. Therefore, the provisions of paragraph 11d) require that planning permission is granted unless either of the subsequent points apply. In the case of this appeal, the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development, nor have I identified any adverse impacts of granting planning permission. As such the proposal benefits from the presumption in favour of sustainable development in the Framework.
21. Policy WCS14 of the WCS is referred to in the decision notice. This broadly reiterates the aims of paragraph 11 of the Framework relating to the presumption in favour of development. For the reasons given, my determination of the appeal aligns with the objectives of that policy.
22. I have been made aware of the earlier application for planning permission on this site, where the number of homes proposed was reduced from three to two during the application process². However, this does not provide reason to alter my reasoning on the main issues above. As the appeal relates to an application for outline planning permission, there is an absence of detail relating to several aspects of the proposal, however these would need to be submitted for approval by the Council at a later stage.
23. The issue of on-site parking and site layout would fall to be considered at the reserved matters stage. However, I note that the indicative site layout shows a quantum of parking spaces that has been found to be acceptable to the Highways Authority. Even if some additional on-street parking were to occur, I observed there were few on-street parking restrictions in the vicinity of the site and there is not evidence to demonstrate that some additional parking pressure would be harmful to highway safety. The Highways Authority have found the width of the proposed access to be acceptable and I do not have evidence which would lead me to a different conclusion.
24. The appellant's Arboricultural Report demonstrates that three Class B and Class C trees within the garden of 1 Coopers Row could reasonably be protected and methods could be adopted to protect the roots where they may have spread into the appeal site.
25. It is likely that technical solutions exist to connect the development to local infrastructure. There is not firm evidence to suggest that the proposal could not integrate into existing services, nor that the additional pressure on the water system, which I note to be under strain, would create adverse effects.
26. Matters relating to surface water drainage, foul drainage, tree protection and retention, and the required noise mitigation measures should be addressed by conditions, as discussed below. It is appropriate that these matters be considered at a later date, informed by full details of the proposal including its final layout.
27. Any effects from the construction period would be short-term, even if the three houses were phased. However this could be mitigated by careful construction

² WD/2020/1316/O

management. There is no evidence to suggest that there would be longer term disturbance arising from the new homes, and legislation exists outside the planning system to assist with this should it occur. Nor is there evidence that the proposal would give rise to an increase in anti-social behaviour or crime in the area.

28. The proposal has been assessed on its own merits and in light of the particular circumstances of this site. I do not therefore consider the issue of precedent is central to the decision.

Conditions

29. The Council has provided a list of suggested conditions that it considers would be appropriate, and the appellant has had the opportunity to comment on them. Pre-commencement conditions have also been agreed as required. I have considered all suggested conditions in light of the advice in the Framework and Planning Practice Guidance, and have amended the wording of some, and combined provisions of others without altering their fundamental aims.
30. As planning permission for the development is granted at outline stage with all matters reserved except for access, a condition is necessary to secure matters of appearance, landscaping, layout and scale, with the standard conditions specifying when the reserved matters applications must be submitted and when the development must be commenced by. A condition listing the approved drawings, insofar as they are relevant to access, is also necessary to provide clarity to the parties and details of the kerb line would be a matter to be agreed with the Highway Authority.
31. To protect the living conditions of nearby occupants and to safeguard highway safety during the construction process, a construction environmental management plan should be provided. For environmental reasons, details of foul drainage disposal, surface water drainage, and water and energy efficiency measures for the development as a whole are necessary. I have removed the specific references to associated guidance and legislation, in case this should change over time. Details of the noise insulation measures for the new homes are necessary to ensure good quality living conditions. Together these conditions should be satisfied prior to commencement to ensure they are considered at an early stage. Similarly, tree protection measures are conditioned and these need to be in situ prior to commencement to ensure the protection of the relevant trees from the outset. I do not have evidence of a reason to protect other trees and shrubs on the appeal site beyond those identified in the Arboricultural Report, particularly as details of landscaping would follow.
32. To protect the character and appearance of the area as well as living conditions, details of any external lighting is conditioned and, to promote biodiversity, relevant enhancements are also secured.
33. I do not have details of the specific need for an acoustic barrier, or which houses it is intended to protect. On the basis of the evidence before me, it would not meet the test of necessity for the purposes of the planning permission. Much of the visibility splay for the access would be outside the appeal site, and given the road is relatively straight and served by multiple

driveways, I do not consider further restrictions on the visibility splays would meet the test of necessity.

34. As the extent of turning areas, cycle and car parking on the site is not yet established, it is not necessary to condition their delivery and retention. Similarly, landscaping would be a reserved matter for later approval.
35. Additional conditions have been suggested by an interested party. As matters of layout and landscaping would be subject to later approval as reserved matters, it would not be necessary or reasonable to condition the buffers between the access road and the neighbouring properties further. The wording of the conditions below would ensure that, where required, the development is maintained in accordance with the approved details. It would not be necessary or reasonable to condition the future maintenance of the site beyond this.

Conclusion

1. 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) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place, including site clearance, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the local planning authority. The CEMP shall include, but not be limited to:
 - i) An indicative programme for carrying out the works, including any traffic management;
 - ii) Measures to minimise noise and vibration from the construction process;
 - iii) Details of working hours and deliveries;
 - iv) Details of any external lighting;
 - v) Locations of parking for personnel, operatives and visitors;
 - vi) Locations for loading and unloading of plant and materials;
 - vii) Locations for storage of plant and materials;

- The development shall be carried out in accordance with the approved details.
- 5) No development shall commence (except for site clearance), until details of foul drainage disposal for the development has been submitted to, and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and the drainage shall be available prior to the occupation of each related dwelling.
 - 6) No development shall commence (except for site clearance) until full details of surface water drainage for the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of each related plot.
 - 7) No development shall commence (except for site clearance) until a scheme for the insulation of the houses hereby approved against the transmission of airborne sound has been submitted to, and approved in writing by the local planning authority. Each house shall be completed in accordance with the approved details prior to its first occupation, and shall be maintained in accordance with the approved details thereafter.
 - 8) No development shall commence, including site clearance, until tree protection measures have been installed in accordance with the details contained in the Arboricultural Report by The Mayhew Consultancy Ltd dated July 2020. Those tree protection measures shall remain in position until such a time that all construction works on the site are complete.
 - 9) Prior to the first occupation of any of the houses hereby permitted, the access onto the highway shall be laid out in accordance with the details shown on plans no.20-126.1-Site, 20-126-Loc.
 - 10) No external lighting shall be installed to the site unless details of its design, position and illumination, have first been submitted to and approved in writing by the local planning authority. External lighting shall be installed and maintained only in accordance with the approved details.
 - 11) Prior to the commencement of development above the damp proof course of any new house, details of a scheme for biodiversity enhancements on the site shall be submitted to and approved in writing by the local planning authority. Those details shall have regard to the recommendations set out in the Preliminary Ecological Appraisal by CT Ecology Ltd, dated 20 June 2020. The approved enhancements shall be installed in full prior to the occupation of each house and plot to which they relate, and shall be maintained at all times.
 - 12) No development shall commence until details of water and energy efficiency measures have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with those measures, and they shall be maintained at all times.

End of Schedule