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# Appeal Decision

Site visit made on 7 March 2023

**by C Shearing BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19<sup>th</sup> April 2023**

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**Appeal Ref: APP/C1435/W/21/3289444**

**Land at Cooks Corner Farm to the rear of Amblesstone, London Road, Crowborough**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Wellsbridge Estates Ltd against Wealden District Council.
  - The application Ref WD/2021/1699/MAO, is dated 23 June 2021.
  - The development proposed is demolition of existing residential dwelling, erection of up to 31 dwellings and creation of new access.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. 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.
3. As part of the appeal, the appellant has submitted an updated drawing showing the visibility splays at the proposed access. As this does not substantially amend the proposals, I have taken this drawing into account. In response to that drawing the Council state that the visibility splays required by the Highways Authority could be achieved and this is not a matter in dispute between the parties.
4. A Unilateral Undertaking, under section 106 of the Town and Country Planning Act 1990, has been submitted with the appeal, dated 1 September 2022 (the UU). I have taken this into account in reaching my decision.
5. The Council report that the absence of a legal agreement to secure contributions towards affordable housing, self/custom build housing, open space and mitigation for the Special Protection Area (SPA) effects, would have formed reasons to refuse planning permission. These formed reasons for refusal 2, 3 and 4 as set out in the Council's appeal statement. As a completed UU has been submitted, and as the Council confirm agreement with its terms, I have considered the planning obligations together near the end of my decision, rather than as a main issue.

## **Main Issue**

6. Having considered the Council's appeal statement, and the reasons that it would have refused planning permission, the main issue is the effect of the proposal on the character and appearance of the area.

## **Reasons**

7. The appeal site comprises an area of grassland situated behind a number of houses which front onto London Road, as well as proposed access in the place of an existing house. The area of grassland is broadly rectangular and bound predominantly by trees and hedgerows. The Council report that the majority of the site, to the rear of the garden area, is within the High Weald Area of Outstanding Natural Beauty (AONB) and that the site is adjacent to the development boundary of Crowborough.
8. The neighbouring houses which front London Road comprise detached houses set within generous plots with significant set backs from the street. They have long front gardens, often with hedgerows forming their front boundaries, which are set behind an additional grass verge on the edge of the highway. The gaps between the houses provide views of the open spaces behind the houses, as well as the trees forming their rear boundaries. Together, these features create an open and verdant character to the north eastern side of London Road.
9. This is in contrast to the opposite side of London Road, which is more densely developed, with housing on predominantly smaller plots and closer to the edge of the road. The above characteristics of the north eastern side of London Road contribute to the appreciation of its position at the edge of the settlement, where the more dense forms of development to the south east dilute into the countryside beyond. Based on the findings of my site visit this relationship forms an important part of the landscape character of the AONB. Together with the neighbouring rear gardens, the appeal site forms part of the buffer between the settlement and the countryside beyond, and contributes positively to the landscape character.
10. While details of the layout and appearance would be considered at the reserved matters stage, the proposal would inevitably result in the site being changed from open grassland to one of built development. It would result in the encroachment of residential development beyond the perceived edges of the settlement boundary and would cause the loss of the open land which contributes positively to the wider landscape character.
11. The appellant has submitted details of a site layout, which is annotated as being illustrative, and as such it is not part of the formal proposal. It nonetheless provides evidence as to how the proposed development could be devised. While this is not the only way in which the site could be developed, it nonetheless shows that the likely extent of coverage of the site to accommodate 31 homes would be significant when taking into account factors such as amenity areas and accesses, as well as the buildings themselves. The illustrative layout shows there would be little space for the development to respect the spacious and verdant qualities of the surrounding area. This adds further to my concerns and I am not satisfied that this could be adequately addressed at the reserved matters stage, based on the evidence before me.

12. There is little evidence relating to the impact of the proposal on views. In localised views the proposal would be visible at the point of access and in the gaps between the buildings on the north eastern side of London Road, where it would occupy higher ground. As described above, I find those views to contribute positively to the character of the area and the appreciation of the edge of the settlement and the stark contrast of the proposal with the surrounding development would be apparent. Some longer views of the development may be possible from the north. While the existing tree belt on the northern boundary would provide a degree of screening at some times of the year, given the raised ground level of the site comparative to the edge of the settlement, together with the quantum of development proposed on the site, the proposal would be likely to appear prominent and visually intrusive in the landscape. I consider the proposal would cause significant visual harm in these respects.
13. Overall, the proposal would cause harm to the character and appearance of the area, and would cause harm to the landscape character of the AONB. It would conflict with saved policies EN1, EN27, GD2 and DC17 of the Wealden Local Plan 1998 (the WLP), which require development to promote local distinctiveness, and seek to resist housing development outside development boundaries. The proposal would also conflict with the objectives of the National Planning Policy Framework (the Framework) insofar as it requires development to be sympathetic to local character including the surrounding built environment and landscape setting, at paragraph 130.
14. In respect of the harm found to the AONB, the proposal would conflict with paragraph 176 of the Framework, which states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. While the AONB impacts were not explicitly referred to in the Council's reasons for refusal, it is clear from the appeal statement that this formed a part of their concerns.
15. The appellant asserts that the proposal is not major development for the purposes of paragraph 177 of the Framework insofar as it states that planning permission should be refused for major development in AONBs, other than where certain criteria apply<sup>1</sup>. The Council have not specifically disputed this point. There is not substantive reasoning for this conclusion, which adds to my concerns. In any event, and even if I were to agree, it would remain the case that the proposal would cause harm to the AONB for the reasons set out.

## **Other Matters**

### *Planning Obligations*

16. The appellant has submitted a completed UU which would secure contributions to matters including affordable housing, custom/ self build plots, green infrastructure and play space, as well as mitigation for the effects of the proposal on the SPA. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations states that an obligation may only constitute a reason for granting planning permission if it meets the relevant tests. As the appeal is dismissed for other substantive reasons, this is not a matter I need to consider further.

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<sup>1</sup> Previously contained in paragraph 172 of the National Planning Policy Framework 2019

17. Notwithstanding the above, the UU would have the ability to secure on site affordable housing at 35% as well as self build plots. I am satisfied, based on what I have seen, that these contributions would meet the relevant tests for planning obligations and that they could constitute benefits of the proposal, as discussed below.
18. The proposal would entail new residential dwellings close to the Ashdown Forest Special Protection Area and Special Area of Conservation, which are afforded protection under the Conservation of Habitats and Species Regulations 2017. However, Regulation 63(1) indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is dismissed on other grounds it is not therefore necessary to address this in any further detail.
19. Policy EN8 is referred to in the suggested reasons for refusal and relates to development in the Low Weald. There is not evidence to establish whether the appeal site lies within this area and as such I cannot conclude the level of compliance with that policy. Policies WCS6 and WCS9 of the Wealden Core Strategy 2013 (the WCS) refer to different types of settlements and rural exception sites for affordable housing, which would appear not to be applicable here. Nonetheless, the absence of harm against these policies would not mitigate for or reduce the conflict found with the other development plan policies above.
20. I am mindful that the proposal is for up to 31 dwellings, and that a lower quantum of housing could come forward at the reserved matters stage. However, I am required to consider the merits of the development proposed in the application. If the appeal were to be allowed, this would permit the development contained in the description of development, which in this case is specific about the maximum number of dwellings. While a scheme of less than 31 dwellings may have different effects, it is not within the remit of this appeal to speculate about what development may be acceptable to comply with the relevant policies.
21. The Council accept that it does not have a 5 year land supply for housing and relevant development plan policies in respect of the AONB have not been brought to my attention. As such the provisions of paragraph 11d) of the Framework are applicable. However, in the case of this appeal, the application of policies in the Framework, insofar as they relate to protection of the AONB, provide a clear reason for refusing the development proposed. As such, the proposal does not benefit from the presumption in favour of sustainable development.
22. Even if I were to find policies GD2 and DC17 of the WLP to be out of date due to their restrictive approach to housing, the application of paragraph 11d) would still be the same.
23. Despite this, the proposal would contribute up to 31 dwellings to the Council's housing supply, and this would include 35% affordable units and provision for self/ custom build plots. These would be in a sustainable location with good accessibility to the services and facilities within Crowborough, including public transport. The appellant reports the development could be delivered quickly, and as such the site is one which paragraph 69 of the Framework recognises could make an important contribution to meeting the housing requirement in an area. There would also be social and economic benefits arising from the

- additional population and their future expenditure, as well as from the construction process. Taken together I ascribe these benefits significant weight, particularly given the significant undersupply of land for housing in the District.
24. Green infrastructure and contributions to youth and adult play space are included within the UU, however details do not form part of this proposal. The contributions relating to SPA effects provide mitigation for the proposal rather than a benefit. As such these factors do not attract weight as benefits in favour of the proposal.
25. Consequently, the benefits would not outweigh the harm to the landscape character of the AONB and the character of the area, which would be significant and long lasting, and would cause conflict with the Framework. I am mindful of the relevant case law brought to my attention in reaching this conclusion<sup>2</sup>. The absence of objections from consultees during the course of the application does not provide reason to alter my judgement.
26. The Council have raised other concerns which appear to be based on the indicative site layout provided, relating for example, to the living conditions of future occupants, effects on the living conditions of those occupants on London Road and pressure on nearby trees. However, it is likely that a satisfactory solution could be achieved through a revised site layout and appearance, particularly given the distances to the houses on London Road.
27. The appellant has drawn my attention to a recent appeal decision in Cooper's Green<sup>3</sup>. While the appellant later confirmed that I do not need to take that decision into account, comments were nonetheless invited from the main parties. I do not have full details of that particular site or that proposal, however the Inspector in their application of paragraph 11d) of the Framework found that the adverse impacts of the proposal would not significantly outweigh the benefits, and the site would appear not to have been within the AONB. As such, the circumstances of that appeal differ to that before me.

## **Conclusion**

28. 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 dismissed.

*C Shearing*

INSPECTOR

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<sup>2</sup> Monkhill Ltd V SSHCLG & Waverley Borough Council [2021] EWHC 1993 Civ 74

<sup>3</sup> APP/C1435/W/21/3283533