



Appeal Decision

Site visit made on 28 March 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/M2270/W/21/3283836

South of Burrs Hill Yard, Horsmonden Road, Brenchley, Kent TN12 7AU

- 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 Ms Angela Woodhams against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/01675/FULL, dated 11 May 2021, was refused by notice dated 30 July 2021.
 - The development proposed is erection of a 4 bed chalet bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Tunbridge Wells Borough Council Local Plan was submitted for examination in public (EiP) in November 2021 and the EiP is ongoing. At the time of considering the application, the Council highlighted that policies in the emerging Local Plan carried limited weight. The Council has confirmed that this position has not changed and the timetable for completion of the EiP and adoption of the emerging LP remains uncertain. I have therefore given the emerging Local Plan limited weight when considering the appeal.

Main Issues

3. The main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to the level of accessibility to services and facilities,
 - the effect on the character and appearance of the area, including the landscape character of the High Weald Area of Outstanding Natural Beauty (AONB),
 - whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding, and
 - the effect on ancient woodland.

Reasons

Suitability of Location

4. The appeal site is located in countryside between the settlements of Brenchley and Horsmonden. It is well outside the Limits to Built Development (LBD) for

either settlement, as defined in Policy LBD1 of the Tunbridge Wells Borough Local Plan 2006 (LP). Policy LBD1 directs new development primarily to defined areas within existing settlements. The supporting text explains that this is to ensure sustainable development patterns, which concentrate development within the built-up area while limiting development in the surrounding countryside.

5. Both Brenchley and Horsmonden provide a reasonable range of local services, albeit at a modest scale, commensurate with these rural village communities. Both villages provide local convenience stores, community facilities and a range of other small businesses. There is also a public house on Horsmonden Road, about halfway between Brenchley and Horsmonden.
6. Horsmonden Road is a narrow rural lane with vegetated verges. There are no pavements and no street lighting. Although the volume of traffic was relatively light at the time of my site visit, vehicles were frequently travelling at speed. The roadside environment is therefore not particularly hospitable to pedestrians. Cycling to the villages would be feasible for a confident cyclist, but the lack of street lighting, limited road width and traffic speeds would be something of a deterrent. Although a bus service is available, the nearest stop is at the public house and not conveniently accessible on foot.
7. While the characteristics of Horsmonden Road are not particularly unusual for a rural lane, they would nevertheless act as a deterrent to use of a range of travel options. Therefore, future occupiers of the proposed dwelling would be largely reliant on travel by car. As a result, there would be negative environmental and social effects arising from the location, in terms of the increased use of natural resources and the limited accessibility of local services. The proposal would furthermore not enhance or maintain the vitality of the nearby settlements to any meaningful degree, given its very modest scale and the ease with which those settlements could be bypassed in favour of larger service centres when travelling by car.
8. The plans indicate that the commercial yard to the north of the site would remain and that this would be outside the area where residential use is proposed. The yard is independently accessed and contains a range of buildings which are the focus of the existing commercial use, together with areas for parking and external storage. While existing external storage on the appeal site would be displaced by the proposed development, there is little substantive evidence that there would be a meaningful reduction in commercial traffic to the yard itself. Therefore, this aspect of the proposed development would not off-set the introduction of a car-dependent residential use.
9. For the above reasons, I conclude that the proposed development would not provide a suitable location for housing, having regard to the level of accessibility to services and facilities. It would conflict with LP Policy LBD1, Core Policies 4, 5, 6 and 14 of the Tunbridge Wells Core Strategy 2010 (CS) and with relevant paragraphs of the National Planning Policy Framework (the Framework). Amongst other things, these policies limit development in the countryside, directing new dwellings to existing settlements as part of a spatial strategy which encompasses protection of the countryside for its own site and combatting avoidable causes of climate change.

Character and Appearance

10. The site is a parcel of open, grassed land, enclosed by woodland on three sides. It is set slightly below the level of the adjacent highway and is screened from the road by close boarded fencing and a rather unkempt hedgerow. The site is associated with a yard to the north which, based on the signage displayed at the time of my site visit, appears to trade in reclaimed building materials. When visiting the site, I observed that the appeal site was being extensively used for external storage of building materials and equipment. This included sizable items such as skips, telegraph poles, construction machinery and vehicles in various states of repair.
11. The surrounding rural landscape comprises a patchwork of cultivated fields, deciduous woodland and narrow, sometimes sunken lanes with wooded verges. Farm buildings, cottages and larger dwellings are strung out sporadically along the lanes, often in spacious and informal gardens with extensive planting.
12. The patchwork of deciduous woodland, cultivated fields and rural lanes is characteristic of the landscape within this part of the AONB. The significance of the AONB includes the very extensive, often ancient deciduous woodland. The Tunbridge Wells Borough Landscape Character Assessment 2017 (LCA) further highlights that such woodland is less extensive within the Fruit Belt areas, such as that around the appeal site, and is therefore of particular value where it still exists. On that basis, the extent of woodland around the appeal site, including areas identified as ancient woodland, is a particularly important landscape characteristic.
13. Within the woodland are the remains of a building. I observed on site that this comprises a series of regularly spaced concrete footings, which appear once to have been the foundation for a metal framed building, now collapsed. The very limited remaining structure is heavily overgrown and difficult to discern due to the degree to which it has blended into the vegetation of the woodland floor. Annex 2 of the Framework makes clear that in these circumstances, land which once contained a building no longer qualifies as previously developed land. There is otherwise no built development on the appeal site, and I find that it does not comprise previously developed land for planning purposes.
14. Although fencing and vegetation along the front boundary largely screen the site from public view, stored items can be glimpsed over the fence, from higher sections of the road to the south. As such, the existing use intrudes into the otherwise leafy, rural surroundings, albeit to a limited extent.
15. Conflicting evidence has been presented as to the status of the existing storage use for planning purposes. While the appellant describes the site as having an established commercial use, the Council describes it as having no planning history, implying that the area having lawful use for storage of materials is limited to the yard located to the north.
16. Even if the existing storage use on the appeal site is taken into account, introduction of a new dwelling would formalise the appearance of the site. It would introduce a permanent building which would be more publicly visible than the existing use as a result of its greater height. There would also be an extensive residential curtilage, introducing domestic features such as car parking, formal landscaping and other domestic paraphernalia into land which currently has a much more informal, undeveloped character.

17. While LP policy EN25 allows for some development outside LBD boundaries, there is a strong focus on avoiding intrusion into the rural landscape, including along rural lanes. Although there is an existing pattern of sporadic housing along Horsmonden Road, this does not of itself justify further erosion of the rural landscape. The adoption of design features and materials found within the local area does not overcome the harm associated with the introduction of additional built development, particularly in light of the site's proximity to one of the few remaining parcels of ancient woodland.
18. Since the commercial yard would remain, just outside the appeal site, there is little guarantee that external storage would be eradicated, as opposed to being displaced elsewhere within the immediate vicinity. As such, the harm associated with increased built development within these rural surroundings is not outweighed by any associated reduction in commercial activities.
19. For the reasons given above, I conclude that the proposal would be harmful to the character and appearance of the area, including the landscape character of the AONB. As such, it would conflict with LP Policies EN1, EN25 and LBD1 of the LP, CS Core Policies 4 and 14, relevant sections of the LCA 2017 and relevant paragraphs of the Framework, notably paragraph 176. These policies, amongst other things, require that the character of the countryside is protected and that great weight is given to conserving and enhancing landscape and scenic beauty within the AONB.

Flood Risk

20. The Framework advises that development should be directed away from areas at highest risk of flooding, and that flood risk should not be increased elsewhere as a result of proposed development. It further states that, where appropriate, applications should be supported by site-specific flood risk assessments, such as where development would introduce a more vulnerable use, like new dwellings.
21. The appeal site is almost entirely located within Flood Zone 3 (high risk). This includes the site of the proposed dwelling, its residential curtilage and the means of access to Horsmonden Road. Land within Flood Zone 2 (medium risk) is restricted to a very narrow strip of land along the front boundary fence, while only parts of the woodland are within Flood Zone 1 (low risk).
22. While the Environment Agency (EA) has confirmed that the Flood Zones in the vicinity of the site are not based on site-specific measurement, the modelled assessments on which the Flood Zones are based nonetheless indicate a high level of flood risk throughout the site of the proposed development. No substantive evidence has been provided that the boundaries of the areas identified as being at medium or high risk of flooding are incorrect. Lack of evidence of historic flooding does not negate the risk that flooding may occur in the future.
23. The Framework makes clear that development should be directed away from areas at the highest risk of flooding. Furthermore, if development is concluded to be necessary in areas at high risk of flooding, it should be made safe for its lifetime without increasing flood risk elsewhere.
24. Although a Flood Risk Assessment (FRA) has been provided, and has been updated following consideration of the application, it does not cover all the

matters required by the Framework. Where measures are set out to address the risk of flooding, these are limited to use of natural flood risk mitigation measures, primarily the intended deployment of permeable surfaces and dispersal of water into the surrounding woodland. It is not clearly explained how such measures would address risks to occupiers of the proposed dwelling in the event of river flooding, bearing in mind the significant extent of the site which is identified as being at high risk. The FRA also does not clearly set out any compensatory measures to ensure that the raised ground levels which are proposed within the site would avoid increasing flood risk elsewhere.

25. For the above reasons, on the basis of the evidence before me, I am not satisfied that the proposed development would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. As such, it conflicts with CS Core Policy 5, LP Policies EN1 and EN18 and relevant paragraphs of the Framework and National Planning Practice Guidance. These policies require, amongst other things, that new residential development is directed away from areas at high risk of flooding, taking account of the security of people and property and avoiding increasing flood risk elsewhere.

Ancient Woodland

26. There are parcels of Ancient Woodland (AW) to either side of Horsmonden Road, including land within the appeal site, but outside the proposed residential curtilage. The area identified as AW on the 'Magic Map' extract submitted with the appeal includes a narrow strip of woodland along the south eastern site boundary. This includes a watercourse which flows under Horsmonden Road, past the appeal site and towards to the larger expanse of woodland to the east.
27. Conflicting evidence has been presented regarding the degree of separation between the proposed dwelling and the AW. Dimensions provided by the appellant relate to the footprint of the proposed dwelling, whilst the Council's evidence also takes account of land which would form part of the proposed residential curtilage. Based on the proposed plans and my observations on site, it appears clear that there would be very limited separation between the residential curtilage, including the access and parking areas, and the woodland to either side of the stream noted above. While the dwelling itself would be set further back, and the larger expanse of woodland is further away, the proximity of the site to this strip of woodland and the watercourse provides a clear and direct relationship between the proposed extent of residential development and activity and the adjacent AW.
28. Whilst the PEA¹ does not identify any risks associated with the siting of the dwelling, it does highlight risks associated with its construction, including at the access driveway which adjoins the stream. The PEA is silent on the relationship between the AW and the proposed residential curtilage. However, the Council's evidence identifies specific risks in this regard, such as increased noise and lighting which could disturb wildlife, use of gardening chemicals and pressure for unsympathetic woodland management.
29. Ancient Woodland is defined in the Framework as an 'irreplaceable habitat', reflecting that it takes hundreds of years to become established and has a complex and significant biodiversity value which cannot readily be restored or

¹ Greenlink Ecology Ltd, Preliminary Ecological Appraisal 12th May 2021

replaced if harmed. For that reason, paragraph 180 of the Framework states that development resulting in deterioration of irreplaceable habitats such as AW should be refused unless there are wholly exceptional reasons justifying the development and a suitable compensation strategy exists.

30. While some of the potential risks to the AW could be managed through appropriate planning conditions, risks associated with noise, light and chemical pollution are substantially unavoidable, given the proposed residential use and the lack of separation between the proposed residential curtilage and the adjacent woodland along the stream. Therefore, based on the evidence before me, I find that there is a material risk that the proposed development would result in deterioration of this irreplaceable habitat. There is furthermore no evidence of any wholly exceptional reasons justifying the provision of one dwelling in this particular location, as required by the Framework.
31. While there may also be some potential to reduce risks to biodiversity arising from the existing external storage use, as noted above there is little certainty that this would not simply be displaced elsewhere in the vicinity, where other parts of the woodland would continue to be affected.
32. I conclude that the proposal would involve an unacceptable risk of harm to the Ancient Woodland around the site. It would conflict with LP Policies EN1, EN13 and EN15 and CS Core Policy 4 which, amongst other things, require that development avoids harm to biodiversity, taking account of the importance and value of the habitat in question. It would also conflict with paragraph 180c of the Framework which relates to proposals which would cause the deterioration of irreplaceable habitat, for the reasons outlined above.

Other Matters

33. The Council lacks a five year supply of housing land, with the Council's evidence indicating that the supply of housing land stood at 4.75 years, as at February 2022. No alternative figures have been provided.
34. By virtue of this modest shortfall in housing land supply, the development plan policies which are most important for determining the application are deemed to be out of date. As a result, the proposed development falls to be considered against Framework paragraph 11, which articulates a presumption in favour of sustainable development.
35. In these circumstances, Paragraph 11d(i) makes clear that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Framework Footnote 7 makes clear that the policies in question include land designated as an Area of Outstanding Natural Beauty, irreplaceable habitats and areas at risk of flooding.
36. Having concluded that the proposed development would be harmful to the AONB, that it would be inconsistent with national policy to direct development away from areas at risk of flooding and that there would be an unacceptable risk of harm to Ancient Woodland, there are clear reasons for refusing the development proposed, based on relevant policies in the Framework. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development set out at Framework paragraph 11.

Conclusion

37. For the reasons set out above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR