



Appeal Decision

Site visit made on 18 January 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/C1435/W/22/3294532

Little Byers, A267, Little London TN21 0AY

- 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 Mr Holman against the decision of Wealden District Council.
 - The application Ref WD/2020/0736/F, dated 7 April 2020, was refused by notice dated 11 October 2021.
 - The development proposed is two semi-detached dwellings to replace storage building for builder's plant, machinery, and materials.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the application process a revised plan was drawn up to amend the proposed parking arrangements. However, while this was discussed with the Council, it was not subject to further consultation and it did not form part of the Council's final decision. Therefore, to ensure no interested parties are prejudiced, I shall determine the appeal on the basis of the plans that informed the Council's decision.
3. As part of the appeal the appellant has submitted an Arboricultural Implications Assessment¹ (AIA). This assessment does not amend the proposal, rather it addresses the concerns raised regarding the impact of the proposal on the adjacent trees and woodland. The Council and interested parties have had opportunity to comment on this assessment as part of the appeal proceedings. For these reasons, no party would be prejudiced by my consideration of it as part of the appeal.
4. Policy EN2 of the Wealden Local Plan (1998) (Local Plan) is not referred to in the Council's decision notice. However, the Council refer to it in their appeal statement and have provided a copy of the policy as part of the appeal process. The appellant and interested parties have therefore had opportunity to comment on this policy. Given this, I do not consider that their interests would be prejudiced if I take it into account as part of my determination.

¹ Arboricultural Implications Assessment for proposed two semi detached dwellings (sic), by Broad Oak Tree Consultants Limited, dated 7th March 2022, Ref: J61.84

Main Issues

5. The main issues are:

- Whether the site is a suitable location for the development with regard to the Council's spatial strategy for the area and accessibility to services and facilities;
- The effect of the proposal on the character and appearance of the area, including whether it would conserve or enhance the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty;
- The effect of the proposal on highway safety, with particular regard to visibility; and
- The effect of the proposal on biodiversity, with particular regard to bats.

Reasons

Suitability of location

6. Saved Policies EN1 and EN2 of the Local Plan focus on the pursuit of sustainable development by, amongst other things, maintaining the existing settlement pattern. A similar approach is promoted by spatial planning objectives SPO7 and SPO8 of the Wealden District Core Strategy Local Plan (2013) (Core Strategy), which seek to enhance the effective network of villages and locate development where it would reduce the need to travel by car and make it easier to travel by more sustainable modes of transport.
7. In line with these approaches, Policy WCS6 of the Core Strategy sets out a spatial strategy for development in the rural area of the district, which seeks to direct new development to Service Centres, Local Centres and Neighbourhood Centres. Outside of defined development boundaries, Saved Policies GD2 and DC17 of the Local Plan resist housing development unless it is in accordance with specific policies in the plan.
8. The appeal site is located on the eastern side of the A267 public highway, a short distance north of a small group of properties, known as Little London, in an area with no defined development boundary. Although there are some houses not far from the appeal site, the surrounding area is predominately countryside and not residential.
9. There are very few local services available at Little London, with the exception of a car garage and MOT centre. However, further from the site are the village of Cross in Hands and the market town of Heathfield, which offer a wider range of services and facilities. There is also a large garden centre south of Little London which sells a range of items including grocery items, fruit, and vegetables.
10. While these services and facilities are within walking distance, access to these facilities by foot, cycle and public transport is limited. Although there is a Public Right of Way (PROW) to Heathfield that crosses the appeal site, the route is unlit, across fields, through woodland and the walking surface is unmade and uneven. It is therefore unlikely to be an appealing route for future occupants to use to undertake day-to-day activities, especially during periods of inclement weather or in the dark. However, it does connect the site to the Cuckoo Trail

Cycle path that runs adjacent to the B2203, which provides access to Heathfield, Horam, Hailsham and further afield.

11. The most direct access to Cross in Hands and the garden centre for pedestrians and cyclists is along the A267, which comprises a narrow carriageway with no footpaths or street lighting. I saw on my visit that there are frequent traffic movements at relatively high speeds along the highway and that there are several bends in the highway that restrict visibility. Therefore, this route would likely be dangerous for pedestrians and very unappealing to cyclists. The site is not served by public transport and so access to the nearest bus stops would also involve using the PROW or travelling along the A267.
12. Opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, for the reasons above, it is likely that future occupants of the proposed dwellings would choose to access most services and facilities by private car. The appellant's Transport Assessment² suggests that community transport services and taxi companies could provide an alternative to public transport. Also, that improved home delivery operations would reduce the need to travel to visit retail destinations. Nevertheless, this would still result in additional vehicle movements as a result of two new dwellings at this location, with future occupants being heavily dependent on private motor vehicles to meet their day-to-day needs. This limited accessibility weighs significantly against the proposal.
13. Accordingly, for the reasons above, the site would not provide a suitable location for the development with regard to the Council's spatial strategy for the area and accessibility to services and facilities. Therefore, the development would conflict with the aims of policy WCS6 and objectives SOP7 and SPO8 of the Core Strategy, as well as Saved Policies EN1, EN2, GD2 and DC17 of the Local Plan, and the associated provisions of the Framework, which together seek to achieve sustainable patterns of development that reduce the need to travel by car.

Character and Appearance

14. The appeal site is located within the High Weald Area of Outstanding Natural Beauty (AONB), which is characterised by well wooded rolling ridges and valleys, interspersed by a patchwork of small fields.
15. The appeal site comprises a small clearing within a tree belt that runs along the eastern side of the A267. To the south and east of the appeal site are open fields that slope away from the site, and on the opposite side of the A267 is an area of Ancient Woodland. Most of the A267 in this location is lined by trees, although there are partial views through the trees to the open countryside beyond. There are a few properties in the area, which tend to be positioned close to the highway and set within the trees. Overall, the area has a verdant and open rural character.
16. The appeal site is currently absent of any buildings and forms a gap in the tree belt running beside the A267. Close to both the north and south boundaries of the site are mature trees that form part of and continue the tree belt. Although there is little vegetation on the site, in its current undeveloped form, it makes a positive contribution to the open and rural character and appearance of the

² Little Byers, A267, Little London near Heathfield, TN21 0AY, WD/2020/0736: Transport Statement, by Transport Dynamics dated December 2020, Ref: PCD-396-RP-01

surrounding area and this part of the AONB. Furthermore, given it is open, views are afforded across the site to the fields and woodland beyond. Despite some closed-board fencing that demarcates the north-eastern corner of the site, both the western and eastern boundaries are open, meaning the site is visible from the highway and from the surrounding countryside, including the PROW.

17. The proposed dwellings have been designed to appear as a single converted threshing barn. However, while it would be common for barn conversions to include some domestic features, the extensive amount of glazing on the front and rear elevations of the proposed dwellings, their pattern of fenestration, and the dormer windows, do not reflect the typical appearance of a threshing barn. Although the wider area may comprise of some farm and storage buildings, the proposal would not be in keeping with the more traditional form and character of the surrounding properties and would stand out as an incongruous form of development.
18. In addition, the proposed dwellings would be of a significant scale, particularly their height, and would thus appear dominant in the open and verdant landscape setting. While the development would be positioned in the corner of the site where a previous commercial building was located, there would be little space between the proposed dwellings and the closed board boundary fence and adjacent trees. Therefore, although this positioning may help integrate the proposed dwellings into the trees in a similar manner to other nearby properties, given their significant height, they would appear overly assertive and cramped within the plot, thereby restricting views to the countryside beyond. This would harmfully erode the verdant and open rural character of the surrounding area and, in doing so, would diminish the landscape and scenic beauty of this part of this part of the AONB.
19. Furthermore, the garages would be located away from the proposed dwellings and separated from them by the PROW and field access. This would have an urbanising effect and that would result in built form encroaching into the countryside and towards the adjacent woodland, adding to the intrusive nature of the proposal.
20. While additional landscaping may help integrate the proposal more successfully into its surroundings, it would not fully address the harm arising from the scale and design of the proposal. The development would still be visible from the public highway, appearing as an uncomfortably cramped and discordant form of development. Moreover, landscaping should not be used to conceal inappropriate development that fails to contribute positively to its surroundings.
21. For these reasons, the proposal would be harmful to the character and appearance of the area and would fail to conserve or enhance the landscape and scenic beauty of the High Weald AONB. Therefore, it would conflict with Saved Policies EN6 and EN27 of the Local Plan and the associated provisions of the Framework. These together, among other things, seek to ensure proposals promote local distinctiveness, are of a high-quality design, and conserve or enhance the natural beauty and landscape character of the High Weald AONB.
22. Notwithstanding my conclusion on this main issue, a comprehensive landscaping scheme could be secured by condition. Therefore, the proposal would not conflict with Saved Policy EN14 of the Local Plan, which, where

appropriate, requires landscaping schemes to be carried out as part of development proposals.

Highway Safety

23. The appeal site is served by an existing vehicular access directly onto the adjacent A267 public highway, a busy main road which at this point is subject to a 40mph speed limit. The land to either side of the access consists of narrow verges topped with dense woodland vegetation. Therefore, despite its wide frontage, intervisibility between vehicles exiting from the access and oncoming vehicles using the highway is constrained.
24. The Highway Authority advise that, in applying the standards set out in the Design Manual for Roads and Bridges, a visibility splay of 120 metres is required in each direction either side of the access, measured from a point 2.4 metres back from the edge of the carriageway. Upon further assessment, the Highway Authority suggest that a reduced visibility splay of 90 metres could be provided to the north when measured from a point 1 metre back from the edge of the carriageway. However, in highway safety terms, there is no clear rational provided to justify this lower standard.
25. Nevertheless, during my visit I observed that vehicle movements are frequent and that most vehicles appeared to travel at speeds close to the speed limit, and I have not been presented with any evidence to suggest that this is not the case. Intervisibility between users of the existing entrance and users of the adjacent highway approaching from the north is already significantly constrained by trees and hedges which abut right up to the edge of the highway and overhang it. The carriageway is also narrow and there is a bend a short distance to the north of the site, further restricting the visibility for users of the site entrance and users of the highway approaching from the north. Accordingly, I consider that visibility splays measuring 120 metres either side of the access, as initially advised by the Highway Authority, are a reasonable requirement, having regard to the highway conditions at the site.
26. The submitted plans show that the full visibility splay to the north is not achievable within the extent of the highway verge or within land under the appellant's control. Therefore, in the absence of a mechanism to secure the provision of the required visibility splays, it is not certain that the splays can be achieved and maintained for the life of the development.
27. Without the provision of suitable visibility splays to serve the proposal, the driver of a vehicle exiting the site in a forward gear would be unlikely to see oncoming vehicles approaching from the north until they had manoeuvred a large part of the vehicle onto the carriageway. This would inevitably give rise to a significant risk of collisions with other vehicles, resulting in an unacceptable adverse effect on highway safety.
28. I have considered whether the use of planning conditions could overcome this issue. However, the Planning Practice Guidance is clear that conditions requiring works on land that is not controlled by the appellant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability³. I have also considered the use of a 'Grampian' style condition, prohibiting development until adequate visibility

³ PPG Paragraph: 009 Reference ID: 21a-009-20140306

splays can be provided, although in this case such a condition would not secure the ongoing provision and maintenance of the splays rendering the condition unreasonable and unenforceable.

29. The appellant points out that the proposed access is an established vehicular access and argues that the existing lawful use of the site for the storage of builder's plant, machinery and materials would generate a greater number of trips than the proposed development of two dwellings. However, there is no substantive evidence before me to demonstrate that the site would have generated, or could have accommodated, the amount or type of traffic suggested by the Transport Assessment. Therefore, this does not support the appellant's assertion and does not provide a justification for the lack of adequate visibility splays to serve the proposal.
30. In my view, the proposed residential use for 2 dwellings would be a more intensive use of the site than a storage use, particularly given the modest size of the site which limits its commercial potential and restricts the size and number of vehicles that could be accommodated. Furthermore, while the Transport Assessment takes into account the operation and use of plant and machinery on site, the Lawful Development Certificate⁴, granted in 1999, confirms the lawful use of the site as being only for storage.
31. Bringing all these points together, I have found that visibility between users of the existing access and oncoming users of the adjacent highway is already constrained. Therefore, to increase the use of this inadequate access, as a result of the proposal, without the provision of adequate visibility splays, would give rise to an unacceptable risk to highway safety.
32. For these reasons, the proposal would have an unacceptable adverse effect on highway safety, with particular regard to visibility. Thus, it would conflict with objective SPO13 of the Core Strategy and the associated provisions of the Framework, which together seek to achieve high quality, safe and attractive living environments which minimise the scope for conflicts between pedestrians, cyclists, and vehicles, and ensure that new development does not compromise highway safety.

Biodiversity

33. The Preliminary Ecological Appraisal⁵ (PEA) submitted with the application notes that the woodland adjacent to the appeal site is likely to qualify as lowland mixed deciduous woodland which is a Habitat of Principal Importance (HPI) under the Natural Environment and Rural Communities Act 2006. I have a duty under this Act to have regard to conserving biodiversity. Furthermore, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal.
34. To avoid any adverse impacts on the biodiversity of the woodland, the PEA recommends that no works associated with the proposed development be undertaken within a distance of 15m from the woodland edge. Nevertheless, the AIA found that the proposal would not require the removal of any trees, and that the proposed dwellings, access drive, parking spaces and garaging

⁴ LPA Ref. WD/1999/0658/LD

⁵ Undertaken by PJC Consultancy, dated 6th July 2020, Ref: 4313E/20

would all be outside the Root Protection Areas and canopy spreads of the trees in the adjacent woodland. Accordingly, it concluded that, provided the trees were appropriately protected during the construction process, there would be no adverse impact on them. From the evidence before me and my observations on site, I am satisfied that the protection of trees and the adjacent woodland as a whole could be secured by condition and thus no unacceptable impacts would arise in this regard.

35. Notwithstanding this, the PEA identifies the adjacent woodland as an important movement corridor and suitable habitat for a number of protected species, including bats, dormice, and great crested newts. It considers the proposal could have indirect adverse impacts on these species from, amongst other things, disturbance during construction and occupation, and increases in the level of artificial light.
36. The PEA makes recommendations, including landscaping measures to reinstate habitat connectivity along the woodland belt and protection measures during construction, to mitigate the proposals impact. However, with regards to bats, the PEA recommends that an ariel roost inspection and, if required, emergence and re-entry surveys are undertaken to confirm whether they are present in the adjacent woodland. In the absence of these surveys, the extent that they would be affected by the proposal is unknown.
37. Bats are listed as an EPS under the Habitats Regulations. Therefore, the evidence indicates there is a reasonable likelihood of a protected species being affected by the proposed development. Circular 06/2005⁶ advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted.
38. Circular 06/2005 goes on to advise that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case. Moreover, it would not be possible to secure any necessary mitigation or compensatory measures in the absence of further surveys. The PEA is clear that in the absence of appropriate mitigation and compensation measures, the proposal could result in the loss or degradation of bat foraging and commuting habitat and/or sever important commuting routes and obstruct access between potential bat roosts and important foraging habitats.
39. Therefore, while conditions could be put in place to ensure adequate protection of the trees in the adjacent woodland, I find that insufficient information has been provided to demonstrate that the development would not have an unacceptable adverse effect on biodiversity, with particular regard to bats. The proposal would therefore conflict with Policy SP01 of the Core Strategy and the associated provisions of the Framework, which together seek to protect and enhance biodiversity. For the same reasons, it would also fail to meet the statutory duties I have set out above.
40. However, given the proposal would not involve the removal of any trees, it would accord with Saved Policy EN12 of the Local Plan that seeks to retain and

⁶ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

enhance the contribution of trees and woodland areas to the landscape character of the district.

Other Matters

41. In support of the appeal, the appellant has drawn my attention to a previous grant of planning permission⁷ issued in January 2015 for a replacement storage building for builder's plant, machinery, and materials at the site. They consider that this represents a fallback position that could achieve a development that would have worse effects than the appeal proposal. However, the Council dispute that this permission is extant as they state that conditions were not satisfactorily discharged to allow the development to lawfully commence. This casts significant doubt over the status of this previous permission, and I have not been provided with a Certificate of Lawfulness to suggest otherwise. Therefore, I have no substantive evidence to indicate that this alternative scheme is a real prospect and would be built should this appeal fail.
42. In any case, this previous consent relates to a smaller scale of development and there is little evidence before me to suggest that this alternative use would be more intensive than the proposed development of the site for two residential units. Accordingly, I am not convinced that this previous consent would lead to a greater level of harm than the appeal scheme. Consequently, this matter does not lead me away from my conclusions on the main issues in this case.
43. In terms of benefits, the proposal would provide 2 dwellings on a site which is partly previously developed land. There is some support for the proposal from those nearby as it would increase the stock of more modest residential dwellings in the area. At the current time the Council is unable to demonstrate a five-year supply of deliverable housing sites. Its current five-year housing supply figure is 3.66 years, which shows there to be a significant shortfall in housing supply. Given this, the provision of any additional housing, including that delivered by both smaller and larger developments, carries significant weight. Nevertheless, the two dwellings in this case would make only a modest contribution to the Council's housing supply.
44. There would also be some economic benefits from the construction and occupation of the dwellings, although these too would be limited given the modest scale of the proposal.
45. It may be that there are other dwellings along this section of the A267 which would have similar circumstances to the proposal. However, these dwellings appear to be long established, and their presence does not justify the harm I have found and the subsequent conflict with the development plan.
46. It has been put to me by the appellant that the application process was lengthy and involved numerous requests by the Council for additional information and amendments, which greatly compromised them. I acknowledge that the application took longer to determine than 8 weeks and appreciate that this would cause frustration. However, these essentially procedural matters are beyond my remit insofar as it relates to a consideration of the planning merits of the appeal.

⁷ Ref: WD/2014/2426/F

Planning Balance and Conclusion

47. Overall, I have found that the proposal would result in future occupants being heavily dependent on motor vehicles to meet their day-to-day needs, and therefore would not provide a suitable location with regards to accessibility of services and facilities. It would also harm the character and appearance of the area and the landscape and scenic beauty of the AONB, have an unacceptable impact on highway safety and has failed to demonstrate that it would not result in harm to bats and their habitats. Thus, it would conflict with the development plan read as a whole.
48. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, therefore paragraph 11d) of the Framework falls to be considered. As I have found harm to the landscape and scenic beauty of the AONB, paragraph 11.d) i. of the Framework applies. Consequently, the application of the Framework's policies that protect AONBs provides a clear reason for refusing the development proposed and, therefore, the presumption in favour of sustainable development does not apply.
49. Accordingly, I have found the proposal would conflict with the development plan, read as a whole. Having had regard to all relevant material considerations, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR