



Appeal Decision

Site visit made on 28 March 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 30th May 2023

Appeal Ref: APP/C1435/W/22/3303208

**Land South of Quarry Wood, Fir Grove Road, Cross in Hand, Heathfield
TN21 0TA**

- 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 & Mrs D Beattie against the decision of Wealden District Council.
 - The application Ref WD/2021/2011/MAO, dated 28 July 2021, was refused by notice dated 21 June 2022.
 - The development proposed is outline application for the erection of up to 12 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development was originally described in the application form as "Outline Application for the change of use and erection of up to 12 dwellings". An amended description of the proposal, as "Outline application for the erection of up to 12 dwellings", was agreed between the main parties, and I have determined the appeal on this basis as it provides a clearer description of the proposal before me.
3. The application is for outline permission with all matters reserved except access. The description of the development limits its scale to 12 dwellings. A location and block plan: Drawing No PL.000 and an Indicative Site layout plan PL.001 has been submitted with the application. A layout of the proposed development is also shown on drawings 11057/100, 11057/101 and 11057/1601, which indicate site levels, access and drainage respectively. For the purpose of this appeal, I have taken the internal appearance, landscaping, and layout shown within the site as illustrative only
4. The appellants submitted a Unilateral Undertaking (UU) which sought to provide affordable housing consisting of three social rented housing units and one shared ownership housing unit, unless agreed otherwise with the Council, as part of the proposed development, accompanied by a plan showing the site's red line boundary. Whilst the Council have stated doubt regarding the practicality of provision of affordable units on site, the UU would secure a quantum of affordable housing appropriate to the scale of the development. I have taken account of the UU in my decision

Main Issue

5. The main issue in this appeal is the effect of the development on the landscape character and scenic beauty of the High Weald Area of Outstanding Natural Beauty (the AONB).

Reasons

6. The site lies within the High Weald Area of Outstanding Natural Beauty (the AONB). There is no dispute between the parties that the site lies outside of any settlement boundary and so lies within the countryside for planning purposes.
7. The appeal site (the site) is an open field fronting onto Fir Grove Road (the road) and is part of a larger grassed field. Away from the road the field is enclosed by a mixture of mature hedges and fences with substantial gaps, some containing trees. There is also a mature hedge containing trees on the road frontage and this has few gaps. The site has an existing field access onto the road through this hedge. The site slopes up into the site from the road. Opposite the site the land falls away from the road.
8. To the rear of the site lie single dwellings set in large plots. On the road, the site lies between rows of dwellings on either side of the road, stretching from the centre of Cross in Hand, and more sparse development as the settlement gives way to open countryside.
9. Overall, the character of the site is that of a verdant, rural field set in quiet farmland on the edge of a settlement.
10. Fir Grove Road is a narrow, unlit rural road bordered by narrow verges, hedges, often on banks, and ditches, before running into the denser, more built-up part within Cross in Hand. Accesses onto the road are generally low key, serving single dwellings or fields. It has a strong rural appearance as it passes through the sparse development which fronts it, characterised by its winding alignment between verdant edges and feeling of spaciousness beyond. This creates a visually appealing effect as rurality gives way to the urban forms of the settlement.
11. Policy EN6 of the Wealden Local Plan -1998- (the Local Plan) seeks to conserve or enhance the natural beauty and character of the landscape of the AONB, having regard to various criteria.
12. The application was accompanied by a Landscape and Visual Impact Appraisal (LVIA) dated 25 June 2021.
13. The High Weald AONB Management Plan 2019-2024 identifies five defining components of character that it establishes have made the High Weald a recognisably distinct and homogenous area for at least the last 700 years. These include a settlement pattern of dispersed historic settlement; a dense network of historic routeways which are now identifiable as roads, tracks and paths; and a pattern of small, irregular and productive fields, bounded by hedgerows and woods, and typically used for livestock grazing.
14. Records indicate that Cross in Hand was originally settled in the 17th Century. The historic field pattern is important to the landscape context and character of this settlement in regard to its contribution to the relationship between the core of the settlement and the outlying historic dwelling at Millbank Cottage.

15. Fir Grove Road is a historic route. I have identified that it has a predominantly rural character approaching Cross in Hand before giving way to a more urban, but nevertheless relatively informal, form as it enters the more heavily built up parts of the settlement.
16. Whilst the proposal is in outline form, access is not reserved for determination at a later date. The proposal would introduce a formal, engineered access into the site, constructed to a modern standard, with footways and visibility splays. This would act to undermine the rurality of this stretch of road and would also appear incongruous with its less formal urban street form within the more built-up area to the north.
17. The development would divide the existing field, disrupting the existing field pattern. Built form would be introduced into the lower part of the field, with an urbanising effect resulting from the dwellings themselves, residential paraphernalia and increased activity through the comings and goings at the access of a nature out of keeping with its current peaceful rural nature and which I have identified above as important characteristics of the area. This would undermine any appreciation of the historic fields around Cross in Hand and their relationship with the settlement in separating it from outlying dwellings.
18. Whilst details could, given that no housing mix is fixed, provide a variety of building forms when reserved matters are submitted, it is reasonable to assume, because of the number of dwellings, that the development would not respect the wider settlement character, its pattern or grain. Cross in Hand is a primarily post medieval settlement with the field systems this site relates to being part of this period, when Cross in Hand developed as a very small ridgetop hamlet on the main ridgeline. There has been relatively little intrusion of development down and away from the ridgetop development characteristic of the older settlement pattern.
19. Whilst there has been significant development down from the ridge along Fir Grove Road, spreading down from the ridgeline, which has a clear character as a developed part of the settlement, this does not justify further development out into the more sparsely development countryside to the south. This development has introduced some new, more modern dwellings, which intrude into the settlement pattern. However, this took place before the designation of the AONB and the protection that provides to the landscape and its wider settlement pattern. Additional development spreading further down from the ridge would be intrusive in a landscape sense.
20. The proposed development would be highly noticeable through the access and, notwithstanding the screening and softening effects of any retained landscaping, would be a highly urban form in a prominent position on the entry to the settlement. Further, the wide access and more urbanised form of Fir Grove Road would be readily apparent to those travelling towards, or from the settlement.
21. The appellants consider, based upon their LVIA, that visibility of the development would be constrained by landform and vegetation. Any remaining views of the dwellings would be limited to neighbouring properties and the site would be viewed in the context of existing development. It is suggested that any remaining visual impact would be mitigated by enhancements to existing planting.

22. However, I have found that the proposed development would be highly apparent from the public realm of Fir Grove Road and urbanise that section of road itself. It is unlikely that any degree of enhancement to planting would address this effectively. Further, the residential activity at the access would remain apparent.
23. Whilst development has occurred along the ridgeline above the site and along Fir Grove Road, this does not undermine the important features of the AONB to a degree that the area is wholly without merit in its contribution to the landscape. Indeed, this undermining increases the significance of the contribution made by site as a surviving area representative of the features of the AONB.
24. Bringing these matters together, the proposal would have an urbanising effect on the site and the road fronting it. It would undermine the site's rural tranquillity and the rurality of the field and the road, extending urban form into the countryside setting of the settlement of Cross in Hand to which the site and road make an important contribution. Further, the proposal would be at odds with the contribution that the site makes to the history of the landscape. The proposal would not, therefore, conserve or enhance the natural beauty or character of the landscape of the AONB.
25. I conclude that the proposal would fail to preserve or enhance the landscape character and scenic beauty of the AONB. It would thus be contrary to the aims of Policy EN6 of the Local Plan. The proposal would also be contrary to Policy EN27 of the Local Plan in as much as this policy seeks to ensure that development should promote local distinctiveness. The proposed development would also be contrary to Policies GD2 and DC17 of the Local Plan, and WCS6 of the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan -2013- (the CSLP) in as much as these policies seek to limit development in the countryside to that which accords with other policies in the development plan.

Other Matters

26. There is no disagreement between the parties that the Council is unable to identify a five year supply of housing land (5YSHL). Accordingly, the most important policies for determining the application should be deemed out of date. Where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole unless certain circumstances apply.
27. In the context of the development plan, I have found that the proposed development would be contrary to Policies EN27, GD2 and DC17 of the Local Plan, and WCS6 of the CSLP. However, in this case, the absence of a 5YSHL means that the policies most relevant to the determination of this appeal are deemed to be out of date. The policies may, nonetheless, still carry weight in proportion to their degree of consistency with the aims of the Framework. These policies are largely in accord with the aims of the Framework that seek to conserve and enhance the natural environment and so I afford them significant weight.

28. Section 85 of the Countryside and Rights of Way Act 2000 places a statutory duty upon me to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. As a consequence of its design the appeal scheme would have a harmful impact on the AONB insofar as it would neither preserve nor enhance the natural beauty of the area. AONBs are identified in Footnote 7 of the Framework as one of the areas of particular importance.
29. The Framework advises that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs and that AONBs have the highest status of protection in relation to these issues. It also advises that the conservation and enhancement of cultural heritage are also important considerations in these areas. The Framework also states that the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
30. Paragraph 177 of the Framework tells us that, for applications for development within AONBs, permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.
31. Footnote 60 of the Framework explains that, for the purposes of Paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
32. The Council, in its Officer's Report, sets out its reasoning for concluding that the development is not 'major' for the purposes of Paragraphs 176 and 177 of the Framework. Having considered the circumstances relating to this particular site I find no reason to disagree with this conclusion. Thus, in this case, whilst the presumption against development within an AONB except in exceptional circumstances does not apply, nor yet does the "tilted balance" of the Framework. The benefits and harm resultant from the proposal are therefore weighed against each other in a normal balance. Notwithstanding that a new Framework has been published subsequent to the judgement this approach accords with the conclusions of Mr Justice Holgate in the Monkhill judgement¹.
33. The proposed development would deliver up to twelve additional homes, four of them affordable homes. I am satisfied that the submitted UU would effectively secure an appropriate proportion of these dwellings as affordable.
34. Twelve additional homes would provide a modest contribution towards the Council's housing supply and, as a 'windfall site', help decrease the Council's shortfall. Further, Paragraph 69 of the Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. The provision of a significant proportion of this housing as affordable homes adds weight in favour of the proposal.
35. The proposal would provide minor short-term benefits to the construction industry, both economic and, by providing workforce experience and/or training, social. Future occupiers would also provide some support to local

¹ Monkhill Ltd v SSHCLG [2019] EWHC 1993 (Admin)

services and, as the site lies in reach of services within the settlement of Cross in Hand, reachable by sustainable modes of transport such as walking or cycling. Future occupiers may participate in local clubs and other social groups. However, such support would be limited by the scale of the development.

36. The additional landscaping proposed as part of the development could provide biodiversity improvements to the site, However, this has not been quantified by the appellants and therefore the weight that can be attributed to this is limited.
37. Taken together these factors provide support in favour of the proposed development, and, given the Council's current position with regard to its supply of housing land, the scale of the development and need for affordable housing, I allocate these benefits moderate weight.
38. However, the proposal would fail to preserve or enhance the landscape character and scenic beauty of the AONB, contrary to the aims of the Framework, and this is a matter of great weight counting against the proposal.
39. Overall, I find that the adverse impacts of the proposed development on the AONB would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when read as a whole.

Conclusion

40. The proposed development would be contrary to the Development Plan and the Framework, when read as a whole, and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR