



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/22/3298061

Sunset Farm, Mayfield Road, Cross in Hand, Heathfield TN20 6JJ

- 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 John Rose of East Grinstead Tyre Service against the decision of Wealden District Council.
 - The application Ref WD/2021/2332, dated 6 September 2021, was refused by notice dated 11 November 2021.
 - The development proposed is erection of a dwelling to provide accommodation for site manager.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a dwelling to provide accommodation for site manager at Sunset Farm, Mayfield Road, Cross in Hand, Heathfield TN20 6JJ in accordance with the terms of the application, Ref WD/2021/2332, dated 6 September 2021, and the plans submitted with it, subject to the following conditions: -
 1. The development to which this permission relates shall be begun not later than the expiration of one year beginning with the date on which this permission is granted.
 2. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, at the gas storage and filling facility at Sunset Farm, Mayfield Road, Cross in Hand, Heathfield TN20 6JJ, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 3. Before construction above ground level of the dwelling hereby approved, samples of materials to be used on the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall be used in the implementation of the development and thereafter so retained.
 4. Before the preparation of any groundworks or foundations for the development hereby approved, full details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details and thereafter so retained.
 5. Before preparation of any groundworks and foundations on site for the development hereby approved, a scheme of landscaping shall be submitted

to and approved in writing by the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development.

All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

6. No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:-
 - (i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - (ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - (iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - (iv) No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
 - (v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
 - (vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
7. Prior to the preparation of any groundworks and foundations on site for the development hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with the recommendations in sections 5.19 – 5.22 of the Preliminary Ecological Appraisal date stamped 6 September 2021 to include timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be

implemented in accordance with the approved details and thereafter so retained.

8. No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.

Main Issues

2. The main issues in this appeal are: -

- The effect of the proposed development on the landscape character and scenic beauty of the High Weald Area of Outstanding Natural Beauty (the AONB); and -.
- Whether the site is suitable for a dwelling, bearing in mind the settlement policies of the development plan and the accessibility of services, and whether there is a need for a rural worker that would outweigh any harm in these regards.

Reasons

Landscape character of the AONB

3. The appeal site (the site) lies within the AONB. During my site visit I observed that the area around the appeal site comprises rolling farmland, bounded by mature hedges and trees with some woodland. The appeal site (the site) itself is currently an undeveloped area of grass, lying alongside the A267, but separated from it by dense mature hedging. The other three sides are bounded by gappy hedges and trees. To the south lies Sunset Farmhouse and a collection of buildings and hardstanding in commercial use, including Rose Gas. The site lies in a shallow dip in the ground.
4. Being an undeveloped field largely enclosed by mature hedges, the site is characterised by its attractive verdant appearance and open rurality. As such it provides a transition between the business of the developed land around Sunset Farmhouse and the surrounding countryside. Accordingly, the site has a strong visual relationship to the wider open countryside and is clearly and distinctly different from the development to the south.
5. Policy EN6 of the Wealden District Council Local Plan -1998- (the Local Plan) seeks to prevent development that does not conserve or enhance the natural beauty of the AONB.
6. The site is well screened from public views by the vegetation along the A267. The proposed development would also be screened, to some extent, in wider views across the countryside from further afield, by the fold in the ground and by existing planting, particularly in summer. By virtue of its height and location towards the edge of the site the building would be visible in longer views across the countryside. However, it would do so in the context of the building group around Sunset Farmhouse.
7. By virtue of its presence the development would undermine the verdancy of the countryside and the AONB and increase disturbance by virtue of the day-to-day

activities of the residents and their comings and goings. It would, therefore, be harmful to the landscape character of this sensitive landscape. Notwithstanding the limited views from the public realm, the landscape character of the AONB is important in its own right.

8. Landscaping can be used to soften development but should not be relied upon to hide buildings that would otherwise appear incongruous, as it could fail in the future and can only reasonably be safeguarded for a limited period. Whilst it primarily softens visual impacts, it will seldom mitigate the impact on landscape character as the land would still undergo a transformation from a field to housing.
9. Bringing these matters together, I find that the proposed development would be harmful to the landscape character of the AONB, but that, given the limited views of the proposal and its context in regard to the development to the south this harm would be small.
10. For the above reasons, I conclude that the development would be harmful to the landscape character of the AONB. As a result, it would be contrary to Policy EN6 of the Local Plan and those parts of SPO1 of the CSLP which seek to protect and enhance the distinct landscapes of the District, particularly those nationally designated. It would also conflict, in this regard, with those parts of the National Planning Policy Framework (the Framework) which aim to conserve and enhance the natural environment.

Settlement policy, accessibility, and rural worker need

11. There is no dispute between the parties that the site lies outside of any development boundary, as defined in the development plan. The site therefore lies in the countryside for planning purposes.
12. Policies GD2 and DC17 of the Local Plan seek to resist new development (including housing) outside of development boundaries unless it is in accordance with specific policies in the Local Plan. Policy DC2 of the Local Plan allows new permanent dwellings outside of development boundaries for those employed in agriculture or forestry, or exceptionally in another enterprise where a countryside location is necessary, subject to certain criteria.
13. The site lies in open countryside, away from any settlements. Occupants of the dwelling would be remote from day-to-day services. The nearest settlement, Cross in Hand, is approximately half a mile away and has a limited range of services. However, a full range of services lies in Heathfield, which lies over two miles away. There is no dispute between the parties that the future occupiers of the dwelling would be heavily reliant on the private car for their day-to-day transport needs.
14. Consequently, the proposal for a dwelling in this location would be in tension with policies in the Local Plan, and the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan -2013- (the CSLP), which set out the Council's sustainable approach to development, whereby most development is to be located where it would have access to a range of facilities without inappropriate reliance on the private car.
15. However, Policy DC2 of the Local Plan recognises that there may be a need for some housing in other locations to support established and viable rural businesses, where there is an essential need for a presence on the holding.

16. The proposed dwelling would be associated with an established business storing and distributing low pressure gas (Rose Gas) and would provide accommodation for the site manager.
17. Rose Gas is a 'Lower Tier' site as defined in the Control of Major Accident Hazards (COMAH) Regulations 2015 and has the capacity to store significant amounts of gas within the site.
18. I am mindful that the Group Manager Business Safety, of the Safer Communities Directorate of the East Sussex Fire and Rescue Service (ESFRS) advised that to facilitate an effective operational response, having a designated person with knowledge of the site living on or near to the site would prove invaluable in an emergency and provide ESFRS operational crews with immediate expert knowledge and assist with preventing site risks being realized.
19. Further, a safety consultant, Fabre Consulting, identifies that whilst the facility has many safety features, which all contribute to the overall effective and safe operation of this site, the presence of trained and experienced gas operators is a requirement, both for the safe operation of the site, and the emergency response for the site. The consultant advises that the absence of trained and responsible staff during emergency would almost certainly lead to an escalation of the severity of any incident.
20. There is no evidence before me to demonstrate that, although the site has been handling gas products for some time, there have been emergencies requiring the attendance of the emergency services. However, there is no guarantee that this will remain the case, as accidents are, by their nature, unforeseeable events, often dependent upon a coincidence of circumstances. Further, over time, circumstances can alter, such as an increase in terrorist activity.
21. I note that the fire service advises that a person could live on or near the site. There is no dispute between the parties that the Council is unable, at this time, to demonstrate a five-year supply of housing land and that this has been the case for some time. Further, I note that the Council has under-delivered on its housing targets in recent times. This is likely to have put pressure on the availability of housing locally, and there is no evidence before me to demonstrate that a suitable dwelling would be available so as to provide a suitable response time in an emergency.
22. It has been drawn to my attention that Sunset Farmhouse was, when the gas storage and filling facility originally received planning permission, subject to an occupation condition linking the two, but that this was subsequently removed¹. Whilst I have limited information as to the reasoning behind the removal of the condition at that time, that decision was some time ago and circumstances may have changed significantly in the interim. I have, however, determined this case in regard to the current situation. I see nothing, at the present time, to link Sunset Farmhouse, in planning terms, to the operation of the gas business.
23. The appellant further argues that, due to the operational needs of the facility, it is necessary for two persons to be on site to facilitate vehicular loading and

¹ Council Ref WD/2000/2533

discharge of gas and that this can take place at any hour and requires access through the security measures necessary to keep the site and its contents safe and secure.

24. The site contains flammable, and, under some circumstances, explosive materials in significant quantities. As such a countryside location, distant from concentrations of dwellings and other dense development would not be inappropriate for the business.
25. I conclude that there would be a need for a full-time rural worker to live on the site. The proposal would, therefore, accord with Policy DC2 of the Local Plan in as much as it is suitably located to meet the identified functional need. Given the proven need for a rural worker's dwelling, the proposal also, therefore, accords with Policies GD2, EN1 and DC17 of the Local Plan, and Spatial Planning Objectives SPO1 and SPO7 of the CSLP as a suitable exception to the aims of these policies in safeguarding the countryside from inappropriate development and avoiding development that does not have access by sustainable transport modes to services and facilities to meet its day-to-day needs.

Conditions

26. I have had regard to the various conditions suggested by the Local Planning Authority.
27. I have imposed a condition limiting the period within which the development must commence to one year. This is less than the usual period of three years given for implementation. However, this is justifiable in this case to incentivise delivery in order that the undersupply of housing within the district can be addressed in accordance with the Wealden Housing Action Plan and to provide the safety benefits that would accrue from implementation and which contribute heavily towards justification for the provision of the worker's dwelling.
28. I have also added a condition limiting the occupancy of the dwelling to a person working, or last working at the facility, their surviving partner in the event of their having died, and their dependents. This is necessary to conserve the residential accommodation for persons employed at the adjacent gas storage facility, which contributes towards justification of the development, having regard to policies in the development plan and the requirements of the Framework.
29. Whilst the Council suggested that occupancy be restricted to the time during which the occupier is actively employed at the facility, I have considered whether it is reasonable to do so, having regard to the findings in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* [1996] JPL 753 (Keen), which considered it unreasonable that a rural worker should lose their home on cessation of employment. The parties have had the opportunity to comment and agree that Keen is relevant. I find that it is necessary to restrict occupancy, so that the need for a worker at the facility can be secured, but that the wording suggested by the Council is over-restrictive. I have thus amended the wording to occupancy to a worker last employed at the facility, their widow or widower.

30. Conditions requiring the approval of materials to be used in the construction of the dwelling, landscaping proposals, the protection of trees and controlling external lighting are required to safeguard the visual amenities of the locality and character of the area having regard to policies in the development plan and the requirements of the Framework.
31. I have included a condition requiring details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development to be submitted to and agreed in writing by the Local Planning Authority. This is necessary to promote sustainable building design, having regard to policies in the development plan and the requirements of the Framework.
32. A condition requiring the submission and approval of a scheme for the enhancement of the site for biodiversity purposes to identify and ensure the survival and protection of important species and those protected by legislation that could be adversely affected by the development is necessary, having regard to policies in the development plan and the requirements of the Framework.
33. The submission and approval of information detailing the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development, landscaping proposals and the enhancement of the site for biodiversity purposes prior to any groundworks or preparation of foundations on site are necessary as the works themselves would have potential to impact upon the design of the scheme and impact on the measures sought. I have sought, and received, the agreement of the appellant in regard to these conditions.
34. I have amended some of the requested wording of the Local Planning Authority's conditions for clarity and to accord with the test of reasonableness.

Planning Balance

35. 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 provides 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.
36. In the context of the development plan, I have found that the proposed development would be contrary to Policy EN6 of the Local Plan and parts of Policy SPO1 of the CSLP that seek to safeguard the natural environment. 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 those parts of the Framework that seek to conserve and enhance the natural environment and so I afford them significant weight.

37. 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.
38. 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. 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.
39. The proposed development would deliver an additional home and this home would support an existing rural business. The Framework, in Section 6, aims to build a strong, competitive economy, including in rural areas.
40. Paragraph 84 of the Framework supports the development of agricultural and other land-based rural businesses. The proposed development would support an existing rural business and would, therefore, provide economic benefit through the creation of rural employment.
41. Of itself, an additional home would provide a contribution towards the Council's housing supply and, as a 'windfall site', help decrease the Council's shortfall. 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. However, the dwelling would be governed by an occupancy condition and this would limit the benefit.
42. The proposal would provide minor short-term benefits to the construction industry, both economic and, by providing workforce experience and training, social. Future occupiers would also provide some support to local services and, as the site lies in reach of services within the settlement of Cross in Hand, future occupiers may participate in local clubs and other social groups. However, such support would be limited by the scale of the development.
43. Taken together these factors provide support in favour of the proposed development. Given the Council's current position with regard to its supply of housing land and the scale of the development I allocate these benefits, particularly as a result of the support that the development would provide to the continuation of an established local business, significant weight.
44. However, the proposal would fail to preserve or enhance the landscape character and scenic beauty of the AONB. This notwithstanding, I have found that the overall impact of the development on the landscape character of the AONB would be small, and of a degree that would be inevitable in any development for a rural worker's dwelling within the AONB. This reduces the weight that I place upon this harm and I have afforded this limited weight in my deliberations.
45. Although the proposal is not in accordance with Policy EN6 of the Local Plan and those parts of SPO1 of the CSLP, there are material considerations, including the policies in the Framework, that indicate that a decision can be

made other than in accordance with the development plan and any adverse impacts of granting planning permission would not outweigh the benefits.

Conclusion

46. When applying the policies of the Framework that protect the AONB I have found that there is no clear reason to refuse the proposal. Under such circumstances the tilted balance of Paragraph 11. d) would apply. Thus, for the reasons given I conclude that the appeal should succeed.

I A Dyer

INSPECTOR