



Appeal Decision

Site visit made on 25 April 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/P1425/W/22/3304655

Land South of Crest Road, Newhaven, BN9 0PA

- 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 Highbeech Properties Ltd (Mr C Porpora) against the decision of Lewes District Council.
 - The application Ref: LW/21/0568 dated 8 July 2021, was refused by notice dated 31 March 2022.
 - The development proposed is erection of 3 x no.3 bedroom detached houses with associated car parking and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the appeal stage a botanical survey was undertaken and submitted to address the second reason for refusal.

Main Issues

3. The main issues in this appeal are:
 - a) The effect of the proposal on the character and appearance of the local area, and
 - b) The effect of the proposal on ecological interests, including protected species and biodiversity.

Reasons

Issue a) Character and Appearance

4. The appeal site is an open and undeveloped piece of scrub land on the south side of Crest Road (a private and unmade road) which leads off Fairholme Road on the edge of Newhaven. There are mature trees along the southern boundary of the site; most of the rest of the site is open scrub/ grassland. The site lies outside of albeit relatively close to the settlement boundary of Newhaven, with an open paddock and field shelter in between the appeal site and Fairholme Road. There is residential development along the west side of Fairholme Road. The eastern boundary of the site is very close to the South Downs National Park (National Park). The land slopes away from Crest Road.

5. There is a clear visual distinction between the more regular residential development along the western side of Fairholme Road and the more open countryside including scrub land, with very sporadic residential dwellings on the east side.
6. The proposal would introduce three detached dwellings, each in self-contained plots with their own access and car parking off Crest Road and rear gardens. Utilising the slope of the land, the properties would appear as single storey when viewed from Crest Road, but two storeys at the rear. At the rear of the site, existing trees are proposed to be retained together with new native planting and is indicated to be a protected area for ecology.
7. The proposed dwellings, together with the car parking and gardens, would extend built development across almost the full width of the site, leaving narrow margins on either side. The regular spacing and identical form of the three dwellings in terms of their siting and appearance would present a suburban form of development which would appear out of context and would detract from the openness of the existing site and much of the surrounding area. The development would appear as an incongruous addition to the local area, being surrounded by sporadic development and predominantly open / scrub land and separated from the housing within the development boundary.
8. The Appellant has commented that the National Park Authority did not raise an objection to the application but the consultation response I have seen, dated 10 August 2021 did comment that consideration should be given to the visual impact of the development upon the landscape character within the setting of the National Park.
9. Although there is sporadic development in the vicinity, the appeal site and surrounding land presents a transition from the built up development within and along the edge of Newhaven and the open countryside within the National Park. The proposed development in terms of its regular suburban form and amount of built development and associated residential paraphernalia including car parking and hard standings would harm the openness of this land and the transition it serves at the edge of the National Park. It would therefore be a visually intrusive addition and would therefore, in my view, also harm the setting of the National Park in this location.
10. Policy DM1 of the Lewes District Local Plan Part 2 set out guidance on development within and outside of the planning boundaries and this proposal would fall to be considered outside of the settlement boundary. I do not consider, for the reasons set out above, that the development would protect the distinctive character and quality of the countryside. There is no information before me to suggest that the development requires a countryside location.
11. I therefore conclude that the proposal would harm the character and appearance and openness of the local area. This would conflict with Policy DM1 of the Lewes District Local Plan Part 2 and Policy D1 of the Newhaven Neighbourhood Plan as well as the National Planning Policy Framework and in particular Sections 12 and 15, all of which amongst other matters seek a high quality of design which respects the local context and recognises the intrinsic character and beauty of the countryside.

Issue b) Ecological Interests and Biodiversity

12. The ecological reports submitted with the planning application included a Phase 1 Ecology Report dated 31 05 2021 and a Reptile Survey Report dated 2 July 2021, both by Ecology & Habitat Management Ltd. This was supplemented by a Botanical Survey Report by Dr Lesley Mason dated 22 July 2022 which was submitted with the appeal. The purpose of this later report was to determine the grassland habitat type present within the site, as supported by a botanical species list recorded on the day of the site visit. The report made no recommendations in respect of its findings in terms of the impacts of the proposed development, mitigation and enhancements.
13. Whilst I appreciate the concerns of the Appellant regarding the extent of surveys required, and implications in terms of both time and costs, I agree with the Council that insufficient information has been provided and that indications in some of the reports that there may need to be further survey work has not been followed up. As a result, I am unable to assess fully the potential impacts of the proposed development on biodiversity. I agree with the Council, that on the basis of the limited information before me, it would appear that there would be likely to be a net loss to biodiversity, unsupported by detailed mitigation and enhancement proposals.
14. The scheme plans include for an area at the rear of the site for ecology. However, there is no information provided about enhancement proposals for this area and its suitability as a zone for biodiversity, in relation to the proximity to the rear gardens of the proposed dwellings.
15. National guidance, including under Circular 06/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System* is clear that the presence or otherwise of protected species and the extent to which they may be affected by the proposed development should be established before determination of an application and that the use of conditions to address such matters should only be used in exceptional circumstances; no evidence has been put before me to suggest that would be applicable in this case. I am of the view that insufficient evidence has been submitted at the application and appeal stages to provide sufficient certainty regarding the presence or otherwise of protected species.
16. Notwithstanding the additional report submitted at the appeal stage, it is not possible to conclude the extent of ecological harm which may arise, including to protected species as a result of the proposal. I cannot therefore be satisfied that the proposed development would not result in harm to and a net loss to biodiversity and there is no confirmation of mitigation and enhancement to offset any such loss. This would conflict with Policy DM24 of the Lewes District Local Plan Part 2 and Policy NE1 of the Newhaven Neighbourhood Plan as well as the National Planning Policy Framework with particular reference to Section 15, in relation to the conservation and enhancement of biodiversity and protected species.

Other Considerations

17. I have taken into account that the site is not currently in use and that the Appellant is of the view that alternative commercial activities are unlikely to be

viable, but this does not in itself justify a residential development in the countryside.

18. The Appellant has referred to the Council's Interim Policy for Housing Development produced in May 2021 given the Council's position on housing delivery. However, and as pointed out by the Appellant it does not appear to have been the subject of any formal public consultation which necessarily limits the weight that can be afforded to it. The Council has indicated in the officer's report at the application stage that the proposal would satisfy the majority of the criteria set out under this Interim Policy. Notwithstanding the limited weight that I can attach to this Interim Policy, given the assessments and findings I have reached on my main issues which are also criteria under the Interim Policy, I am not persuaded that the scheme proposals would fall to be considered as sustainable development under this Interim Policy.

Planning Balance

19. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing land and that it can only demonstrate a 2.7 years supply (outside the National Park). Accordingly, paragraph 11(d) of the Framework is engaged. In so far as this appeal is concerned, this indicates that permission should be granted unless 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.
20. The proposed development would provide 3 additional residential units, but this would make only a very modest contribution to the housing supply. I have also taken into account the Appellant's references to a 2014 survey indicating an identified need for more detached housing for families to aspire to, although I am not advised whether that research has been subsequently updated. There would also be some relatively limited attendant social and economic benefits, including both during the construction phase and in the longer term through the contribution that future residents would make to the local community and use of services and facilities. However, I have found that the proposed development would harm the character and appearance and openness of the local area and I am not persuaded that there would be no harm to protected species and ecological interests.
21. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

22. For the reasons given above and having regard to all other matters raised, I conclude that the scheme fails to accord with the development plan taken as a whole, and there are no material considerations, including the Framework, that indicate a decision other than in accordance with the development plan. Therefore, this appeal should be dismissed.

L J Evans

INSPECTOR