
Appeal Decision

Site visit made on 23 May 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2023

Appeal Ref: APP/C1435/W/21/3289181

Thistledown Farm, Framfield Road, Blackboys TN22 5HD

- 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 Steve Butler against the decision of Wealden District Council.
 - The application Ref WD/2020/0130/F, dated 24 June 2020, was refused by notice dated 25 June 2021.
 - The development proposed is demolition of a poultry unit (with extant change of use consent to 1 no. C3 dwelling under WD/19/0672/P04) and two adjacent farm buildings and their replacement with a new build dwelling, garage and shed.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's evidence confirms that prior approval ref. WD/2019/0672/P04, which is referred to in the description of the proposed development in the banner heading above, expired in June 2022. The main parties have been given the opportunity to comment on this change in circumstances since the application was determined.
3. A revised National Planning Policy Framework was published in July 2021, shortly after the application was determined. The Council has provided an update on the implications for consideration of the appeal and the appellant has had the opportunity to comment.

Main Issues

4. The main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to its accessibility to services and facilities, and
 - the effect on ancient woodland.

Reasons

Suitability of Location

5. The appeal site is part of a landholding containing a detached dwelling near the road, with disused agricultural buildings and open land to the rear. The existing buildings include a substantial former poultry shed and smaller stable and storage buildings. The proposed dwelling would be largely on the footprint of the poultry shed, which was also the subject of the 2019 prior approval.

6. The site is outside any defined settlement. However, it is part of a ribbon of loose knit detached housing along Framfield Road (B2102), between Blackboys to the east and Framfield further to the west.
7. Policies GD2 and DC17 of the Wealden Local Plan 1998 (WLP) direct new housing development to land within defined development boundaries. Although Blackboys is named as a settlement in the Core Strategy¹, it does not have a development boundary. Nevertheless, the National Planning Policy Framework (the Framework) allows for housing in rural areas where it would enhance or maintain the vitality of rural communities and therefore I have considered the suitability of the location with this in mind.
8. There are some local services in Blackboys, including a school, public house, local community buildings and outdoor recreation facilities. These are all of a relatively modest scale, typical of a rural village location. Although they are within a potentially feasible walking distance from the site, the footpaths along Framfield Road are narrow and close to the carriageway and the road is unlit. There are significant stretches of open land between the appeal site and the more substantially developed part of the village, where the services are located. Therefore, there are a number of deterrents to future occupiers accessing the relatively limited local services on foot, as opposed to travelling by car or bus to more extensive services in larger urban areas.
9. On that basis, one additional dwelling in this somewhat detached location is unlikely to enhance or maintain the vitality of Blackboys to any meaningful degree. Future occupiers would also be largely dependent on travel by car, conflicting with guidance in the Framework directing growth towards locations which limit the need to travel.
10. For the above reasons, I conclude that the proposed development would not provide a suitable location for housing, having regard to the accessibility to services and facilities. It would conflict with policies GD2, EN1 and DC17 of the WLP, Spatial Planning Objective SP07 and policies WCS6 and WCS14 of the Core Strategy and relevant paragraphs in the Framework. These policies, amongst other things, restrict new housing outside development boundaries and support patterns of development which limit the need to travel.
11. WLP Policy EN8 and Core Strategy Spatial Planning Objective SP01 are also referred to in the first reason for refusal. These largely focus on the effect of development in relation to biodiversity and landscape considerations. The first reason for refusal does not identify any harm to biodiversity or the rural landscape and neither Policy EN8 nor Spatial Planning Objective SP01 are relevant to the site's suitability in terms of access to services. However, both parties have provided evidence relating to the visual appearance of the proposed dwelling in comparison with a potential fallback position and I return to this matter below.

Ancient Woodland

12. There is a parcel of woodland adjacent to the site, immediately to the west of the proposed dwelling and its garden. This is part of a larger expanse of woodland known as Tickerage Wood, which is identified as ancient woodland in

¹ Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan adopted February 2013

the Preliminary Ecological Appraisal (PEA)² which accompanied the application. Although the PEA is of some age, there is no evidence suggesting that the status of Tickerage Wood as ancient woodland has changed or is otherwise in any doubt.

13. The parties differ as to the degree of separation between the proposed buildings and the ancient woodland. However, even if (as the appellant states) all buildings would be sited more than 15 metres from the woodland, the plans clearly indicate that the proposed garden would abut the boundary with Tickerage Wood. As such there would be no separation between the ancient woodland and land to be used as a new garden.
14. Standing advice from Natural England and the Forestry Commission (NE & FC), referred to by the Council, includes that a buffer zone of at least 15 metres should be maintained between the boundary of ancient woodland and proposed development. This advice furthermore states that development proposals, including gardens, should not be approved within such a buffer zone.
15. Although the PEA proposes a 15 metre buffer zone between the edge of the woodland and any building works, there is no indication that this area would be excluded from the garden. The area would potentially be used for an enhanced amphibian/reptile area and construction of hibernacula. While these measures may be beneficial for the species in question, there is no indication of any intention to exclude residential activity within 15 metres of the woodland or to establish and manage suitable woodland edge habitat capable of mitigating the adverse effects of development.
16. As set out in the NE & FC standing advice, development within such close proximity to ancient woodland is associated with risks such as increased pollution, disturbance of wildlife due to increased activity and domestic pet predation and pressure for tree management. While some of the potential risks could be managed through appropriate planning conditions, others are unavoidable, given the very close relationship proposed. Therefore, based on the evidence before me, I find that the proposed development would be highly likely to result in deterioration of the ancient woodland habitat.
17. 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 replaced if harmed. For that reason, paragraph 180 of the Framework states that development resulting in deterioration of irreplaceable habitats such as ancient woodland should be refused unless there are wholly exceptional reasons justifying the development and a suitable compensation strategy exists. No such exceptional reasons have been proposed and no suitable compensation strategy is before me.
18. For the above reasons, I conclude that the proposal would involve an unacceptable risk of harm to the ancient woodland adjacent to the site. It would conflict with WLP Policy EN13 and Core Strategy Policy WCS13. These policies, amongst other things, resist development that would harm the District's network of green infrastructure or prejudice the ecology of ancient semi-natural woodlands. It would also conflict with relevant paragraphs of the

² Lizard Landscape Design and Ecology Preliminary Ecological Appraisal Report dated 10 October 2018.

Framework, notably paragraph 180 which relates to proposals which would cause the deterioration of irreplaceable habitat, for the reasons outlined above.

Other Matters: Fallback Position

19. The 2019 prior approval was for conversion of the former poultry shed to a five bedroom dwelling. The two end bays would have been retained as farm storage and the plans indicate that only a narrow area around the building would have been used for residential purposes. The two existing buildings to the north of the poultry shed would have been retained.
20. During my site visit, I saw no evidence that the condition of the building has deteriorated to any material degree since prior approval was granted. Nor is there any evidence of any other material change in circumstances since then. On that basis, although the prior approval expired in June 2022, the Council has indicated that it would be likely to reach the same decision on any future application submitted on the same basis.
21. The Officer Report described the fallback position as unviable, but the Council has clarified that this referred to the theoretical possibility of the building being first converted and then demolished and replaced. The Council has subsequently accepted that there is no evidence that the prior approval scheme could not be implemented nor be economically viable. Based on the evidence before me, I have no reason to reach a different view. Therefore, there is a real prospect that a conversion corresponding with the 2019 prior approval could be implemented, if this appeal is dismissed.
22. On that basis, the proposed development would not increase the amount of housing in this rural location, since the principle of providing one additional dwelling through conversion of an existing building has already been established. The need for future occupiers to travel would be similar, given that accommodation of a broadly similar scale is proposed. This counter-balances the harm associated with the proposed location outside any development boundary.
23. The proposed dwelling would have a more conventionally domestic appearance than the converted poultry shed, reasonably consistent with the design and materials of other nearby dwellings. Although it would be considerably taller than the poultry shed, its split-level form makes effective use of the sloping site, so that the front elevation would still have a single storey appearance. The projecting wings at the rear would be of a more subservient scale, on lower ground and the width of the building across the site would also be reduced. The proposed garage building would be in reasonable proportion to the scale of the proposed dwelling.
24. Detached dwellings in large gardens, with outbuildings, are an established pattern of development along this section of Framfield Road. Furthermore, given its location behind the existing dwelling, the proposed dwelling would be substantially screened from the road and not intrusive in any public views. Nor would it encroach into any areas of more open, agricultural land.
25. The proposed tractor shed would also be set well back in the site, on lower lying land. It would have a typically utilitarian appearance and would not be excessive in scale, given likely maintenance requirements for the landholding

as a whole. It would be no more intrusive in the landscape than the significantly taller storage shed which it is proposed to demolish.

26. Given the extent of screening, the similar extent of floorspace and the balance between the greater height of the proposed dwelling versus its more conventionally domestic detailing, I find that the proposal would have a neutral effect on the landscape, compared to the fallback position.
27. Importantly, however, the prior approval scheme does not propose residential use of the land adjacent to the ancient woodland. While the existing building would be retained, the nearest end of the building would remain in agricultural use, as would the land alongside the woodland. The limited residential curtilage would be both smaller and further from the edge of the woodland and therefore would not introduce the same level of risk to the irreplaceable habitat. For that reason, I conclude that the 2019 prior approval scheme would be less harmful in terms of its relationship with ancient woodland.

Other Matters

28. The proposal would deliver one dwelling on a small site. However, this is not a net benefit compared to implementation of the fallback position, which would also deliver one dwelling.
29. Evidence has been provided with the appeal that the proposed dwelling would be a self-build project. However, no legal mechanism has been presented to secure the provision of self-build housing on the site. As such, while there would potentially be a modest contribution to any local demand for self-build plots, there is no certainty that this would be delivered in practice. For that reason, I have given the provision of self-build housing very limited weight.
30. While there is evidence that the Council has approved other developments in Blackboys, outside any development boundary, both parties acknowledge that these decisions were based on other material considerations which were concluded to outweigh the conflict with the development plan. By their nature, such considerations vary according to the circumstances of each case and I have considered the appeal proposal on its own merits.
31. The Council lacks a five year supply of housing land. During consideration of the appeal, the Council confirmed that the supply of housing land stood at just under 4 years, based on the Five Year Housing Land Supply Statement published December 2022. No alternative figures have been provided.
32. By virtue of this 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 11d), which articulates how the presumption in favour of sustainable development should be applied in these circumstances.
33. Paragraph 11d) i. states 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 confirms that the policies in question include those relating to irreplaceable habitats, which includes ancient woodland.
34. Having concluded that there would be an unacceptable risk of harm to ancient woodland, there is a clear reason for refusing the development proposed,

based on relevant policies in the Framework. Therefore, the further test set out in paragraph 11d) ii. of the Framework does not apply. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development set out at Framework paragraph 11.

Conclusion

35. I have concluded that the harm associated with the site's location and the associated need to travel is counter-balanced by the existence of a realistic fallback position allowing for a similar scale dwelling in the same location. The proposal's contribution to the supply of housing likewise carries neutral weight, given that a similar contribution would be made by the fallback position. I have also concluded that the net effect on the landscape would be neutral.
36. Any contribution to self-build housing carries very limited weight, given the lack of any legal mechanism to secure its delivery.
37. There would be an unacceptable risk of harm to irreplaceable habitat as a result of the proximity of the proposed garden to ancient woodland. This carries significant weight. The fallback position does not involve a similar level of risk, by virtue of its different layout. As such, the harm to irreplaceable habitat is not outweighed by the fallback position or any other considerations.
38. For the reasons given 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