
Appeal Decision

Site visit made on 25 April 2023

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Appeal Ref: APP/C1435/W/21/3285795

Land at and to the rear of Hazelbank, Rattle Road, Westham BN24 5DS

- 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 M Lear (Domaines Du Chateau Ltd) against the decision of Wealden District Council.
 - The application Ref WD/2021/0102/MAJ, dated 18 December 2020 was refused by notice dated 7 May 2021.
 - The development proposed is a change of use of land and the demolition of existing dwelling to allow access for residential development of 12no. dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's description of the site's location has been used above for the sake of accuracy. A Council flooding reason for refusal relates to surface water flooding. There is a stream/ditch straddling the appeal site which has been identified as a pathway to the Pevensey Levels Special Area of Conservation (PLSAC). Given this, an Appropriate Assessment has been carried out under the Habitat regulations having regard to surface water runoff.
3. A Unilateral Undertaking (UU) dated 18 October 2022 relates to the provision of four affordable dwellings on the site. Attention has also been drawn to two allowed appeal decisions¹ for residential development in Stone Cross. Main parties' additional comments on these appeal decisions, design and changed policy or circumstance since the submission of the appeal documentation, have been considered in this decision.

Main Issues

4. The main issues are the effects of the proposal on (a) the character and appearance of the area, (b) the highway safety of pedestrians, cyclists and drivers using Rattle Road, (c) whether the development would increase flood risk elsewhere, having regard to surface water, (d) the integrity of the PLSAC, having regard to surface water, and (e) the living conditions of the occupiers of Mill View Close, having regard to outlook.

¹ Appeal Ref: APP/C1435/W/21/3292472, Land north of Crossways/St Michaels Close, Hailsham Road, Stone Cross, Pevensey, BN24 5EH and Appeal Ref: APP/C1435/W/21/3284526, Land north of 16 The Crossways, Hailsham Road, Stone Cross, Pevensey, BN24 5EH.

Reasons

Character and appearance

5. The appeal site comprises a bungalow and a more expansive area of paddock, behind it and the rear gardens of adjacent neighbouring properties on Rattle Road. The paddock includes grazing land, stables, sheds, a barn for animals, feed and equipment, and a sand school. Along the rear perimeter of the paddock and site, there is a stream within a ditch roughly parallel to the road. The site includes two access points onto Rattle Road, separately serving the bungalow and the paddock land.
6. The bungalow lies within a ribbon of mainly 20th century dwellings which are varied in design, scale and appearance, but nevertheless are mainly detached within spacious gardens. Terraced dwellings at Mill View Close, behind Rattle Road, abut part of the paddock and have deep rear gardens. Substantial new residential development has taken place either side of Rattle Road at Uplands Farm and at the Wells site. These new houses have smaller plots, with more restricted garden space, compared to the older housing in the area but nevertheless, the landscaped public open space provides a spacious context to these substantial housing developments. The housing part of the appeal site is within a transitional area between the older traditional housing on Rattle Road and new estate housing to the rear at the Wells site, where a spacious context still remains an important quality.
7. The appeal site is outside the adopted development boundaries of the development plan. However, it is now located within an urbanised area given recent housing developments. Amongst other matters, Policy EN27 of the Wealden District Local Plan (LP) 1998, requires scale, form, site coverage, density, design, materials, and landscaping of development to respect the character of adjoining development, and design to be of an appropriate high standard. Paragraph 126 of the National Planning Policy Framework (Framework) indicates that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
8. On the plot of the demolished Hazelbank bungalow, a new access road would slope down to the proposed housing at the rear. Within the paddock part of the site, there would also be a downward slope from the terraced dwellings on plots 1-4 to those on plots 11-12. The development would be discretely located away from public view and amenity areas would be landscaped. There are varied housing types, sizes and ages within the area. Dwelling plots 1-4 would have a separate pedestrian accessway onto Rattle Road and they would partly border gardens of recent neighbouring dwellings.
9. However, the terrace flank on plots 1-4 would be positioned very close and tight to a common boundary with one of the recent neighbouring dwellings. These proposed plots would have small gardens relative to those in the surrounding area, especially plot 2, and the frontage of the terrace would be dominated by oppressive hard surfaced areas to be used for vehicle parking and turning. Frontages of dwellings on units 7 and 8 would also be dominated by hard surfacing. The access road leading to plots 9-12 would be dominated by fencing/walls on either side, with little opportunity for landscaping to ameliorate the extent of hard surfacing. As such, a significant part of the

development would not be visually attractive, with little space for appropriate and effective landscaping.

10. The housing scheme has taken many design cues from the surrounding area but this has resulted in considerable variation of dwelling form, roofs, architecture and materials, such that the development has an excessive range of differently designed dwellings lacking any connection to one another. Whilst there should be no objections to complementary variations in scheme design, the general individuality of the dwelling design results in the development having a lack of distinctive identity and combined with the cramped and dominating hard surfaced areas, this would result in a lack of a sense of place.
11. The plot 11 dwelling would be close to boundary trees straddling the site's boundary with the adjacent neighbouring Wells residential development. The appellant's Arboricultural Report (AR)² identifies them to be an attractive mature group of Oaks and Horse Chestnut, with a height of approximately 13m and having a significant canopy spread. From what I saw on site, they contribute to the public amenity of the area. A corner of this dwelling would be sited within the root protection area (RPA) of the trees.
12. There would be temporary ground protection during construction, but the trees are well-established, being mature, increasing their sensitivity compared to young trees. The AR has not assessed the effects of root severance, ground compaction through necessary construction work in and around the dwelling or changes in ground topography to facilitate the development. It has also not been proven that soils adjacent to the RPA could accommodate root growth given the proximity of the dwelling, stream/ditch and the grouped nature of the trees. Therefore, in accordance with widely accepted professional standard, BS 5837:2012³, it has not been demonstrated that the trees in question would remain viable and that the area lost to encroachment can be compensated for elsewhere. Accordingly, there would be a significant risk to the health of these trees and their loss would be detrimental to the landscaped qualities of the area.
13. For all these reasons, the development would not achieve a well-designed place and would harm the character and appearance of the area. Accordingly, the proposal would conflict with Policy EN27 of the LP and paragraphs 126 and 130 of the Framework.

Highway safety

14. Policy TR3 of the LP requires new development not to create or perpetuate unacceptable traffic conditions and to provide a satisfactory means of access to meet local planning and highway authority standards. Paragraph 111 of the Framework states development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.
15. Rattle Road is a non-trunk road, with speed limit of 40 mph. The new access would have a width of 5.5m with 6m radii. The visibility splay would be 2.4m, the x-distance (step-back from the highway into the site) by 71m, the y-distance (across the site's frontage) in a westerly direction. In the easterly direction, the y-distance would be 105m. The westerly y-distance is based on

² Arboricultural Report, Tree Survey Arboricultural Impact Assessment and Tree Protection Plan, land at Hazelbank, Rattle Road, Westham BN24 5DS, The Mayhew Consultancy Ltd, AR/87420, November 2020.

³ BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations.

being 1m out into the carriageway, based on Manual for Streets (MfS) and Manual for Streets 2(MfS2). Previous speed surveys took place in 2017 and 2020, and there was disagreement over the 85th percentile (85th%tile) speed to be taken to establish acceptable visibility splays. However, the Highway Authority's appeal statement details that an updated September 2021 speed survey showed that, with the traffic calming and white lines installed as part of the nearby Wells residential development, the 85th%ile recorded speed to be 34mph. Given this, the visibility splays would accord with MfS and MfS2, and there would be no unacceptable risk to highway safety.

16. The proposed access would be sited close to that serving the Uplands Farm development. The Highway Authority estimate the proposed development would generate about 60 trips per day with 6 trips in morning and afternoon peaks, with the net increase being slightly lower taking into account the previous dwelling and stable uses on the site. There would be significant traffic generation from access serving the Uplands Farm development, given its size, some 200 houses. The Highway Authority has indicated the necessity for a Safety Audit for the new access and, that this cannot be conditioned. The appellant has expressed doubt whether such audit can cover matters relating to the proximity of two access roads.
17. However, the effect of traffic calming measures has been to slow traffic speeds, as evidenced by the revised 85th%ile speed. There is no evidence of any significant officially recorded accidents along this stretch of road. Even taking into account the higher vehicle trip numbers of the Highway Authority compared to that of the appellant, the level of traffic generation from this development, including at peak times, would not be significant. Both accesses would be laid out in accordance with relevant highway standards. Taking into account all these factors, there would be no unacceptable risk to highway safety due to proximity of junctions.
18. There are no vehicle tracking plans showing manoeuvring and turning areas for dustcarts but given the space available on the site, there is no reason why this cannot be conditioned. The location of visitor vehicle parking spaces on the access road would be distant from the dwellings on the site but it would be hard to demonstrate harm on highway grounds solely on this basis.
19. As a statutory consultee on highway matters, considerable weight is attached to the Highway Authority's comments. However, in this instance, for the reasons indicated, the development would not result in an unacceptable impact on highway safety and would comply with Policy TR3 of the LP and paragraphs 110, 111 and 112 of the Framework.

Flood risk

20. The flood risk assessments (FRAs)⁴ show part of the plot 4 dwelling, within a 1 in 1000 year surface water flooding extent. The Local Lead Flood Authority (LLFA) raised objections due to inadequate information in relation to the proposed drainage system.

⁴ Stage 1 Flood Risk Assessment to support a planning application for a small residential development of 11 dwellings and 1 replacement dwelling to the rear of Hazelbank, Rattle Road, Westham, East Sussex BN24 5DS, A.C. Rollings, December 2020 and Supplemental Stage 1 Flood Risk Assessment to support a planning application for a small residential development of 11 dwellings and 1 replacement dwelling to the rear of Hazelbank, Rattle Road, Westham, East Sussex BN24 5DS, job no. 2020/21, A.C. Rollings, September 2021 .

21. The appellant's Drainage Strategy (DS)⁵ has been revised to address the LLFA objections. Absorption into the ground would not be a feasible option for surface water discharge because of poor soil infiltration and a high water table. The DS calculates existing and proposed discharge rates and based on the difference, proposes a mitigation package of catchpits and underground storage crates to manage water discharge into the stream, via a hydro-brake. Permeable hard surfacing for access roads and drives would be built but their storage capacity for surface water run-off has not been taken into account as such surfacing can easily be changed to impermeable in the future. It has been confirmed that the proposed water outfall into the ditch would be within the boundary of the development site.
22. Under the DS and FRAs, topological and cross section plans detail the position of the underground storage crates and outfall relative to the watercourse, including its banking, and the hard surfaced parking area above. Within this area, there would be raising of ground levels necessitating retaining walls adjacent to the watercourse. In assessing a cross section plan and the Environment Agency's latest flooding maps, the outfall would be above the surface water level of the stream in a high-risk flooding scenario. In the neighbouring Wells development, the majority of its surface water would be discharged into attenuation ponds away from this part of the stream. At the neighbouring scaffolding Langsett development site, a drainage system would control surface water into the stream in a similar managed way to that proposed here. Therefore, it has been demonstrated that the operation of the proposed drainage system, including its controlled discharge outfall, would not fail due to extreme weather events, taking into account runoff from surrounding developments.
23. In terms of displaced surface flood water, the DS has calculated the additional volume of built development within these flood zones. Based on this, mitigation could be undertaken, through the lowering of ground levels within the site, to prevent increased flood risk elsewhere. The DS and FRAs are based on professional technical advice and standards, and demonstrate that surface water drainage can be discharged in an acceptable manner, subject to conditions relating to final details and maintenance.
24. Significant weight is attached to the LLFA comments but in this instance, for the reasons indicated, the proposed surface water drainage system would ensure acceptable discharge into the stream and there would be no unacceptable increase in flood risk elsewhere, including through the displacement of water. Accordingly, the proposal would comply with Policy CS2 of the LP, which amongst other matters, requires adequate provision to be made for surface water drainage to avoid increasing the risk of flooding. It would also comply with Paragraph 167 of the Framework, which requires Councils to ensure that flood risk is not increased elsewhere.

Pevensey Levels Special Area of Conservation (PLSAC)

25. The site is within a zone of influence of the SAC and the stream straddling the development would offer a pathway into it. The PLSAC is an internationally important wetland site, also designated as a Ramsar site, and its special

⁵ Drainage Strategy Rev C, Land at Hazelbank, Rattle Road, Westham BN24 5DS, September 2021, Stephen Wilson Partnership.

interest relates to its wetland plants and invertebrates that are dependent upon good water quality and stable water levels. The PLSAC is one of the largest and least-fragmented lowland wet grassland systems in southeast England. The low-lying grazing meadows are intersected by a complex system of ditches which support a variety of important wetland communities, including nationally rare and scarce aquatic plants and invertebrates. Therefore, the development could result in a likely significant effect on the SAC.

26. The DS proposes a drainage system that would attenuate flows and avoid rapid changes in water levels, and water quality effects downstream. The pollution control measures include catchpit manholes and a First Defence device. The detrimental effects of untreated water discharges on biodiversity are well documented but the DS demonstrates that the drainage system would mitigate against contaminants and suspended solids, such that pollution from the development into the watercourse would not be greater than that resulting from the site now.
27. Furthermore, under the DS, a drainage systems maintenance plan sets out the frequency and responsibilities for its different parts, and the implementation of this can be ensured by way of a condition. Similarly, a condition can require the implementation of an environmental construction management plan to prevent unacceptable surface water runoff and sediment during construction. There are no comments from Natural England (NE) on the acceptability of the pollution measures, but such measures are comprehensively dealt with, and the finer details and maintenance arrangements can be conditioned. On this basis, the surface water discharged into the stream would not either singly or cumulatively detrimentally affect water levels or quality within the SAC for the reasons indicated. Consequently, having regard to surface water runoff, the integrity of the PLSAC would be maintained and the proposal would comply with Policy CS2 of the LP.

Living conditions

28. A flank terrace for plots 1-4 would be on raised ground relative to a rear garden and dwelling on a neighbouring property whilst the dwellings and gardens on plots 11 and 12 would be on higher ground than a neighbouring property in Mill View Close.
29. However, the terraced flank would only partly extend along the rear garden area of the neighbouring property and in relation to the house itself, it would be sited a significant distance away. First floor windows of the terrace could be conditioned to be obscure glazed. Consequently, there would be no significant loss of outlook or privacy to these neighbouring residents. For the plot 11 and 12 dwellings, there would also be significant distance between them and the Mill View Close dwelling, including its garden. Despite a difference in ground levels, this separation would ensure no significant loss of outlook or privacy.
30. For all these reasons, the development would not harm the living conditions of the occupiers of these neighbouring properties, having regard to outlook and privacy. Accordingly, the proposal would comply with Policy EN27 of the LP.

Unilateral Undertaking

31. Policy AFH1 of the Affordable Housing Local Delivery Plan 2016 requires a 35%

affordable housing contribution. Westham and Wealden District has an acute shortage of affordable housing. The very low rate of turnover of affordable homes results in long waiting times for people that need affordable accommodation. The obligations of the UU provide for 4 affordable housing units in accordance with this policy and a housing mix that reflects the needs of the Housing Register and recommendations of the Council's Housing Development Officer. The Council's Housing Service is supportive of this proposal.

32. Given this, the obligations are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to it. They would meet the statutory tests of the Community Infrastructure Regulations 2012 (as amended) and paragraph 57 of the Framework.

Other matters

33. Paragraph 60 of the Framework details the Government's objective of significantly increasing the supply of homes and in supporting this, that a sufficient amount and variety of land should come forward where it is needed and that the needs of groups with specific housing requirements are addressed. As of April 2022, the Council's Five Year Housing Land Supply (5YHLS) is deficient at 3.92 years. The Wealden SHELAA (2018) indicated the site to be suitable for development. This development, comprising a net increase of 11 dwellings, would make a modest but important contribution to housing supply. The UU would provide much needed affordable housing and the proposal would make more efficient use of land for development reducing housing pressure on greenfield sites.
34. Paragraph 105 of the Framework indicates that significant development should be focussed on locations which are sustainable, through limiting the need for travel and offering a genuine choice of transport modes. The appeal site would be within a built-up area of Westham. There are nearby bus stops offering services to settlements in the wider area, including Stone Cross, with its extensive shopping and services. Westham Railway Station would be within a reasonable walking distance and has services to London. As well as pavement walkways along roads, there is a network of cycles and footpaths providing access to the wider area, including the countryside. New residents would have good access to services and facilities through sustainable transport options.
35. Given a deficient 5YHLS, these housing and sustainable transport advantages of the development would offer economic, social and environmental benefits significantly weighing in favour of the development. However, there would be harm to the character and appearance of the area. The Framework sets out an objective of achieving well-designed places and the development would fall considerably short of this objective by reason of its cramped nature (Plots 1-4), dominance of hard surfacing at the expense of landscaping, a lack of a sense of place and detrimental effects of the health of a group of trees. The development would not be visually attractive by reason of good architecture, layout and appropriate and effective landscaping, and so conflict with paragraph 130 of the Framework. Such adverse effects of the development would be determinative for these reasons. Policy WCS14 of the Wealden Core Strategy Local Plan 2013 sets out the application of the presumption in favour of sustainable development. In accordance with paragraph 11 d) ii. of the

latest Framework, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

36. In the Stone Cross appeal decisions, the Inspector granted permission in principle for residential development. However, these permission in principle decisions did not consider design and effects on character and appearance considerations as I have done so here. In any case, every appeal has to be considered on its particular planning merits taking into account specific site circumstances. Accordingly, little weight is attached to these decisions.

Planning Balance

37. The proposal would result in the addition of much needed housing, including affordable housing, in a sustainable location, having regard to non-private vehicle modes of transport, and would make more efficient use of land. However, the development would not achieve a well-designed place and there would be harm to the character and appearance of the area. The conflict with Policy EN27 of the LP would be overriding and there would be conflict with the development plan taken as a whole.
38. Under Framework paragraph 11 d) ii., the presumption in favour of sustainable development would not apply. There are no material considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan. Under section 38(6) of the Planning and Compensation Act 2004, the decision should be taken in accordance with the development plan and planning permission refused.
39. In relation to the PLSAC, the discharge of foul water has been indicated as a pathway. The development would provide a new on-site foul drainage system and the relevant utility company has raised no objection. However, had there not been overriding reasons for dismissal of the appeal, further assessment would have taken place, involving consultation with NE, to determine whether there would be a likely significant effect on the internationally important interest features of the site, as result of this development (for foul water disposal), either alone or in combination with other projects coming forward.

Conclusion

40. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR