



Appeal Decision

Site visit made on 8 August 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/U1430/W/22/3303314

Land adjacent to Ghyllside, Station Road, Northiam TN31 2QD

- 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 Edmunds (Express Housing Group Ltd) against the decision of Rother District Council.
- The application Ref RR/2022/1097/P, dated 28 April 2022, was refused by notice dated 22 June 2022.
- The development proposed was originally described as 'demolition of existing dilapidated residential garage to provide a new two bedroom, 1.5 storey detached residential dwelling. All with associated parking and landscaping'.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether there would be harm or disturbance to Great Crested Newts;
 - the effect of the proposal on the living conditions of the occupiers of Corner Croft with respect to privacy, and on Ghyllside with respect to natural light, outlook and private garden space;
 - whether it would provide satisfactory living conditions for future occupiers, having regard to private garden space; and
 - its effect on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty.

Reasons

Great Crested Newts (GCN)

3. GCN are a protected species¹ and protection extends to their habitat². The appeal site is within a 'red impact zone' containing several ponds, including one about 20m from the site. There is, therefore, suitable habitat for GCN and a high likelihood of CGN presence on or near the site. This is not disputed by the appellant. In these circumstances it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in my decision³.

¹ Conservation of Habitats and Species Regulations 2017 (as amended)

² Wildlife and Countryside Act 1981 (as amended)

³ Section 99 of Circular 06/2005 published by the Office of the Deputy Prime Minister.

4. The appellant states that the Council did not refer to GCN in a previous application for development at the site, or prior to issuing its decision in this case. The appellant has, though, had the opportunity to address GCN as part of the appeal but did not submit any ecology evidence. Though still 'more than willing' to provide such information, ecological surveys should only be resigned to a planning condition in exceptional circumstances. It would otherwise result in surveys conducted after planning permission has been granted, including subsequent identification of mitigation or compensation measures and enhancement to achieve net gain in biodiversity with suitable mechanisms to achieve these outcomes. There is no exceptional circumstance in this appeal.
5. Accordingly, I am not satisfied the appellant has demonstrated that there would not be significant harm or disturbance to GCN. Consequently, the proposal is contrary to Policy DEN4 of the Council's Development and Site Allocations Local Plan 2019 (LP). This policy includes that development should conserve and enhance protected species in a manner appropriate to the local context.

Living conditions – Corner Croft and Ghyllside

6. The house would be sited at right-angles to, and roughly in-line with the rear elevation of the bungalow at Corner Croft behind. A second floor rear window approximately 7m from the common boundary could be used as a habitable room (shown in the plans as a bedroom but it could be a home office for instance). While such use might be intermittent or transient, an intervening fence and some planting would not prevent a perception of being overlooked and actual direct, downward views of much of the rear garden of Corner Croft. While a condition could ensure this window was top-opening only, obscured glazing would unduly restrict outlook. I appreciate that it might be possible to alter the design of this part of the house but that is not the scheme before me. Such a fundamental change is not within the scope of a planning condition.
7. The house would be virtually two-storey in height and bulk with a front elevation in-line with the semi-detached house Ghyllside next to it and a gap between the respective side elevations of over 3m. The use of rooms with windows in the facing elevation of Ghyllside is not clear. However, sited to the northwest the house would not overshadow any of them or any of its garden. Nor would it be close enough to cause overly gloomy internal living conditions or overreliance on artificial lighting. I have been referred to an alleged 'right to light' but this would be a civil matter between the respective parties.
8. The effect of development on private views is not usually a planning consideration because private individuals do not have a right to a view. Even if development significantly changes a view from a private property this is not normally a reason to refuse planning permission, unless there is harm to living conditions. In this case some of the windows and the rear garden are set much further back such that views from these parts of Ghyllside would not be materially affected. The reach of perpendicular views from the other windows would be limited by the siting of the house. However, the gap would be sufficient to ensure that it was not overwhelming or unacceptably visually intrusive, including that angled views to either side and upwards would not be unduly adversely affected.
9. There is no blue line around Ghyllside on any submitted plan to suggest that the appellant owns or controls that property. Even if the site was originally part

of the garden of Ghyllside it is no longer in the ownership or control of the occupier or owner of Ghyllside⁴ and has been separated from it, so is not available to it. As such, the proposal would have no effect on the size of private garden space at Ghyllside.

10. Taking all the above into account, I find that the proposal would not cause harm to the living conditions of the occupiers of Ghyllside. It would, though, harm the living conditions of the occupiers of Corner Croft by unacceptable loss of privacy. Consequently, it is contrary to CS Policy OSS4(ii) which requires that development should not unreasonably harm the amenities of adjoining properties.

Living conditions – future occupiers

11. The modest size house would have one double bedroom and could also provide a single bedroom so be suitable for small family occupation. Most of the rear garden would be between about 7m and 8m deep, so shorter than the 'at least' 10m length normally required by LP Policy DHG7 that I have been referred to (though this policy is not cited in the Council's reason for refusal).
12. This garden would, though, be quite wide (circa 11m) so provide a reasonably large, useable square space and on one side wrap around the corner of the house to be just over 10m deep. A significant part of this garden would not be overshadowed by the house or other buildings for a large part of the day, nor would it feel cramped or unduly enclosed by boundary fences or planting given its size and layout. As a result, it would be conducive to normal expectations for outdoor activity including by a small family, such as for entertaining, relaxation or play. In these circumstances there would not be a significant or unacceptable departure from the Council's normal standard.
13. I therefore find that the proposal would provide satisfactory living conditions for future occupiers, having regard to private garden space. As a result, it complies with CS Policy OSS4(i) which requires development should meet the needs of future occupiers by providing appropriate amenities.

Character and appearance

14. The site is inside the development boundary for Northiam, in a mainly lower density residential area. Apart from a dilapidated single garage this open plot is overgrown and no longer in use. It sits in a frontage of mostly detached or semi-detached houses and bungalows of various age, size and design along one side of Station Road, with bungalows in-depth behind on slightly lower ground. There is similar development along the other side of this road.
15. The house would not be materially closer to Station Road than many other houses and bungalows along it, including Ghyllside and the other half of this semi-detached pair of dwellings, Goddens Cottage. This would maintain the general building line. It would also be similar in design and external appearance to these two houses which it would be closest to. Though significantly different in these respects to the bungalow at Epcot on the other side of the site and others further along the road (also in scale, massing and height), there would still be a wide, spacious gap to Epcot. Furthermore, a more immediate step-up in built form between some dwellings (compared to the much wider existing gap between Ghyllside and Epcot) is not uncommon

⁴ Land Registry official copy title plan and registered title.

along Station Road, nor therefore at odds with the bungalows behind. As a result, the house would not appear incongruous or jar in this varied streetscene.

16. There are many wider plots along Station Road but some are narrower or like the site, which is for example wider than the plot now at Ghyllside. Many dwellings have landscaped open front gardens with hardstanding and car parking, or to the side, so it is not unusual in this residential area. The proposal would reflect this, including a grassed area next to the pavement and a retained roadside cherry tree. There is no apparent reason to prevent pruning of this tree, if necessary, or any compelling evidence it would unduly interfere with means of access or use and activity on the site. A suitable construction method for hardstanding to avoid adverse impact within a root protection area and fencing during construction could be secured by a planning condition. The Highway Authority indicated that 'at least' one car parking space was required, rather than the two shown in the submitted plans, so there could be additional landscaping. Existing or proposed landscaping could be secured by a planning condition and either way make a meaningful contribution to the verdant nature of the area.
17. The proposal would not, therefore, be appreciably more prominent in public views from Station Road than other dwellings, especially houses, nor unduly cramped in relation to site boundaries or surrounding development. Nor would the house unduly erode openness, including in relation to the size of the plot and that part which would remain undeveloped, or be overly dominated by hardstanding. Instead, it would be compatible in overall form, external appearance and layout and be readily assimilated into this streetscene, in-keeping with its surrounding context.
18. By virtue of location in Northiam the site is in the High Weald Area of Outstanding Natural Beauty (AONB). Its distinctiveness includes the historic pattern and verdant, spacious character of settlements. The linear arrangement of residential development along the Station Road corridor extends sufficiently in-depth behind frontage dwellings such that there is no appreciation of the site beyond the built-up area development boundary. The house would integrate with the settlement pattern and character of Northiam without any direct visual or spatial juxtaposition with the open countryside or, therefore, adverse effect on the landscape and scenic beauty of the AONB, so would conserve the AONB.
19. Considering all the above, I find that the proposal would not have an adverse effect on the character or appearance of the area, including the AONB. Consequently, it does not conflict with CS Policies OSS4 and EN3 or with LP Policy DEN2. These policies include that development should respect the appearance of the locality, make a positive contribution to the character of the area and in the AONB small-scale development should be in-keeping with the settlement pattern to conserve landscape and scenic beauty.

Other Matters

20. The house would have satisfactory internal living accommodation and meet the Government's nationally described space standard, which has been adopted by the development plan. Subject to planning conditions there would be appropriate provision for permeable surface water drainage as well as bin and cycle storage. The absence of harm in these respects are neutral factors in my decision.

21. The appellant considers that the Council has not engaged in the planning application process, but these are not matters within the remit of this appeal. I also appreciate the appellant believes that this revised proposal overcomes the Council's previous objections to similar development on the site. However, I have considered the appeal on its individual planning merits.

Planning Balance

22. The Council accepts that it cannot currently demonstrate a 5-year supply of deliverable housing sites, though no supply figure has been provided by either main party. Nonetheless, the development plan policies most important for determining the appeal are therefore out-of-date and National Planning Policy Framework (Framework) paragraph 11(d) is engaged. The starting point is that planning permission should be granted.
23. Residential development in Northiam is acceptable in principle and the proposal would not harm the living conditions of the occupiers of Ghyllside, the future occupiers of the house or the character or appearance of the area, including the AONB. This small windfall site would help meet identified needs for housing and be aligned with objectives of the Framework to significantly boost the supply of homes. The proposal would generate a Community Infrastructure Levy payment. While notable, even if the shortfall in housing supply was acute these modest social and economic benefits from a single house have limited weight in support of the proposal.
24. On the other hand, it has not been established that there would be no harm or disturbance to GCN. As such the proposal is at odds with aims of the Framework to protect and enhance biodiversity so planning permission should be refused. It would harm the living conditions of the occupiers of Corner Croft, at odds with objectives of the Framework to promote well-being and a high standard of amenity for existing users. Development that is not well-designed in these respects should be refused. Both issues would undermine the Council's relevant development plan objectives, which are consistent with the Framework. These are important environmental and social considerations so each has significant weight against the proposal.
25. In this appeal the application of policies in the Framework that protect areas or assets of particular importance (the AONB) do not provide a clear reason for refusing the development. However, in my view, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this case.

Conclusion

26. The proposal does not accord with the development plan taken as a whole and conflicts with relevant provisions of the Framework. There are no other material considerations which override these findings. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR