



Appeal Decision

Site visit made on 18 July 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/U1430/W/22/3307136

Land adjacent to Milward Gardens, Winchelsea Road, Guestling TN35 4LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by BBG Commercial Properties Ltd against the decision of Rother District Council.
- The application Ref RR/2022/37/P, dated 7 January 2022, was refused by notice dated 27 June 2022.
- The development proposed is described as "4no. bedroom detached house."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original application was made in outline with all matters reserved. I have dealt with the appeal on this basis and I have treated any details shown on the submitted plans not to be considered at this stage as being illustrative only.

Main Issues

3. The main issues of this appeal are the effect of the proposed development on:
 - i) the character and appearance of the area and the High Weald Area of Outstanding Natural Beauty (AONB);
 - ii) ecology and biodiversity; and
 - iii) flooding and surface water.

Reasons

Character and appearance

4. The appeal site is located on the northern side of Winchelsea Road, amongst several disused barns and agricultural structures adjoining the adjacent property at Milward Gardens. Opposite the site is a ribbon of residential development characterised by a variety of detached dwellings with large gardens. The area of the appeal site is largely undeveloped and has been overgrown with well-established and dense vegetation, including trees and hedges limiting views of the site from the roadside. Nevertheless, its undeveloped and verdant appearance transitions well into the open countryside landscape to the north.
5. Policy OSS2 of the Rother District Council Local Plan Core Strategy (RCS), adopted September 2014, indicates that development boundaries around settlements will differentiate between areas where most forms of new development would be acceptable and where they would not. Policy DIM2 of

the Rother District Council Development and Site Allocations Local Plan (RLP), adopted December 2019, states that areas outside of the settlement boundaries are defined as the countryside and development will be limited to that which accords with specific local plan policies or for which a countryside location is demonstrated to be necessary.

6. Both parties agree that the appeal site is located outside the development boundary and as such would be considered a development in the countryside. The creation of new dwellings in the countryside is allowed only in extremely limited circumstances. RCS Policy RA3 lists a number of such circumstances, of which none apply in this instance.
7. The appeal site is also located within the High Weald AONB. Paragraph 176 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs. The High Weald AONB is characterised by rolling countryside, of a pastoral nature, punctuated by small areas of woodland, small towns, villages and hamlets.
8. The High Weald AONB Management Plan 2019-2024 (HWMP) seeks proposals that will enhance the architectural quality of the High Weald and ensure development reflects the character of the High Weald in its scale, layout and design, whilst protecting the historic pattern and character of settlement.
9. The site has a strong rural character, affording long-range views over the High Weald countryside both to the west and the north. The site relates more to the wider landscape than to the residential development along the A259. The sloping nature of the site and its open aspect would result in any development being prominent in the landscape given that it can be seen in longer distance views in the surrounding area.
10. Given that all matters are reserved, I can only consider the principle of a dwellinghouse in the existing landscape. It is acknowledged the proposal would replace one of the disused structures, providing further residential development on the edge of the group of buildings, and the site is largely screened from wider public views. However, the proposal would provide other paraphernalia, such as garden furniture and structures that would increase the extent of the harm caused to the AONB through its further urbanising effect.
11. There is insufficient information before me to conclude that the proposal would not result in harm to the AONB and as such the development is contrary to RCS Policies OSS2, OSS4, RA2 and RA3 and RLP Policies DEN1 and DIM2 which collectively seek high quality design, siting and layout which should maintain and reinforce the natural and built landscape character of the countryside. Furthermore, the introduction of a dwelling in this location would fail to protect the landscape and scenic beauty of the AONB which RCS Policy EN1 and paragraph 176 of the Framework which require great weight to be given to conserving and enhancing landscape and scenic beauty within AONB's, areas that are given the highest status of protection.

Ecology and biodiversity

12. As stated above, the appeal site has a countryside location providing dense vegetation. From my site observations much of this area has become overgrown and self-seeded with the well screened boundaries providing a

relatively quiet, undisturbed, and secluded location. There is no information in the form of a preliminary ecological appraisal or other similar ecological assessment to establish the biodiversity value of the site, or indeed if any protected species, priority species or priority habitats are present on site.

13. The presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
14. Paragraph 180 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
15. It is important that developments likely to affect biodiversity contain adequate, up-to-date information to effectively evaluate the impacts. This should include relevant site (field) surveys and desk-based studies to inform the baseline position. There is insufficient evidence before me to conclude whether protected species are present on the site and therefore any potential impacts on these species as a result of the proposed development.
16. In conclusion, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to protected species. This would be contrary to RCS Policy RA2(viii) which seeks to conserve the natural and ecological resources of the countryside. I find it would also conflict with the Framework, which sets out the principles for the determination of planning applications to protect and enhance biodiversity.

Flooding and surface water

17. RCS Policy EN7 requires flood risk to be taken into account at all stages in the planning process to avoid inappropriate development in areas at current or future risk from flooding, and to direct development away from areas of highest risk. It also requires development to include Sustainable Drainage Systems (SuDS). This approach is consistent with the Framework. The appeal site lies within flood zone 1 and therefore has a low probability of fluvial flooding.
18. During the course of the appeal process details were supplied from the Environment Agency (EA) and East Sussex County Council as the Lead Local Flood Authority (LLFA) on a previously refused scheme¹ in respect to flooding and surface water concerns. The appellant has indicated that surface water will be disposed of via SuDS, however no details of this system have been submitted. The appeal site is located upon a secondary aquifer A, as such groundwater is particularly sensitive in the location. No evidence has been supplied in respect to drainage details of the scheme to ensure that there are no unacceptable risks to groundwater resources.
19. The EA have suggested that conditions could be applied should permission be allowed in respect of the disposal of foul and surface water to minimise the risk to groundwater resources, and a remediation strategy in respect to any

¹ Rother District Council Planning Ref: RR/2019/734/P

potential contamination. However, the LLFA have indicated that the area in general has low infiltration rates, suggesting that further information and soakage testing in accordance with BRE365 to determine the actual infiltration potential is required.

20. As such, without the appropriate soakage testing there is insufficient information in respect to surface water management to ensure that the development would be either appropriately flood resistant or resilient. Consequently, I must adopt a precautionary approach and conclude that the development would be at risk from flooding.
21. I acknowledge that conditions could be used to ensure that otherwise unacceptable development could be made acceptable, for example on receipt of further detailed technical information. However, given the lack of assessment in respect to soakage testing, and in light of the uncertainty surrounding the infiltration potential in accordance with BRE365 at the appeal site, I cannot be sure that conditions would be sufficient to make the development acceptable and remedy any flooding impacts so that permission can be granted.
22. Consequently, there is insufficient information supplied in relation to surface water drainage, and thus would be contrary with RCS Policy EN7 and the Framework which among other things seek to ensure flood risk is minimised and mitigated, and that residual risk is addressed.

Other Matters

23. The Council cannot demonstrate a 5-year housing supply (2.79 years of housing supply as of November 2022). The appeal scheme would make a modest contribution to Rother District Council's housing undersupply. As such, this attracts moderate weight in favour of the development.
24. During my site observations, the appellant drew my attention to another development in the vicinity of the proposed scheme, also located in the AONB. However, I have been presented with little substantive evidence relating to its planning history or any planning policy in place at the time when the scheme was granted planning permission, thus I am unable to directly compare these examples. Furthermore, this limited example does not provide an overriding influence over the character of the area or landscape and scenic beauty within the AONB. In any event, I have determined this appeal on its own merits based on all the evidence presented.
25. There is also reference to the advice of the Council and its officers during the pre-application process. However, these are not matters for my deliberation in the context of a planning appeal.

Planning Balance

26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
27. It is common ground that the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites (HLS) and therefore the policies most important for determining the application are considered to be out-of-date, commonly referred to as the tilted balance. However, as I have found harm to the AONB, in accordance with paragraph 11.d) i. of the Framework including

footnote 7 to that paragraph the application of policies which protect the AONB, a designated area, provide a clear reason for refusing the development and the tilted balance does not apply. Accordingly, the presumption in favour of sustainable development does not apply.

28. I have found the development would offer potential benefits in terms of providing a new dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have also considered that the proposal would allow for family accommodation. I have attached significant weight to these factors in favour of the proposal.
29. However, the weight attributable to these matters is not sufficient to outweigh the harm that I have already identified above in respect to the character and appearance of the area and the High Weald AONB, flooding and ecology and biodiversity.
30. Taking all of the above into account, the extent to which there would be adverse impacts of granting planning permission would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.

Conclusion

31. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

Robert Naylor

INSPECTOR