



Appeal Decision

Site visit made on 29 June 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/C1435/W/22/3297437

Land at Mycroft, South View Road, Crowborough, East Sussex, TN6 1HW

- 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 MMH Property Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/2583/F, dated 6 October 2021, was refused by notice dated 25 March 2022.
 - The development proposed is erection of a detached dwelling with associated access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached dwelling with associated access, car parking and landscaping at Land at Mycroft, Crowborough, TN6 1HW in accordance with the terms of the application, Ref WD/2021/2583/F, dated 6 October 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal is accompanied by a Unilateral Undertaking to address the Council's second refusal reason relating to adverse impacts on the Ashdown Forest Special Protection Area (SPA) due to increased recreational pressures.
3. The Council cannot demonstrate a five-year supply of deliverable housing sites. Its reported figure at the time of the application was 3.66 years supply (73%). The appellant opines that this has since deteriorated to 3.28 years (65.6%). This represents a significant under delivery against its housing requirement. As such, in accordance with Paragraph 11(d) of the National Planning Policy Framework (the Framework), planning permission should be granted unless the application of policies in the Framework provides a clear reason for refusal or 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. I shall return to this issue in the planning balance below.

Main Issues

4. The main issues are (a) the effect of the proposal on the character and appearance of the area, (b) the adequacy of living conditions for future occupiers in relation to the proximity of trees, (c) whether the proposal would be likely to result in pressure to remove or substantially reduce protected trees to the detriment of local visual amenity and (d) whether the submitted Unilateral Undertaking would adequately mitigate increased recreational pressures on the Ashdown Forest SPA.

Reasons

Character and appearance

5. The appeal site is triangular in shape, formed from the side garden to Mycroft. There are trees subject to Tree Preservation Orders on the site frontage to South View Road and within the tapering back garden. Land levels fall from the frontage to the rear. A new vehicular access would be created to South View Road with the proposed dwelling set behind front garden parking spaces.
6. The surrounding area is residential in nature but diverse in character. Mycroft is a large 2-storey semi-detached house paired with Wonston, both with large plots. To the east along South View Road are mainly older dwellings of various size and design including single storey development. To the west of the appeal site, beyond the junction with Orchard Place, is Normandy House, a detached building arranged over 4 floors. Orchard Place comprises relatively recently developed detached houses in irregularly shaped plots. To the northern side of South View Road are back gardens to detached houses in Whincroft Park, a cul-de-sac of similarly designed dwellings with open front gardens.
7. The plot size would be smaller than many but not all in the immediate area. Its shape would be unusual, but it would provide adequate garden areas to meet the needs of future occupiers. The dwelling's western front wall would be no closer to Orchard Place than Normandy House and there would be reasonable separation to Mycroft. The dwelling would not be unduly cramped in its setting.
8. The design of the proposed dwelling would be traditional in approach with accommodation arranged mainly over two floors but with dormers punctuating a steeply pitched roof. The dwelling would be set behind the front line to Mycroft, on lower ground and with a smaller footprint. Its ridged roof would be of similar height to that of Mycroft but lower than that to Normandy House. Its scale, height and massing would respect the character of development in the surrounding area.
9. The proposal includes replacement of the present laurel hedge to front and side boundaries with a new native hedge. This would open up views to the site, particularly from the west, where there is a bend in South View Road on the approach to the junction with Orchard Place. The development would thereby result in a reduction in openness with the dwelling appearing prominent from this direction as Mycroft is partially screened by large trees. Nonetheless, the replacement hedge should mitigate the prominence over time and the dwelling would be of satisfactory appearance. The proposal would not thereby appear as an over-dominant intrusive feature in the street scene.
10. There would be no substantive conflict with Saved Policies EN27(1) and CR2 of the Wealden Local Plan (1998) (WLP) which require the scale, form, site coverage and design of development to respect the character of adjoining development and that the established character of the Warren policy area, within which the site is located, will be protected. The proposal would be compatible with Policy SPO13 of the Wealden Core Strategy Local Plan (2013) (WCS), a strategic policy encouraging high quality, safe and attractive living environments while promoting local distinctiveness. Similarly, the proposal would accord with guidance in Chapter 5 of the Wealden Design Guide Supplementary Planning Document (2008) (SPD) on a visual appraisal of the site's setting and adherence to design objectives.

Living conditions

11. There is a row of five protected trees to the road frontage straddling the boundary between the appeal site and retained land at Mycroft. Two large maple trees would cover parts of the new access and front garden. The part of the house closest to the trees would encompass a staircase linking the main floors. Alongside this would be a triple aspect living room with a dual aspect bedroom above. The line of protected trees would be to the north of the house. All habitable rooms would benefit from satisfactory natural lighting. The proposal would not result in a poor standard of amenity for future occupiers. There would not be conflict with Saved Policy EN27(3) of the WLP which requires provision of a satisfactory environment for future occupiers in relation to daylight, sunlight, privacy and garden space.

Protected trees

12. The proposed access driveway would be formed partially within the root protection area of two protected maple trees. As it would be on sloping land, the appellant's Tree Survey and Report proposes a porous zero compaction construction methodology in accordance with good arboricultural practice. In my judgement, the limited degree of encroachment into the root protection areas coupled with the measures proposed to protect roots would be unlikely to result in significant harm to the trees. Planning conditions could ensure that the preserved trees are appropriately protected during building operations.
13. The canopies of the maple trees would be above the access and away from the house such that reduction works should not be necessary. The trees would be likely to grow over time towards the house and drop fruit and leaf litter on to the front garden. I do not consider that any nuisance arising or overbearing effect would be so significant to result in pressure to fell or substantially reduce the trees. There would be ample separation to the protected silver birch trees in the back garden. The Council would be able to exercise its discretion on any application for works to protected trees by future occupiers.
14. The proposal would be compatible with Saved Policies EN12 and CR2 of the WLP which seek to enhance the landscape character of Wealden District in part through the protection of trees and woodland of significant amenity value. Similarly, the proposal would encompass the arboricultural guidance for trees set out within Chapter 3 of the SPD.

Special Protection Area

15. The appeal site is close to Ashdown Forest, a Special Protection Area (SPA), which is vulnerable to recreational disturbance to ground nesting birds. The proposal would facilitate an increase in the number of people likely to visit the SPA. As such, an Appropriate Assessment, in accordance with Regulation 63 of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, is required to consider the implications of the proposal for the integrity of the SPA in view of the conservation objectives.
16. Due to the proposal's small scale, there would be no scope to provide on-site mitigation for impacts on the SPA. However, it would be possible for mitigation to be provided through financial contributions towards Suitable Alternative Natural Greenspace (SANG), such as in Crowborough or Uckfield, and Strategic Access Management and Monitoring (SAMM) for the SPA itself.

17. The appellant has submitted a Unilateral Undertaking (UU) which includes a SAMMS contribution of £1,170 and a SANGS contribution of £5,000. The contributions would be in line with the tariffs agreed by the Council and supported by Natural England.
18. I am satisfied that the UU has been properly made and meets the three statutory tests at Regulation 122(2) of the Community Infrastructure Regulations (2010), repeated at Paragraph 57 of the Framework, in that the payments are necessary to make the development acceptable in planning terms, would be directly related to the development and fairly and reasonably related to it in scale and kind.

Other matters

19. Local residents have objected to the proposal on the grounds above and in relation to other matters. Concerns have been expressed that the proposed access would be hazardous, subject to flooding and that satisfactory sight lines would not be achieved. The access would be optimally located between the nearest trees and the corner with Orchard Place and would require removal of the present laurel hedge on the frontage. I note that the Highway Authority raise no objection to the scheme, subject to planning conditions; I have no reason to disagree with their findings. I am satisfied that there would not be any harmful overlooking or overshadowing of dwellings near to the site.

Planning balance

20. This site lies within a sustainable location inside the defined development boundary for Crowborough. Much of Wealden District is unsuitable for residential development due to constraints such as the setting of the High Weald Area of Outstanding Natural Beauty. This weighs in favour of taking opportunities for development within the suitable areas.
21. The Council's poor record on housing delivery in recent years means that the presumption in favour of sustainable development at Paragraph 11(d) of the Framework is triggered. The Council points out that it is working pro-actively to address the housing land supply and delivery issues through in its Housing Action Plan (2022). Nonetheless, permission should be granted unless outweighed by harm supported by policies in the Framework taken as a whole.
22. The Council states that there would be harm in relation to paragraphs 124 to 134 of the Framework on achieving appropriate densities and well-designed places including in relation to the character of an area and the contribution trees make to this. My findings are that whilst there would be density contrasts to adjacent development, the proposal would not result in significant harm to the character of the area and that the measures proposed should safeguard the retention of protected trees that are of high amenity value.
23. The Framework, at paragraph 60 emphasises the Government's objective to significantly boost the supply of homes. Whilst the proposal would be for just one dwelling it would nonetheless make a modest contribution to the present shortfall. Any adverse impacts arising from granting permission in respect to the character of the area and to protected trees would not significantly and demonstrably outweigh the proposal's benefits when assessed against the policies in the Framework taken as a whole. The proposal would accord with WCS Policy WCS14 which reflects the Framework's approach to decision taking.

Conditions

24. The Council has suggested conditions in the event that the appeal is allowed including that the period for commencement of work should be reduced from the customary 3 year period to 1 year in recognition of the District's housing shortfall and to encourage early implementation of permissions for new housing. The appellant has not objected to this, so I have included a condition to this effect. A condition is also necessary to list the approved plan numbers in the interests of certainty and proper planning.
25. Pre-commencement conditions are necessary in relation to water and energy efficiency in the interests of sustainability and to ensure that measures specified in the appellant's Tree Report to safeguard protected trees are in place ahead of construction. Before the development exceeds ground level, conditions are necessary to approve details of hard and soft landscaping and materials to be used in the construction of the dwelling.
26. A condition is required to ensure that the proposed access is constructed up to base level before construction of the dwelling commences to safeguard the protected trees. In the interests of highway safety, a condition is needed to ensure that appropriate visibility splays are provided at the site entrance prior to first occupation of the dwelling. A condition is needed requiring the proposed car parking and turning arrangements to be in place prior to first occupation of the dwelling to ensure provision of a satisfactory standard of development. Finally, in the interest of providing alternative modes of transport, a condition is needed to approve details of cycle storage.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than the expiration of one year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001E, 002B and 003A.
- 3) Before the preparation of any groundworks or foundations for the development hereby approved, full details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development, shall be submitted to and agreed in writing by the local planning authority and the development shall be carried out in accordance with the approved details and thereafter so retained.
- 4) Before the preparation of any groundworks or foundations for the development hereby approved, the tree protection fencing for the protection of those trees, shrubs and natural features not scheduled for removal shall be erected in accordance with the Tree Constraints Plan no.TCP001A date stamped 23 December 2021 and thereafter shall be retained until completion of the development, to the approval of the local planning authority. Hereafter, the fencing shall be referred to as the approved protection zone. The development shall be undertaken incorporating the no dig construction methods and ground protection measures detailed in the Predevelopment Tree Survey & Report and on the Tree Constraints Plan no.TCP001A both date stamped 23 December 2021.
- 5) No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the local planning authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the local planning authority:-
 - (i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - (ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - (iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - (iv). No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
 - (v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
 - (vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction – Recommendations.

6) Before the erection of the dwelling beyond foundation level for the development hereby approved a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. Details of hard landscape works for the development, shall include details of all fencing, walling and other boundary treatments, steps, retaining walls and surface finishes. The soft landscaping scheme shall include trees and hedgerows on the land to be retained and additional planting plans. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The hard landscaping shall be carried out prior to first occupation of the dwelling.

7) Before construction above ground level of the dwelling hereby approved, details or samples of materials to be used on the external surfaces of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.

8) Before any works to construct the dwelling are undertaken in accordance with the plans hereby approved, the vehicular access shall be completed (up to base course level) and the access works shall be completed prior to occupation of the building or first use whichever is the sooner.

9) The vehicular access shall not be used until visibility splays of 2.4m by 43m to the northeast and 2.0m x 43m to the southwest of the proposed access are provided and maintained thereafter. A 2.0m x 12.5m tangent splay should also be provided to the southwest of the access.

10) Before first use / occupation of the dwelling hereby approved, the car parking spaces and turning area shown on drawing no.001 rev.E date stamped 23 December 2021 shall be provided, and thereafter shall be retained for such purposes to the satisfaction of the local planning authority.

11) The dwelling shall not be occupied until cycle storage space has been laid out within the site in accordance with a plan that shall have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to first occupation and thereafter be kept available for the parking of bicycles.