



Appeal Decision

Site visit made on 30 August 2023

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/C1435/W/22/3309053

Land at Stargazers, Flowers Green, Herstmonceux, BN27 1RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Paul Richard Shepherd against Wealden District Council.
 - The application Ref WD/2022/0201/F, is dated 26 January 2022.
 - The development proposed is proposed new residential three bed dwelling with associated landscaping, parking and access.
-

Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appellant and the Council are in agreement that a 5-year supply of housing land cannot presently be demonstrated in the district.

Main Issues

3. The main issues for the appeal are:
 - Whether the appeal site is a suitable location for the proposed development having regard to relevant plan policies relating to the countryside and accessibility.
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on nearby heritage assets.
 - Whether the proposed dwelling would provide acceptable living conditions for existing and future occupiers.
 - The effect of the proposal on protected species.

Reasons

Location

4. The appeal site lies within the hamlet of Flowers Green, a linear collection of dwellings and farm buildings located around a mile from the village of Herstmonceux. The site lies outside the development boundary of any settlement and is considered to be in countryside, where saved policies GD2 and DC17 of the Wealden Local Plan 1998 (WLP) restrict new development. Policy 13 of the Herstmonceux Parish Neighbourhood Plan (HPNP) also seeks to ensure new rural housing is provided within the development boundaries of settlements.

5. Although the policies allow for housing beyond settlement boundaries in a limited number of circumstances none of these exceptions apply to the proposal before me. Accordingly, the proposal would be contrary to WLP policies GD2 and DC17 and HPNP Policy 13.
6. Policy SPO7 of the Core Strategy (CS) seeks to locate new development where there are opportunities to make trips by sustainable means. The National Planning Policy Framework (the Framework) seeks to locate significant development in locations which are sustainable by limiting the need to travel and offering a choice of transport modes. It also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
7. Flowers Green has no notable services. Herstmonceaux has a small range of shops and other amenities, along with a primary school and pre-school. The route from the site is via quiet roads or a paved footpath adjoining the main road and so it is possible that some trips for convenience goods or primary schooling could be made on foot, although the distance and route would make the route less attractive after dark or in inclement weather and so most trips would be more likely to be made by car. An hourly bus service also runs along the main road linking Eastbourne and Hastings and settlements in-between. This would provide some limited public transport options for residents and the potential for public transport to secondary school or work in nearby settlements.
8. Whilst it is likely that the car will be used for the majority of trips from Flowers Green, the site is not isolated and some sustainable transport options to meet day to day needs are available. Accordingly, having regard to the scale of development proposed, I find no conflict with policy SPO7, or with the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

Character and Appearance

9. The proposal comprises the erection of a two-storey dwelling of contemporary design, to be accessed through the existing garden of Stargazers. It lies some distance behind the established residential frontage of Chapel Row and is adjoined to the rear by a complex of established agricultural buildings most of which are now in use by small businesses. These vary in age and size, and some are utilitarian in appearance, in keeping with their function. In this regard the appearance of these buildings is not obtrusive, and they sit comfortably in the rural landscape. Along Chapel Row, residential dwellings, mostly traditional in form, sit in well planted gardens and provide an attractive street scene.
10. The appeal site lies on a section of domestic garden which is separated from the immediate gardens of these properties by a domestic tennis court. The site is narrow to the north, widening out to a more substantial width to the south. The building has been designed to maximize built form whilst minimising overlooking to neighbours. Nevertheless, due to the position of the building on the plot, very close to the eastern boundary with the western façade within a short distance of the boundary with the adjoining business uses, it would appear cramped and at odds with the more spacious setting of nearby dwellings.

11. Furthermore, the dwelling would be constructed in a mix of materials, including concrete panelling and wood cladding with wrap-over metal cladding on the roof. The roofslope to the western elevation would not extend as far as the eastern elevation and instead wraps around the façade of the building as a vertical panel. The fenestration would comprise an uncoordinated mix of openings of varying of shapes and sizes. I note that the building has been designed to tie in with the adjacent agricultural units. However, in practice the profile of the building and the position and size of windows on the eastern, western and northern facades, together with the mix of materials would result in a discordant composition which would appear contrived.
12. I am conscious that the site is relatively secluded, and well screened in summer and that the dwelling would be located some distance from properties on Chapel Row. Nevertheless, the existing hedging is seasonal and due to the height of the proposed dwelling, in views into the site from the adjoining dwellings and from the business uses to the rear, over much of the year it would appear visually intrusive and out of keeping with the relatively restrained rural character of the area. The intrusive visual effect in views from the east would be only partly mitigated by the wider collection of buildings which make up the existing farm complex to the rear as it would not be perceived as an agricultural building. Although the building would have very limited, if any, visibility from Chapel Row, in views from the rear of properties and from within the complex to the rear, the building would form an incongruous feature which fails to reflect the highest standards of design and which would be harmful to local character.
13. Accordingly, the proposal would conflict with policy 12 of the NP and Policy EN27 of the LP with together seek development of an appropriate scale, form and design which protects the quality, distinctiveness and character of settlements. It would also conflict with guidance in the Framework, which has similar aims.

The Effect upon Heritage Assets

14. Pernes and Little Butlers are both modest redbrick dwellings fronting Chapel Row. They are both Grade II listed. As the buildings are relatively small in scale and domestic in nature, their character is strongly influenced by the well-established gardens in which they sit, with the wider rural and open setting also contributing to their wider setting. The traditional appearance of these assets and the extent to which they appear settled within attractive cottage type gardens makes a positive contribution to the streetscene.
15. The proposal would not impact upon the streetscene identified above. However, insofar as it would diminish the wider spacious environment in which the assets are appreciated and would be likely to be visible in some glimpsed views from the properties when screening was reduced, it would have some limited but nonetheless harmful impact upon the setting of the assets. This would amount to "less than substantial harm" as set out in the Framework.
16. There are also a number of other heritage assets in the vicinity of the site. Hollies is a modest two storey dwelling which is Grade II listed. The building is domestic in scale and its setting is largely confined to its immediate vicinity. Hollies and the appeal site are separated by the intervening Penlands farm building complex and so the proposal, due to its scale and location would not intrude upon the setting of this asset.

17. Herstmonceux Place is a Grade I listed stately home located around half a mile to the south-east of the site. Herstmonceux Castle is C15th castle surrounded by a medieval park located around a mile to the south-east of the site. The wider rural landscape contributes to the setting of these assets and therefore their significance. However, the appeal site, which lies between the former agricultural buildings at Penlands Farm and the built frontage to Chapel Row is largely concealed in wider views. I am therefore content that the proposal would not impact upon the setting of these assets.
18. The Framework indicates that where less than substantial harm is found, then this should be weighed against the public benefits of the scheme. The proposal would provide an additional dwelling in a district with no 5-year supply of housing land. I therefore contribute significant weight to the public benefits of the scheme capable of outweighing the limited harm identified to heritage assets. Accordingly, the proposal would not conflict with guidance in the Framework in relation to heritage assets.

Living Conditions

19. The proposed dwelling would sit immediately to the rear of buildings at Penlands Farm, which are currently in business use. The appellant has provided the planning permissions¹ for these changes of use which demonstrates that each is subject to conditions limiting use to that within the former use class B8 or B1. The units closest to the site are permitted for use with class B8 - storage and distribution and are also subject to a condition limiting the hours of operation to daytime hours only.
20. Notwithstanding the condition limiting hours of operation, given the very close proximity of the proposed dwelling to the boundary, and the extent to which the unit occupies a large proportion of the western boundary of the site, it is likely that during day time hours occupiers of the proposed dwelling would be conscious of any noise arising from the normal operation of the use, including deliveries and the normal comings and goings at the site. I noted during my site visit that in what was a quiet rural environment, even normal voices at the business units could be clearly heard across the site.
21. Whilst the extent of noise and activity arising from the site in an urban environment would be unlikely to be perceived as severe, given the very quiet rural character of the area and the position of the proposed dwelling close to the boundary, the juxtaposition of activities is likely to be perceived as intrusive by future occupiers. In this regard, taking into account the context of the site, the dwelling would not provide an acceptable standard of accommodation for future occupiers. Furthermore, the introduction of a dwelling so close to the existing business, may, where intrusion is perceived, lead to pressure to restrict the existing business operation.
22. Accordingly, on the fourth matter I conclude that the proposal would conflict with Policy EN27(3) of the Local Plan which seeks development which provides a satisfactory environment for future occupiers, or with the Framework, which seeks both to provide acceptable living conditions for residents and to ensure that new development can be integrated effectively with existing businesses.

¹ WD/04/0548/F, WD/2014/0406/FR, WD/2014/0648/FA

Protected Species

23. The Council initially objected to the proposal on the basis that no ecological survey was submitted with the application. An ecological assessment (PEA) was submitted as part of the appeal, and this was accompanied by the necessary certificate to confirm that the development has been appropriately evaluated and can be covered under a District Licence (WML-OR112) in relation to mitigation to ameliorate any potential impacts on Great Crested Newts.
24. The appellant's PEA concludes that there is no evidence of protected species on the site, but that as the site provides the potential habitat for a number of species, including bats, badgers and hazel dormice, it recommends a number of precautionary measures to ensure effective mitigation for protected species. These include the provision of a 3 metre-wide buffer to existing hedgerow during construction to protect potential hazel dormice habitat and a control on lighting to minimise impacts on bat foraging routes.
25. The provision of confirmation that the scheme would be covered by a District Licence is sufficient to overcome concerns regarding potential impact in relation to Great Crested Newts. In addition, measures to achieve other mitigations could be achieved via the imposition of appropriate conditions. I note that a full 3 metre buffer to hedgerow on the eastern boundary does not appear to be achievable. However, only a short stretch of the boundary would be affected and as no Hazel Dormice have been found on site the buffer is recommended as a precaution only. I therefore do not find this potential omission to be determinative.
26. Furthermore, in relation to the potential effects of the proposal on the Ashdown Forest SPA and SAC. The site lies beyond 7km from the SPA, beyond the distance where potential recreational disturbance is predicted. Furthermore, having regard to the findings of the Council in relation to the impacts of proposed growth set out in the emerging local plan on the impact of air quality on the integrity of the Ashdown Forest SAC, the Lewes Downs SAC and the Pevensey Levels SAC and Ramsar, I am satisfied that the scale of development proposed would not adversely impact the above sites.
27. Accordingly, I am satisfied that the proposal would not have an unacceptable impact on protected species, and I find no conflict with Policy WCS12 of the CS which seeks to prevent a net loss of biodiversity and ensure habitats, biodiversity features and ecological networks are maintained, restored, enhanced. I also find no conflict with the Framework, which has similar aims.

Other Matters

28. A number of other issues have been raised in relation to the proposal. I note that the Council have raised concerns in relation to foul and surface water drainage from the site. Having regard to the appellant's appeal submission, which includes details of how foul drainage can be accommodated, I see no reason why adequate foul and surface water drainage measures could not be secured via planning conditions.
29. My attention has also been drawn to concerns regarding the structural stability of the site. I am satisfied that this matter could be dealt with by a condition requiring that such matters are investigated, and any necessary design measures employed as part of an approved scheme.

Conclusion

30. The Council cannot demonstrate a five-year supply of housing land and accordingly the presumption on favour of sustainable development set out in the Framework must be applied to planning decisions.
31. Although I have found that the proposal would not impact of protected species or heritage assets, and that it is in a relatively accessible location, I have found that the proposal would harm the character and appearance of the area and would not provide acceptable living conditions for future occupiers. Furthermore, the proposal would also conflict with policies GD2 and DC7 of the LP and Policy 13 of the NP in the plan which seek to resist development in the countryside. Although these policies are out of date, and carry reduced weight, the conflict with the plan nonetheless weighs against the proposal in the planning balance.
32. The development would provide a single, energy efficient, self-build dwelling which would contribute to housing supply, and which would bring economic benefits during construction commensurate with the scale of development. In a small way the proposal would also help sustain available local services. However, the proposal would also provide less than acceptable living conditions and would harm the character and appearance of the area. Together this harm would significantly and demonstrably outweigh the benefits of the scheme. I add to this the conflict with the development plan in relation to development in the countryside.
33. Accordingly, the proposal would not comprise sustainable development and having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR