
Appeal Decision

Site visit made on 10 October 2023

by P Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/C1435/W/23/3323356

Land at Tritona and Charnwood, Harlequin Lane, Crowborough TN6 1HT

- 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 Chailey Homes Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/2357/F, dated 3 September 2021, was refused by notice dated 24 January 2023.
 - The development proposed is demolition of existing dwellings and erection of 8 new homes, access, landscaping and associated infrastructure.
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Preliminary matter

1. The description of development was revised to 'demolition of existing dwellings and erection of 6 new homes, access, landscaping and associated infrastructure' dated 29 April 2022. The Council considered it on this basis and I do likewise.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues are as follows:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect on living conditions of future occupiers, in terms of privacy and overlooking;
 - Whether the arrangements made for drainage of surface water and to prevent an unacceptable risk of flooding would be acceptable; and
 - The effect on the biodiversity of Ashdown Forest Special Protection Area (SPA).

Reasons

Policy background

4. The development plan includes the Wealden (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (adopted 2013) (CSLP) and saved policies of The Wealden Local Plan (adopted 1998) (LP).

5. LP policy EN27 is a general design policy. It seeks to govern the scale, form, site coverage, density, use of materials, landscaping and design of development with the aim of respecting the character of the area. It aims to prevent unacceptable adverse impact on the privacy and amenities of adjoining developments and the neighbourhood by reason of scale, height and form amongst other things and aspires to prevent unacceptable backland or 'tandem' forms of development. Policy CR2 seeks to protect the established low density and arcadian character of the Crowborough Warren housing policy area. According to policy CS2, development will only be permitted where adequate provision has been made for surface and foul water drainage to avoid increasing the risk of flooding.
6. LP policies are of some age and have to be understood in the light of later national guidance in the latest iteration of the National Planning Policy Framework (NPPF).
7. Policy WCS14 of the Core Strategy reiterates the presumption in favour of sustainable development in line with the NPPF. Policy SPO13 encourages the development of high quality, safe and attractive living environments for communities in both towns and villages, while promoting local distinctiveness through good design in all new development.
8. The Wealden Design Guide of 2008 (WDG) provides advice on acceptable amenity areas for newly created homes.
9. The replacement Submission Local Plan (2019) has been withdrawn by the Council and there is no timetable for a revised plan to replace the CSLP and LP.

Character and appearance

10. Harlequin Lane is a narrow lane on an east facing slope in a residential area of Crowborough. It is sylvan and verdant in character with high hedges along much of its length. Dwellings vary in character but are mostly post-war and detached with relatively large gardens. Tritoma and Charnwood are mock-tudor houses of similar age on adjacent plots facing south east. Large gardens slope to the east towards the rear of a more formal estate of houses in Southridge Rise.
11. There are several developments of land behind dwellings elsewhere on Harlequin Lane, notably at Bracken Gate and Harlequin Mews but also at Harlequin Place. 'Backland' houses can be seen between the dwellings lining the lane and narrow accesses to some of these are a feature of the road. I conclude that in principle, the development of land behind the existing houses would not be out of character. The Council further acknowledges that the site lies within the development boundary of Crowborough where there is a presumption in favour of new residential development under saved policies of the development plan.
12. Having said that, the density of existing development in Harlequin lane and Crowborough Warren is generally low. The proposed scheme would increase the amount of built form and hard surfacing to a significant extent and would appear unusually cramped and unacceptably out of keeping in the area in principle.
13. Moreover, the design of the dwellings is claimed to be informed by a bespoke approach, but it is unclear what this means. I accept that there would be

elements of traditional materials such as red brick and hanging tiles, but beyond that, the scheme appears to owe much to 'pattern book' architecture with little of aesthetic interest. There is no explanation of how or why the design of the dwellings takes the form that it does. There is no reference to a process of site analysis or anything akin to the recommendations in the National Design Guide (NDG) nor any obvious relationship to guidance in the WDG, which sets out as its main aim the encouragement of a 'higher standard of design for development within the District than has often proved the case....' No effort appears to have been made, for instance, to take particular advantage of the gently sloping levels on the site in articulating the living space or exploiting the long-distance views which are a distinctive feature of the site.

14. The flat roof elements above the sloping hips on all the dwellings help to conceal the size of the dwellings, but the sheer bulk of those facing the lane would be betrayed by bland flank walls, much characterless and uninteresting masonry and plain tile surfaces, uninteresting garage doors and dispiriting detailing, very unlike the existing houses which have considerable character. The opportunity to exploit the flat roofs to provide natural light into the centre of the cube-like volume of the 2 and 3 storey dwellings is missed, most obviously in the 'Winterville' house type. The monotonous flank wall of the house on plot 2 would be elevated above and conspicuously tower over the access.
15. A nod to the mock-tudor elements of the existing dwellings and some other houses in the lane would be somewhat poverty-stricken in appearance, indeed perhaps unintentionally representative of the pursuit of economical internal space and volume that characterises the design of the scheme as a whole. In coming to this conclusion, as an example, the rear elevations of the dwellings on plots 1 and 2 demonstrate the uninspiring character of the intended proposal, yet raised up as they would be at the rear, they would be visible not just from the dwellings on plots 4, 5 and 6 but from further afield.
16. Much of the architecture in Harlequin Lane is typical of its time and unremarkable. However this is largely mitigated by a great deal of variety in massing, elevational treatment and siting. Many are set back from the road behind copious, mature vegetation and frequently long and sometimes curved drives. This helps to define the 'grain' of the area. It is safe to say that nowhere in Harlequin Lane are there 2 houses adjacent that are the same. The close siting of the dwellings proposed on plots 1, 2 (albeit mirrored) and 3 in close proximity to the road would represent a degree of unwelcome change that would not be visually attractive and would fail to satisfy one of the overarching objectives of the NPPF at paragraph 8 (b) of 'fostering well-designed and beautiful...places'. Having regard to paragraph 130, the contrast in quality and character with existing development means that the scheme would not add to the overall character of the area as a result of good architecture or help to maintain a strong sense of place.
17. The NDG indicates that a well-designed place comes about through making the right choices at all levels, including, inter alia, the form and scale of buildings. It advises that 'well-designed new development is integrated into its wider surroundings, physically, socially and visually. It is carefully sited and designed, and is demonstrably based on an understanding of the existing situation, including... patterns of built form, to inform the layout, grain, form and scale; the architecture prevalent in the area, including the local vernacular

and other precedents that contribute to local character, to inform the form, scale, appearance, details and materials of new development....' It has not been shown how the appeal scheme meets these important criteria.

18. Moreover it is completely unclear how the development would meet the sustainability objectives for new development set out in the WDG at section 4 and in the NPPF at paragraph 134. This adds to my concerns that the design of the scheme has not been fully thought through, especially as the site provides an unusual opportunity for an inspiring, highly sustainable design solution which should take advantage of the space available and the southerly and easterly aspect.
19. In summary, the scheme fails to meet the high design quality objectives of CSLP policy WCS14, LP policies CR2 and EN27 and the guidance in the NPPF and the WDG.

Living conditions

20. In assessing this issue I have had regard to the figured dimensions on drawing ref 20.7873.101C (but not the scale on that drawing). WDG paragraph 11.20 on page 52 recognises that back-to-back and side-to-back distances should be interpreted flexibly in order to avoid undue, direct and invasive overlooking and loss of privacy. Given that the upper floor windows on of the dwellings on plots 4-6 would be bedroom windows, together with the prospect that boundary vegetation to mitigate for any impact on privacy in the rear gardens of plots 1-3, and that the scheme would be in a residential area where a degree of overlooking is commonly experienced between adjacent dwellings, I do not find that the development would conflict with the relevant aims of policy SPO13 of the CSLP, policy EN27 of the LP or supplementary guidance.
21. The reason for refusal also refers to the general level of amenity being of an insufficient standard by virtue of the layout of the site and the quantum of development. Whilst there is limited space in the some of the rear gardens and that behind the house on plot 2 would have useability limitations, the overall area available to future occupants of each house would not conflict with guidance in the WDG.

Surface water drainage

22. Site investigation works employing 1 metre (or less if hard to excavate) deep pits indicates that the underlying geology allows for negligible to very poor low rates of infiltration. This is borne out by evidence of surface water flooding in the local area during periods of heavy rain including photos of run-off to Southridge Rise. I noted ditches and bunds along Harlequin Lane intended to catch surface water. There is evidence from local residents that drainage at Bracken Gate, the most recent development of housing off Harlequin Lane, is not performing as expected.
23. A large 104 cubic metres attenuation tank is proposed, sized for a 1 in 100 year storm with an allowance for climate change of 45%. However whilst the storage volume has been calculated anticipating a 2 litres/second discharge rate to an associated deep borehole linked with underground sealed geocellular attenuation units, the actual rate at which water will be discharged is based on an assumption that the deep geological conditions on the site are similar to elsewhere in Crowborough at Musgrove Place and Craigmere Hall, both more

than 1 kilometre away. Whilst these sites demonstrate a discharge rate of 3.3 litres/second, their location near each other but so far from the site does not to my mind provide sufficiently firm assurance that the discharge rate in Harlequin Lane would be adequate, even at the conservative rate of 2 l/s assumed by the appellant's consultant. No geological information has been provided to confirm the discharge rate possible at the site. I give significant weight to the Council's objection on this point.

24. Planning conditions could address other concerns and ensure sufficient temporary drainage during construction, the detail of pipe runs and the setting up of a management scheme to maintain the system, but there is strong evidence of an existing serious problem. The performance of the proposed borehole is of critical importance and very limited investigation works have been carried out so far. I am not persuaded that it would be reasonable to grant planning permission for a development when it has not been conclusively shown that the extensive increase in hardstandings and roof surfaces can be effectively drained.

Ashdown Forest SPA

25. A signed and dated Unilateral Undertaking (UU) has been submitted with the object of addressing reason for refusal 4. This would secure financial contributions towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in line with the tariff guidance in the Council's Ashdown Forest Mitigation Zone Background Paper concerning the need for measures to mitigate the impact of increased recreational pressure on the Ashdown Forest SPA.
26. Accordingly, the scheme would not adversely affect the integrity of the SPA in view of the site's conservation objectives. The proposal would not be at odds with policy WCS12 of the CSLP or saved policies EN1, EN7 and EN15 of the LP. The provisions of the UU are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 57 of the NPPF and Regulation 122 of the CIL Regulations (2010). I conclude that the requirements of Regulation 123 and Planning Policy Guidance have also been satisfied and the UU attracts significant weight.
27. I have taken into account all the other matters raised including many objectors' observations that the existing buildings are not being retained. The Council has a limited legacy of 'brownfield' land and accepts that some intensification of development in sustainable locations in towns and settlements in Wealden is necessary to meet the need for housing. This is a site with considerable potential. I accept that the existing dwellings are inefficient in terms of energy use and uneconomic to upgrade and that the long term benefits of replacing them with well insulated contemporary houses would meet the economic, social and environmental objectives of sustainable development as set out in national policy.

Conclusion

28. The Council acknowledges that it cannot demonstrate a 5-year supply of housing land, and that there is a persistent and significant shortfall. It has failed to deliver enough housing to meet its Housing Delivery Test targets for the past 3 monitoring years, scoring below 85% and subject to a 20% buffer in

each of these monitoring years. Policies for the supply of housing in the development plan are out-of-date. In these circumstances, having regard to paragraph 11(d) of the NPPF, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

29. The proposed scheme would provide 4 new net dwellings, a useful but nevertheless small contribution to meeting the housing need. I have found that the development would not conflict with policies that protect living conditions or ecological interests. However, the disadvantages of the scheme in terms of design and the effect on the character and appearance of the area, which would last for the lifetime of the development, together with the failure to positively assure effective surface water drainage, count against the scheme. Policies of the development plan that encourage high quality design that respect the character of the area are consistent with the NPPF and attract substantial weight. The adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

30. For these reasons, the appeal should be dismissed.

Paul Jackson

INSPECTOR