



Appeal Decision

Site visit made on 13 September 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/C1435/W/23/3317790

Land at Fieldgate, Off the Belfry, Hailsham BN27 3EW

- 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 Wellsbridge Estates Ltd against the decision of Wealden District Council.
 - The application Ref WD/2022/2873/O, dated 3 November 2022, was refused by notice dated 7 February 2023.
 - The development proposed is erection of four detached dwellings and creation of access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline planning permission with all matters reserved except for access. In relation to reserved matters, access means the accessibility to and within the site, for vehicles, cycles and pedestrians. The application was accompanied by a drawing that shows an internal circulation road which falls to be considered as part of the appeal proposal as it concerns accessibility within the site. I have considered the appeal on this basis and have treated any details in relation to the reserved matters as illustrative.
3. As part of the appeal submission, the appellant put forward an amended drawing which showed the access and internal road widened to 5.5m. I am mindful that the appeal process should not be used to evolve a scheme to overcome the local planning authority's reason for refusal and, instead, a fresh planning application should be made. The proposed amended plan amounts to a fundamental change to the appeal proposal, which the council and interested parties have not been consulted upon. I have had regard to the interest of fairness and the principles outlined in the *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) judgement and have concluded that this amended drawing should not be accepted.
4. The appellant has also provided an updated arboricultural report to reflect the proposed widening of the access and the internal circulation road. As I have determined the application based on the original Planning Drawing, I have not considered the content of this revised report as it relates to a different scheme to the one being assessed. Therefore, I have determined the appeal on the basis of the plans and arboricultural report that were before the council when it made its decision and on which parties were consulted.

Main Issues

5. The main issues are the effect of the proposed development on:

- the safety of pedestrians, cyclists and drivers using the internal circulation road,
- the character and appearance of the area, including trees subject to a Tree Protection Order (TPO),
- the living conditions of the occupants of The Belfry and Turnberry Drive, with particular reference to privacy and outlook.

Reasons

Highway safety

6. The appeal site is irregular in shape but is a roughly triangular parcel of land situated at the end of a residential street known as the Belfry and to the rear of existing houses on Western Road and Turnberry Drive. Access would be taken from The Belfry; however, the access to the site and internal circulation road would be narrower and would not include footpaths or make provision for cyclists. The internal circulation road includes a turning head immediately opposite the access and then extends toward the tapered end of the site where there is another turning head.
7. The access and internal circulation roads are particularly narrow, the submitted drawing specifies that they would be 3m wide. This would mean it would be difficult for vehicles to manoeuvre within the site and particularly when there is conflict with oncoming vehicles as there would be insufficient width for two vehicles to pass. The narrow width of the internal road and access would significantly increase the chance of collisions. Additionally, there is nothing on the submitted drawings that would indicate that larger service vehicles would be able to manoeuvre satisfactorily or safely within the site. Also, as the facilities are shared with pedestrians and cyclists the potential harm is increased as these road users are less protected.
8. Within the second reason for refusal the council stated that the proposed development is in conflict with policy HAIL D5 of the Hailsham Neighbourhood Plan (NP), July 2021. This policy concerns the provision of car parking. The provision of car parking is acceptable and would, by itself, not lead to highway safety concerns. This is not disputed by either party. The proposed development therefore accords with NP policy HAIL D5. However, this would not overcome the matters identified above.
9. Overall, the proposed development would have a harmful effect on the safety of pedestrians, cyclists and drivers using the internal circulation road. It would therefore be contrary to saved policies EN27 and TR3 of the Wealden Local Plan (LP), December 1998; and spatial planning objectives SPO12 and SPO13 of the Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan (CS), February 2013. These policies and objectives when taken together indicate that the proposed development should ensure a satisfactory environment for future occupants and provide a satisfactory means of access and create a safe environment.
10. In addition, the proposed development would not be in accordance with the National Planning Policy Framework (the Framework) which seeks to ensure

that safe access to the site can be achieved and that applications for development create places that are safe and that will function well.

Character and appearance

11. As above, the appeal site is irregular in shape, but the access would be close to the widest section of the site and then the site tapers toward properties on Turnberry Drive. At the entrance of the appeal site is dense, mature vegetation and beyond that the site opens to a grassland area with trees and shrubbery located across the site. There is a group of tall trees along the eastern edge of the site, the group of trees is subject to a Tree Protection Order (TPO). The appeal site is largely free from development other than what appears to be a vacated shed.
12. The surrounding area includes residential properties of varying size and design. In general properties on Western Road are set within more spacious plots, whereas other properties are subject to a denser pattern of development. The appeal site would be accessed from The Belfry which is a residential estate that is relatively densely developed. Properties in this area often have short front gardens. There are different designs of houses in this area including detached, semi-detached, and terraced properties. Given there would not be a direct access to Western Road, the proposed dwellings would largely be seen alongside the more densely developed houses.
13. The appeal site is verdant and sylvan in character. This contrasts with the surrounding area, which is densely developed and largely comprises residential uses. These factors combine to create a suburban character.
14. As the description of development specifies that the properties are detached alongside the fixed orientation of the internal circulation road, it is highly likely a future layout would include a dwelling within the tapered section of the site. Due to the presence of the group of trees which are subject to the TPO and given the appellant has indicated they would be unaffected by the proposal; houses would need to be sited away from the eastern boundary. Considering these constraints, houses would likely be sited toward the middle of the site, close together around the internal circulation road with small front gardens. Therefore, the density of the proposed development would be similar to existing development on The Belfry and Turnberry Drive. When viewed, alongside neighbouring development it would appear to be a continuation of the prevailing pattern of development and would not appear cramped, or as an overdevelopment of the site.
15. The illustrative layout shown on the Planning Drawing, includes relatively small gardens for plots 3 and 4 which would be overshadowed by the trees along the eastern boundary. Nevertheless, matters relating to layout, appearance and landscaping are reserved for future approval. From what I saw when I visited the site, I am satisfied that a detailed design could be developed at the reserved matter stage which would minimise any effects of overshadowing from the existing trees.
16. Although the proposed development would alter the verdant and sylvan nature of the site, it would represent a continuation of the prevailing pattern of development in the wider area. It would therefore respect the suburban character of the area.

17. I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. It would therefore comply with LP policies EN12, EN14 and EN27, CS spatial planning objective SPO13 and NP policies HAIL D1 and HAIL D2. When read together these policies expect development proposals to retain trees which make a valuable contribution to the character of the landscape and that the scale and density of development should respect the character of adjoining development, provide high quality and attractive living environments, and integrate well with existing neighbourhoods. It would also be in accordance with the Framework which advises that planning decisions should ensure that developments are sympathetic to the local character and that existing trees are retained wherever possible.

Living conditions

18. Appearance, layout, and scale are reserved matters, the final design of the proposed dwellings is not fixed. However, the description of development states that they would be detached dwellings. I acknowledge that the appellant has mentioned within the planning statement that the houses are capable of being two storeys with four bedrooms. However, these details are illustrative and there is no reason why the dwellings could not be detached bungalows.
19. The boundary with properties on The Belfry and Turnberry Drive comprises tall close boarded fencing. This boundary largely screens views of the garden areas and rear windows of the properties on The Belfry and Turnberry Drive from ground floor level within the site. Those properties also include moderately sized rear gardens and there is sufficient space within the site for dwellings to be sited away from the boundary. Furthermore, the proposal would at least be partially screened in views from these properties by the close boarded fencing. From my observations, I am satisfied that a detailed design could be developed at the reserved matter stage which would ensure neighbouring residents' privacy and outlook is protected to an acceptable level.
20. Due to the length of the gardens on Western Road and the space within the site, I am satisfied that a layout could be achieved that would not lead to the unacceptable loss of privacy for occupants of properties on Western Road, including Innisfail. Similarly, given the orientation of the appeal site compared to properties on The Belfry, I am satisfied that an appropriate layout could be achieved that would not lead to the unacceptable loss of light experienced by occupants of properties on The Belfry, including no. 41.
21. Interested parties have indicated that the window placement needs to be seen to judge the effect of the proposed development on living conditions of neighbouring residents. However, as this is an outline application, with all matters reserved except access, only the principle of the proposed development needs to be agreed. As above, I am satisfied that an appropriately design proposal could be developed at the reserved matter stage.
22. I conclude that the proposed development would not have a harmful effect on the living conditions of the occupants of The Belfry and Turnberry Drive, with particular reference to privacy and outlook. It would therefore comply with LP policy EN27 and NP policies HAIL D1 and HAIL D2. These policies indicate that the proposed development should not create an unacceptable adverse impact on the privacy and amenities of adjoining developments and should respond to the amenity value of an area. It would also be in accordance with the

Framework which advises that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Planning Balance and Conclusion

23. Set against the identified harm are the benefits of the scheme which include the provision of four houses in an accessible location, the potential for habitat creation and enhancement opportunities, and economic benefits associated with construction and an increased local population. In this instance, these benefits attract moderate weight given the shortfall in the supply of deliverable housing sites, discussed below, and the relatively modest scale of development. The appropriate provision of car parking spaces, the ability to provide appropriately sized gardens and the proposal not having a significant impact on traffic conditions within the wider highway network, are all neutral factors.
24. The LP and CS date back to 1998 and 2013, respectively. However, paragraph 219 of the Framework advises that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Rather, due weight should be given to them, according to their degree of consistency with the Framework. Paragraph 110 of the Framework advises that in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users. Therefore, the conflict between the proposal and LP policy TR3 and CS spatial planning objective SPO13 should be given significant weight in this appeal.
25. As there are no policies in the development plan which positively favour development with an unsafe or unsuitable access, and as the proposal would be contrary to the policies referred to above, there would be a conflict with the development plan, when considered as a whole.
26. The council acknowledges that it can only demonstrate 3.92 years of deliverable housing sites and they have underperformed in relation to the housing delivery test. Therefore, Framework paragraph 11d) is engaged. With that context in mind the scheme has certain benefits. Chief amongst them is an addition to housing stock in an area with an acknowledged lack of forward supply. The Framework encourages the efficient use of land, opportunities to improve biodiversity in and around developments, delivery from small and medium sites and in accessible locations, which are sympathetic to local character and create places with a high standard of amenity that will improve the economic conditions of the area.
27. However, the benefits of an additional four units of accommodation would be moderate, considering the modest scale of development alongside the shortfall of deliverable housing sites. As above, the Framework advises when assessing specific applications for development it should be ensured that safe and suitable access can be achieved for all users. Therefore, significant weight should be given to the harm caused by not providing a safe or suitable access.
28. Consequently, the adverse impacts on highway safety would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

29. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
30. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR