



Appeal Decision

Site visit made on 9 January 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/C1435/W/23/3314422

Lampool Site, Straight Half Mile, Maresfield Park, Maresfield TN22 3DP

- 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 Mr Christopher Bell against the decision of Wealden District Council.
 - The application Ref WD/2021/2688/O, dated 10 October 2021, was refused by notice dated 15 September 2022.
 - The development proposed is described as 'Outline application for approval in principle with all matters reserved except access for four detached dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was in outline, with details of access only. The scale, layout, appearance, and landscaping of the proposed development are matters reserved for future consideration. I have treated the layout shown on the Indicative Site Plan as being for illustrative purposes only.
3. In the banner heading above, I have used the description of the proposed development as it appeared on the application form. The appeal form refers to 'four detached two storey dwellings', but there was no reference to the number of storeys on the application form or the Council's decision notice. Written confirmation has been provided that the appellant is the original applicant and has the right of appeal, although only his agent's name was recorded when the application form was amended with an updated Ownership Certificate.
4. Although the Council's Statement of Case suggests that the main issue includes harm to an Area of Outstanding Natural Beauty (AONB), no such harm is alleged in the reasons for refusal. Furthermore, the Council's evidence states elsewhere that the site is not within the High Weald AONB. I have therefore treated this brief, isolated reference to the AONB as an error.
5. Additional ecology evidence was provided with the appeal, in the form of a document titled 'Biodiversity Net Gain Calculation' by Arbtech Consulting Limited dated 9 December 2022. The Council has had the opportunity to comment on this additional evidence. I have taken their observations into account, and I am satisfied that there would be no prejudice to any interested parties as a result of my having considered this additional evidence during the appeal process.

6. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. Those parts of the Framework most relevant to this appeal, including the application of the planning balance in this case, have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issues

7. A completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 was provided with the appeal. In response to the second reason for refusal, this would secure financial contributions to mitigate the effect of the proposed development on European Sites¹. The Council has confirmed that the terms of the UU, dated 15 December 2023, are acceptable.
8. Against that background, the main issues are:
- the effect of the proposed development on the character and appearance of the area, and
 - whether the proposal would protect or enhance biodiversity within the site.

Reasons

Character and Appearance

9. The appeal site is located on the outskirts of Maresfield, outside any defined settlement boundary, in an area which is treated as countryside for purposes of the development plan. Although it is not covered by any specific landscape designations, the site is within a leafy area where loose knit housing along the road frontages is interspersed with areas of open land and woodland. This provides a strong sense of connection with the surrounding countryside. The more consistently built-up parts of Maresfield are somewhat further to the south.
10. The site includes a wooded area and pond close to the road, as well as a more open area further back. This latter area currently contains various items of abandoned machinery, building materials and similar items, but there are no existing buildings.
11. There are detached dwellings fronting the road to either side of the site. However, it projects into open countryside at the rear, where there are open fields and paddocks on three sides of the site boundaries, beyond the boundary trees and hedges.
12. The application is in outline, and I have kept in mind that the layout shown on the plans is indicative. Nevertheless, it gives a clear indication of the potential distribution of four detached dwellings within the site. A relatively formal, linear layout is indicated, which would project to a significant extent into the more open part of the site, surrounded by fields and paddocks. Even if an alternative, less formal layout was proposed, it is clear that this part of the site would be developed, since the area closer to the road, between the existing dwellings, is relatively narrow and would also have to accommodate the means of vehicular access.

¹ As defined in the Conservation of Habitats and Species Regulations 2017

13. That being the case, the proposed development would depart from the established pattern of sporadic dwellings generally fronting the highway. The proposed dwellings would intrude into the open countryside behind the road frontages, establishing a more formal and intensive form of development, to the detriment of the rural character and appearance of its surroundings.
14. There are trees around the site boundaries, and it has a different character from the fields and paddocks that wrap around it to the rear. Nevertheless, it is in a similarly undeveloped condition. The existing boundary trees are well spaced apart and do not provide an effective level of visual enclosure, particularly in the winter months.
15. Although the site is somewhat degraded, the most affected area is set well back from the road and the abandoned items are not intrusive in the wider landscape. Any visual benefit from removal of these items would be very localised and would be more than offset by the more substantial and permanent presence of the proposed dwellings. Although reference is made to creating a park-like setting, there would be limited space around the residential plots and most of the site is likely to comprise private gardens. In any case, the wooded area nearest the road already provides a leafy, undeveloped area within the street scene, so any additional park-like landscaping would be of limited public benefit.
16. I conclude that the proposed development would have a harmful effect on the character and appearance of the area. The level of harm would be somewhat moderated by the site's relationship with existing dwellings fronting the road. Nevertheless, there would be an unacceptable level of harm as a result of the linear form of the site and the consequent level of encroachment into open countryside at the rear.
17. For that reason, the proposal would conflict with relevant requirements in Policies EN8 and EN27 of the Wealden Local Plan 1998 (WLP). These policies, amongst other things, require that development respects the character of adjoining development and conserves the landscape of the Low Weald, avoiding harm to the setting of settlements. It would be inconsistent with relevant aspects of the Wealden Design Guide (WDG)² which include that new residential development should be well integrated into the wider landscape. It would furthermore conflict with relevant paragraphs in the Framework, notably paragraph 135 which says that developments should be sympathetic to local character, including their landscape setting.

Effect on Biodiversity

18. A Preliminary Ecological Appraisal (PEA) was provided with the application³ which details a range of habitats found within the site. These include a pond which is contained within a well-defined area of lower-lying land, apparently an earlier excavation, located near the road. There are also areas of scrub, ruderal vegetation and semi-improved grassland, as well as areas of woodland mainly near the road and along the site boundaries. While the PEA for the most part stops short of recommending further survey work, the habitat is described as being suitable for a variety of protected species and a highly precautionary approach to development is advocated.

² Wealden Design Guide Supplementary Planning Document November 2008

³ Arbtech Preliminary Ecological Appraisal dated April 2022

19. Evidence from both parties confirms that there was more extensive woodland before the eastern part of the site was cleared of trees by a previous landowner. Natural England has apparently agreed to remove the area in question from the Priority Habitats Inventory, but that does not alter the evidence of recent degradation in tree cover. Although the appellant claims that most of the remaining woodland would be retained, this is largely within the narrowest part of the site, near the road. Therefore, it appears clear that there would be further erosion of the remaining woodland to accommodate vehicular access and any dwelling fronting the road.
20. While a target is proposed for achieving a net gain in biodiversity, no specific proposals have been detailed for habitat creation or enhancement. There is reference to replacement tree planting and a detailed landscaping scheme, which would be considered as reserved matters. However, reference is also made in the BNG Calculation to 'targeting areas within the public realm for ecological enhancement'. Based on the indicative layout, there would be very limited public realm, since almost the whole of the site would be required for the four residential plots. Even if an alternative layout was proposed, given the clear evidence that some of the existing woodland and the pond would be lost to accommodate the access and any dwelling near the road, the assertion that a net gain is achievable is not at all persuasive.
21. Although the requirement for mandatory BNG in the Environment Act 2021 is not yet in force for a development of this size, the Core Strategy sets out in Policy WCS12 the Council's strategic approach to preventing a net loss of biodiversity and achieving net gain where possible. Furthermore, in the Framework, paragraph 180 states that planning decisions should contribute to and enhance the natural environment, including by minimising impacts on biodiversity and providing for net gains.
22. While the site is not subject to any specific nature conservation designations, there is evidence of its potential value as habitat for a range of protected species in the PEA. Based on the evidence before me, I am not persuaded that the site is capable in principle of accommodating four detached dwellings without harmful loss of biodiversity, nor am I persuaded that a net gain would be achievable at the reserved matters stage.
23. I therefore conclude that the proposal would neither protect nor enhance biodiversity within the site. In this respect, it conflicts with relevant requirements in Policy WCS12 of the Core Strategy and paragraph 180 of the Framework, as outlined above.
24. WLP Policy EN12 focusses on the contribution of woodland to landscape character, rather than to biodiversity. I have therefore given this policy limited weight when considering the effect of the proposal on biodiversity. However, the proposal would conflict with relevant guidance in the WDG, which includes that existing woodland should be retained and enhanced for reasons including its biodiversity value.

Other Matters

25. My attention has been drawn to a development of a similar density at Forest Ridge, slightly further to the south. This site is also outside any settlement boundary; however it is contained between two roads and does not project into the surrounding countryside to the same extent. Consequently, the site-specific

circumstances differ from those found at the appeal site and I have considered the proposed development on its own merits.

26. The Council lacks a five-year supply of housing. While the Council has highlighted a slight improvement on the position set out in the Officer Report, evidence from both parties indicates that the supply of housing land remains under four years. The appellant describes the shortfall in housing land supply as protracted, dating back to 2016, and I have been provided with no evidence to the contrary.
27. Policies GD2 and DC17 of the WLP preclude most forms of residential development outside settlement boundaries and are more restrictive than the approach to rural housing set out in paragraphs 82 to 84 of the Framework. Therefore, in the context of the shortfall in housing land supply, I have given the conflict with these policies limited weight. However, the relevant development plan policies are otherwise broadly consistent with the Framework's provisions in relation to protecting and enhancing biodiversity and ensuring that development is compatible with the character and appearance of the area. I have therefore attached weight to the conflict with those policies commensurate with the level of harm I have identified.
28. The proposal would contribute four dwellings to the supply of housing. They would be in a location which, although rural, was judged in a 2021 appeal decision⁴ on a nearby site to benefit from a reasonable level of accessibility to local services and facilities in Maresfield. Based on the evidence before me, I have no reason to reach a different view.
29. The proposal would bring forward housing on a small site, where utilities are in place and the dwellings could be built out quickly. However, the site is not previously developed land and any advantage associated with its more intensive use is at the expense of its value as open land in terms of biodiversity and the character and appearance of the area. As explained above, I have given limited weight to the remediation of degraded land, given the limited level of demonstrable public harm in this particular case.
30. There would be some economic benefit as a result of the construction process, although this would be modest, given the limited scale of the development. Similarly, any contribution to the vitality and viability of services and facilities in Maresfield is likely to be limited, given the small number of dwellings proposed, relative to the scale of the existing settlement.
31. The application indicates that one self-build dwelling would be included. However, no legal mechanism has been presented to secure the provision of self-build housing on the site. As such, while I have noted the potential small contribution to demand for self-build plots, I cannot be certain that such benefit would be delivered in practice. I have therefore given the provision of self-build housing very limited weight. I have also given the proposal's contribution to the choice of homes very limited weight, since the scale of the dwellings would be a reserved matter and no objective evidence has been provided that they would address a particular need within the local housing market.

⁴ Appeal Ref: APP/C1435/W/21/3277000

32. According to the Design and Access Statement, a traditional design approach and a high standard of energy efficiency are intended. However, these are neutral factors since there is no clear evidence that the design would exceed what is required by the relevant development plan policies.
33. Overall, the level of benefit would be inherently modest, given the small number of dwellings proposed. I have nevertheless given the benefits of the proposal moderate weight, when considered collectively against the background of the protracted housing land supply shortfall and the relatively accessible nature of the location.
34. Set against the benefits is the harm to biodiversity, the harm to the character and appearance of the area and the consequent conflict with the development plan. Considered collectively, these carry significant weight.
35. Given the harm that I have identified, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. On that basis, the proposal does not benefit from the presumption in favour of sustainable development as articulated in paragraph 11 of the Framework. Nor would it comply with the similar requirements set out in WCS Policy WCS14.
36. As noted above, a Unilateral Undertaking has been provided in response to the second reason for refusal, which includes obligations intended to mitigate any likely significant effect on European Sites. However, since I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

Conclusion

37. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR