



Appeal Decision

Site visit made on 8 April 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/U1430/W/23/3321909

Land adjacent to Seacox Cockers, The Mount, Flimwell, Ticehurst, East Sussex, TN5 7QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Waller against the decision of Rother District Council.
 - The application ref is RR/2022/2886/P.
 - The development proposed is the erection of a pair of semi-detached dwellings, together with parking, new access, garden land and landscaping (alternative scheme to RR/2021/2521).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Areas of Outstanding Natural Beauty (AONBs) have been renamed National Landscapes and, in this case, the appeal site is located within the High Weald National Landscape (the High Weald NL). The National Planning Policy Framework (December 2023) (the Framework) still refers to AONBs and I have taken into account this policy advice in determining this appeal.
3. The original submission indicated that two of the four dwellings would be affordable units of accommodation. However, the Council consider that, with the size of the site, there is not a policy requirement for the provision of affordable housing, either on the site itself or in the form of a financial contribution. The application was not refused on this basis and the draft s106 Agreement that accompanies the appeal has not been signed. Consequently, I have considered the appeal on the basis that the four dwellings would be open market units of accommodation.
4. At my site visit it was apparent that, on part of the site, there was stationed a mobile home, touring caravans and associated paraphernalia and structures, such as fencing. The planning history does not list a planning application that shows that such development has been permitted. In these circumstances, while I have noted the presence of these features on the site, I have taken into account that this presence does not appear to be permitted and, therefore, I have determined the appeal based on the evidence before me.

Main Issues

5. The main issues are:
 - whether or not the development plan would support the proposed housing in this location,

- the effect of the development on the character and appearance of the area, including having regard to its location within the High Weald NL.
- the effect of the development on the setting and heritage significance of the Grade II Listed Building, Seacox Cockers and Seacox Cottage,
- whether or not future occupants of the dwellings would have satisfactory access to services and facilities by a range of transport modes, and
- whether or not the development would provide a safe and suitable vehicular access to the site, with particular regard to the provision of the visibility splay to the east.

Reasons

Location

6. The development plan includes the Rother Local Plan Core Strategy (adopted September 2014) (the Core Strategy), the Rother District Council Development and Site Allocations Local Plan (adopted December 2019) (the DaSA) and the Ticehurst Neighbourhood Plan 2018-2028 (made on 8 July 2019) (the Ticehurst NP).
7. Policy OSS1 of the Core Strategy sets the overall spatial development strategy for the plan area and this includes, in summary, continuing to generally restrict new development (in the countryside) to that for which a countryside location is necessary or appropriate. Policy OSS2 of the Core Strategy advocates that development boundaries around settlements will continue to differentiate between areas where most forms of new development would be acceptable and where they would not.
8. This spatial approach to the location of development is supported by Policy H1 of the Ticehurst NP which explains that the overall spatial strategy for this plan is to focus residential development in the existing villages of Ticehurst, Flimwell, and Stonegate. Policy H1 of the Ticehurst NP further explains that no residential development will be allowed outside the villages' development boundaries as shown on the associated maps, unless a countryside location is essential as required by Policy RA3 of the Core Strategy.
9. The development boundary for Flimwell, as shown in the Ticehurst NP, shows the defined settlement to the west of the A21, London Road. The appeal site is an area of land, further to the east of the A21, beyond the defined settlement boundary. Consequently, it is located within the countryside for planning purposes.
10. The proposed development of four open market dwellings would not meet with any of the allowances for development in the countryside as set out in Policy RA3 of the Core Strategy.
11. In the light of the above analysis, I conclude that the development plan would not support the proposed housing in this location. In particular, the scheme would conflict with Policies OSS2 and RA3 of the Core Strategy and Policy H1 of the Ticehurst NP which, in these circumstances, help form the spatial strategy for the location of development across this part of the plan area.

Character and appearance

12. The section of Flimwell which lies to the west of the A21 (London Road) has a fairly concentrated built form. The pattern of development stretches along the B2087 with those properties generally facing towards the road and with modest spacing between them. This creates a fairly built up character where soft landscaping is more suburban and less dominant than the built form.
13. On the eastern side of the A21, along the A268 (Hawkhurst Road), there is a different character. Initially, beyond the cross roads and the commercial premises on the southern side, there is a field on both sides of the road, and then properties are often interspersed with reasonable sized areas of undeveloped land, some of which is tree covered. There are some quite sizeable groups of dwellings, such as at Sunnybank, and developed sites such as the motor sales and repair garage further to the east. Nevertheless, there are large stretches of this road where the rural and verdant appearance is the predominant character and the buildings often merge into the treed environment. Beyond the commercial motor garage and Flimwell Park to the east, the landscape has a greater appearance of being open countryside and where the built form is more sporadic.
14. The section of the A268, from the A21 to the land up to the commercial motor garage and Flimwell Park, therefore, provides an important transition between the more focused built form of Flimwell and the open countryside beyond. Along this section of the A268, the land that adjoins the road generally provides an important component to the visual character of the area and contributes positively to the appearance of this part of the High Weald NL.
15. I am conscious that the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs (now named NLs) which have the highest status of protection in relation to these issues.
16. The appeal site forms one of the undeveloped spaces between buildings along this section of the A268. With its size and position on the southern side of the road, the site makes a modest but worthwhile contribution to the undeveloped land that separates the buildings and which forms an important element of the character of the area and, thereby, contributes positively to this section of the High Weald NL.
17. The site is subject to a Woodland Tree Preservation Order (TPO) that was made in March 2019. The information shows that, in the past, the land had a mature hedge bounding the frontage with the road. This hedge has been very severely cut down to ground level and this has opened up views into the site. Some of the trees on the site have been permitted to be coppiced on the basis that this would strengthen the woodland in the longer term and would regenerate in time.
18. Despite the presence of the mobile home and caravans on the site, and the related activity within the central area of the land, there still remains a reasonable number of trees within this part of the site. Within this central area there are a couple of reasonably mature specimens and other trees that, taken together, provide an attractive group of trees. I have noted the assessment of

the quality of the trees in the Arboricultural Report¹ and the comments of the Council in its report when some trees were permitted to be coppiced. However, I consider that this underestimates the collective value of this group and these trees within the site are visually important. They make a valuable contribution to the character of the site and are, in turn, a positive feature within this part of the High Weald NL.

19. The scheme proposes to remove the majority of the trees within the central area of the site and replace them with two pairs of semi-detached dwellings. The dwellings would stretch development across much of the width of the site and the buildings would be fairly tall with quite bulky roofs. They would have an unduly imposing presence on the site and with the quite extensive parking area across the majority of the width of the site frontage there would be a marked change from the present character. There would be trees along the boundaries of the site that would be retained, and there is the opportunity for a frontage planting scheme. However, the extent of development proposed in the form of the dwellings and parking, and which would result in the loss of the majority of the central area trees, would lead to a substantial and unduly harmful change to the character of the site.
20. Accordingly, in the context of this street scene, with the loss of the trees and the extent of development and its form, the scheme would not respond positively to the key verdant characteristics of the area and would not integrate successfully with its surroundings. In this way the dominance and extent of the housing and the related loss of the trees would not provide a sympathetic development that responded to local character, including the surrounding built environment and landscape setting, as required by the Framework.
21. Furthermore, the development would involve the loss of trees the subject of a Woodland TPO and prevent other trees rejuvenating within this central part of the site. The result would be that the benefits that the woodland trees provide to the distinctive treed character and appearance of the area would be very substantially eroded.
22. In these ways the development would not conserve or enhance the landscape and scenic beauty of this section of the High Weald NL, a matter that the Framework requires to be given great weight.
23. It follows from the above analysis that I conclude that the scheme would harm the character and appearance of the area, and would not conserve or enhance the landscape and scenic beauty of the High Weald NL. Consequently, the proposal would conflict with Policies OSS4, RA2, RA3, EN1 and EN3 of the Core Strategy, Policies DEN1 and DEN2 of the DaSA, Policies R1 and H5 of the Ticehurst NP and the Framework which, notably in this case, requires that the siting, layout and design of development should maintain and reinforce the natural and built landscape character of the area in which it is to be located.

Listed building

24. Seacox Cockers and Seacox Cottage form a single Grade II Listed Building. The building dates from about 1870. It has heritage significance including because of its age, mix of traditional materials and the architectural composition with well-articulated elevations involving steeply pitched roofs to the gables, some

¹ Pre-development Tree Survey and Report – Invicta Arboriculture – Revised 15 December 2022.

arched window heads, bracketed front porches, decorated tile hanging, ornate barge boards and its distinctive and substantial chimneys. These features combine to form an attractive building and the significance of this Listed Building is contributed to by the generally rural setting behind a well-established front hedge boundary and with undeveloped land to either side.

25. I am mindful of the duty to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess². The Framework sets out a definition of the setting of a heritage asset and this includes the surroundings in which a heritage asset is experienced and that this extent is not fixed and may change as the asset and its surroundings evolve.
26. Seacox Cockers has a boundary with the appeal site on its western side. Across the frontage of the appeal site, from sections of the A268, the attractively proportioned end gable with its architectural form, with parts of the end chimney stack and other chimneys along the roof line, can be appreciated.
27. Consequently, this section of the appeal site forms part of the setting to the Listed Building as it falls within the surroundings in which this designated heritage asset is experienced. The openness of this part of the appeal site may not have been so apparent in the past. However, even if the vegetation was to grow back in this area, historically the surroundings in which the Listed Building was to be found and experienced was separated from other development and with verdant space to the sides. This extent and form of the surroundings around the Listed Building allows the significance of this designated heritage asset to be appreciated and understood.
28. The proposed development would entail, relative to the size of the site, quite a considerable built form across much of the width of the plot. While set back from the road frontage, the built form would, nevertheless, be seen in the broad context of views towards the end section of the Listed Building. This proposed built development, in conjunction with the size, extent and position of the vehicle parking and manoeuvring areas, notwithstanding the extent of planting that could be possible across the frontage, would harmfully and substantially erode the present character of the surroundings in which the designated heritage asset is experienced. Consequently, the scheme would detract, to a meaningful and quite noticeable extent, from this part of the setting to the Listed Building. In turn, this harm to the setting would detract from the significance of the building as a designated heritage asset.
29. The harm to the significance of the Listed Building would, nevertheless, be less than substantial within the meaning of paragraph 208 of the Framework. In accordance with the Framework, this harm should be weighed against the public benefits of the proposal.
30. In terms of the benefits of the proposal, the development would provide a modest boost to housing supply on a windfall site where future occupants would have, as I find below, reasonable accessibility to services and facilities by means other than the private vehicle. The development could be delivered by a small or medium sized builder adding to the overall mix and offer of housing in the area. The scheme would provide good sized accommodation with sufficient

² Section 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

outdoor amenity space such that the Framework requirement to provide a high standard of amenity for future users would be met.

31. There would be social and economic benefits to the local economy during construction and in subsequent occupation, although these would be to a limited degree due to the scale of the proposal, and in respect of construction would only be for a limited time.
32. Given the overall size of the site, and the area to the rear adjoining the ancient woodland, a meaningful biodiversity net gain should be possible and the submissions indicate a range of proposals in this respect.
33. These are all benefits of the scheme. I am especially conscious that the scheme would deliver housing in a plan area where there is a substantial shortfall against Framework requirements. However, as only four houses would be delivered I afford the combined benefits of the development moderate weight in favour of approval.
34. The Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm. I have found that the public benefits of the proposal should afford moderate weight and therefore would not outweigh the level of harm to the setting of the Listed Building and its significance which, in accordance with the Framework, is required to be attributed great weight.
35. Accordingly, I conclude that the scheme would unduly harm the setting and detract from the significance of the Listed Building, and that this harm would not be outweighed by the public benefits of the development. It follows that the proposal would fail Policy EN2 of the Core Strategy and the Framework which seek, amongst other things, to preserve, and ensure clear legibility of, locally distinctive vernacular building forms and their settings.

Access to services and facilities

36. The appeal site would be located outside the defined settlement of Flimwell. However, occupants of the site would have the ability to walk along the footway, past the facilities at the Weald Smokery, to the junction at the A21. From this point there would be access to the limited services in the locality, such as the new village hall, and the fish and chip shop to the north. The evidence indicates that future occupants would also be able to connect to local bus services which could link to local schools and some local towns to access higher level retail, medical services and employment.
37. I accept that walking along the, in places, reasonably narrow footway to access these services and the bus stops may not always be an attractive proposition. However, for some occupants of the site, it would provide a reasonable alternative to the private vehicle. Indeed, while the Framework explains that the planning system should actively manage patterns of growth in support of sustainable transport objectives, including to promote walking, cycling and public transport, it also highlights that decision making should take into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In a planning area where there is not a Framework compliant supply of housing land, some sites for housing are likely

to be required outside settlements and in areas which may be sub-optimal in terms of sustainable transport options.

38. In this case, occupants of the site may well use the private vehicle as the predominant mode of travel but there are some sustainable alternatives. In terms of the appeal decision that the Council has brought to my attention in Flimwell³, I have details of the bus services submitted as part of this appeal and this differentiates the scheme from the information before the Inspector when he considered the appeal at Union Street.
39. In all the circumstances of this case and having regard to its rural location and relationship to the settlement, I consider that there would be reasonable access to services and facilities by a range of transport modes. Consequently, in this specific respect, I conclude that there would not be any substantive conflict with Policies PC1, OSS3, SRM1 and TR3 of the Core Strategy and the Framework which set the approach to sustainable transport in relation to development.

Highway safety

40. The plans show the provision of a vehicular access to serve the development and which would be positioned very broadly within the centre of the frontage. The access would allow two way traffic onto and from Hawkhurst Road (A268). The road is subject to a 50mph limit and is generally straight in both directions.
41. The submission is accompanied by a Highway Access Report (December 2022). This explains that the required visibility splay can be achieved in both directions on the basis that the existing hedge along the frontage of the property is removed (and replanted behind the visibility line) and with a little hedge trimming at Seacox Cockers.
42. The Highway Access Report shows the sight lines on the layout plan and this includes, and is annotated, with the requirement for the "vegetation to be trimmed back to achieve the required visibility" across a reasonable section of the frontage of Seacox Cockers, to the broadly east of the site. While the Highway Access Report indicates that this frontage falls within the control of the appellant, there is no clearly documented information to confirm this matter. Indeed, the drawings do not show this area of frontage within the red or blue edged lines on the plans.
43. At the present time, the boundary along the frontage of the site has had the frontage hedge very severely cut down and there is some new hedge planting set back a little way into the site. Looking to the east from the position of the proposed access, a section of the foliage within the corner frontage of Seacox Cockers does obscure part of the view along the road in this easterly direction and thereby limits the ability to see the oncoming traffic. In this respect the plans and commentary requiring this section of the front boundary planting of this neighbouring property to be cut back are accurate and a necessary highway requirement.
44. Consequently, because the land behind the footway at Seacox Cockers appears to be private land beyond the appeal site, the appellant and future occupants of the site would not be in a position to cut back this frontage planting to provide, and then maintain, the required visibility splay. Without the ability to provide

³ APP/U1430/W/22/3309165 - Villa Flair, Union Street, Flimwell TN5 7NT

and maintain this sight line, the visibility to see oncoming vehicles would not meet the required distance and this would compromise road safety. It would not be reasonable to seek to address this matter by a planning condition in any approval as, based on the information available, there appears to be no readily available solution within the appellant's control or landholding.

45. Based on the above considerations, I conclude that it has not been demonstrated that the development would provide a safe and suitable vehicular access, having particular regard to the provision of the required visibility splay to the east. Consequently, the proposal would conflict with Policy CO6 of the Core Strategy, Policy DHG12 of the DaSA and the Framework which accepts, amongst other things, that proposals for new drives and accesses will be supported where they are considered acceptable in terms of highway safety.
46. The related reason for refusal also references Policy TR4 of the Core Strategy. However, as this concerns car parking rather than highway safety and visibility, it is not directly relevant to this main issue.

Planning Balance and Conclusion

47. This residential proposal would be located outside the defined development boundary and would, therefore, be contrary to the spatial strategy for the location of development. In addition, the scheme would harm the character and appearance of the area, such that it would not conserve or enhance the landscape and scenic beauty of the High Weald NL, it would not preserve the setting of the adjoining Listed Building and the development would lead to an unacceptable impact on highway safety. These harms, in combination, are very substantial planning matters that weigh against the scheme. They are such that the scheme would conflict with the development plan when considered as a whole.
48. The Council has confirmed that it is unable to demonstrate a five year supply of deliverable housing land. The Planning Report explains that a supply of only 2.89 years can be demonstrated, which is a considerable shortfall. In these circumstances, the presumption in favour of sustainable development as set out in paragraph 11d of the Framework would be engaged, unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
49. In this case, I have found that there would be unacceptable harm to the High Weald NL and to the setting of the Listed Building. Either of these planning harms on their own would be sufficient to provide a clear reason for refusing the development. Consequently, because of these clear reasons for refusing the development, the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework, is disengaged.
50. The scheme should be considered under a normal planning balance and planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
51. I have found in the section above, when considering the heritage balance, that the benefits of the scheme should afford moderate weight in favour of approval. I have come to this view notwithstanding the considerable shortfall in

housing supply against Framework requirements and that the occupants of the development would have reasonable access to services and facilities by a range of transport modes.

52. On the other hand, the harms and related policy conflicts are significant and wide ranging. Collectively they should afford very substantial weight against the proposal, and these harms and policy conflicts would not be outweighed by the benefits of the scheme.
53. For the reasons given above, there are no material considerations of such weight that indicate the proposal should be determined otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR