



Appeal Decision

Site visit made on 27 February 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2024

Appeal Ref: APP/C1435/W/23/3330211

Railway Crossing Cottage, Ersham Road, Hailsham, East Sussex BN27 2RG

- 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 Trevor Muddle against the decision of Wealden District Council.
 - The application Ref is WD/2023/1240/F.
 - The development proposed is proposed erection of 3 detached dwellings together with access road.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Appellant against Wealden District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The reasons for refusal did not allege any harm in relation to flood risk. However, the Council has drawn my attention to an appeal determined on 11 March 2024 regarding a site around 1km from the appeal site¹. While the Appellant disputes that the circumstances are similar, both cases concern development of a small number of houses on sites in the Hailsham area which are affected by surface water flood risk. The appeal decision could not realistically have been brought to my attention at an earlier stage, given its date, and raised issues relevant to the current proposal, which had not already been adequately covered in the evidence.
4. Both main parties have had the opportunity to provide further written representations on the relevance of the above decision and the issues raised, notably application of the sequential test. Both have also been able to respond to the other main party's representations. I have taken the appeal decision into account, along with an updated Flood Risk Assessment dated April 2024, which was provided by the Appellant as part of his response. Having received and considered comments from both parties, I am satisfied that this does not result in any procedural unfairness.
5. The Council is preparing a new Local Plan and has published a draft version for consultation under Regulation 18². This proposes a revised development boundary for Hailsham, which encompasses the appeal site. However, the

¹ Appeal Ref: APP/C1435/W/23/3322172, 1 The Drive, Hailsham BN27 3HN

² Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012

emerging Local Plan is at an early stage and subject to further change in response to consultation, so I have given it limited weight.

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 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. The main issues are:

- the effect of the proposed development on the character and appearance of the area, and
- whether the appeal site is a suitable location for housing having regard to application of the sequential test in relation to the risk of surface water flooding.

Reasons

Character and Appearance

8. The appeal site contains several modest sheds, with areas of lawn and a few trees. There is no physical boundary separating it from the garden of Railway Crossing Cottage, and the evidence indicates that the site was historically used as a cattery business associated with this existing dwelling.
9. The site is outside any settlement boundary, in an area of open countryside where sporadic dwellings are interspersed with significant areas of open land. However, a sizable residential development has been approved on the opposite side of Ersham Road and there is also extensive new housing to the north, which is visible across the intervening open land. As such, there is an increasing level of urban development nearby, although there is still a significant rural context around the site, particularly to the east and south.
10. The proposed development would be more intensive than is typical of the surrounding rural area. There would be limited separation between the proposed dwellings, compared to the more sporadic dwellings along Ersham Road. Therefore, if considered solely in relation to its existing rural context, the proposal would be somewhat incongruous.
11. However, the new development opposite the site will bring about significant change. The drawings provided with the Appellant's Statement of Case indicate that there will be new housing along the frontage to Ersham Road, behind a landscaped boundary, and that this would be on plots of broadly similar scale to the appeal proposal. The proposed dwellings would directly face this new housing, which was in the early stages of construction at the time of my site visit. I have therefore taken this evolving context into account.
12. The appeal site is physically contained between Ersham Road on one side and the raised Cuckoo Trail walking and cycling route on the other. It already contains some built development. The Council acknowledges that as a result of the above developments, it will be within a transitional area between new housing and open countryside. Therefore, given the particular circumstances of

the site, including its relationship with the development opposite, it would not erode the character of the surrounding Low Weald landscape.

13. Two storey dwellings with steeply pitched roofs are typical of the area and there are some substantial examples nearby. Railway Crossing Cottage is also on two storeys, although it has a narrow, elongated footprint resulting in a more modest roofscape. Within this context, the proposed dwellings would not be excessively bulky. The layout of the frontage includes space for cars to be parked close to the buildings, with soft landscaping in front, comparable to the layout of the approved development opposite. There would be a reasonable gap between Plot 3 and the existing dwelling, with the proposed single storey garage helping to maintain a sufficient sense of space in this part of the site. The rear garden to Plot 3 would be small, but Railway Crossing Cottage is likewise sited very close to its rear boundary. Therefore, this dwelling would not look incongruous or cramped, given its immediate context.
14. For the reasons given above, I conclude that the proposal would not be harmful to the character and appearance of the area, when the approved development opposite is taken into account. There would be no conflict with relevant requirements in Policies EN8 and EN27 of the Wealden Local Plan 1998 (WLP) or Spatial Planning Objective SPO13 of the Wealden Core Strategy 2013³ (WCS). These policies, amongst other things, require that development respects the character of adjoining development and conserves the low rolling agricultural character of the landscape. The proposal would also be consistent with relevant requirements in Policy HAIL D1 of the Hailsham Neighbourhood Plan 2021, which requires amongst other things that site capacity is optimised by responding to both the existing built form and the landscape.
15. Chapter 7 of the Wealden Design Guide 2008 provides guidelines for a designed approach, so that development responds to local context without relying on standard designs or replicating existing buildings. Similarly, paragraph 135 of the Framework advocates development which is sympathetic to local character, including its landscape setting, while not preventing appropriate innovation or change. The proposal would be broadly consistent with those principles.

Flood Risk

16. The appeal site is in Flood Zone 1, indicating low risk of fluvial flooding. However, it includes land which the Environment Agency's Flood Map identifies as being at medium risk of surface water flooding. This forms a band parallel to the boundary with the adjacent Cuckoo Trail, with much of the rest of the site identified as being at low risk. The Cuckoo Trail is elevated above the level of the appeal site and the FRA attributes the medium risk area to a ditch and culvert which collects run-off from this higher land.
17. The ditch and culvert lie outside the appeal site boundary according to the drainage drawings. However, the medium risk area indicated on the Flood Map clearly includes land within the appeal site. The Appellant highlights that the Flood Map is indicative and there are no previous recorded surface water flooding incidents on the site. However, no persuasive evidence has been provided to confirm that this wider band shown on the Flood Map is not, as a matter of fact, at medium risk of flooding.

³ Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan adopted 2013

18. The Framework advises that development should be directed away from areas at highest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Framework Paragraph 168 confirms that this sequential approach is to be followed in areas known to be at risk now or in the future from any form of flooding. Planning Practice Guidance (PPG) confirms that this means avoiding, so far as possible, development in high or medium flood risk areas, taking account of all sources of flooding, including surface water flooding. The requirement covers non-major development as well as larger proposals. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the PPG confirms that the sequential test still needs to be satisfied.
19. Although application of the sequential test is considered in the FRA, it is limited to the proposed position of the dwellings within the site. While I acknowledge that these would be set wholly or substantially within the area identified as being at low risk, the residential use of the site, including the rear gardens, would include the area at medium risk of flooding. Therefore, the proposed development is subject to the application of the sequential test.
20. The FRA does not consider whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Therefore, there is no clear evidence that the sequential test has been correctly applied or satisfied. The Appellant considers that the approach taken is proportionate and that the Council's proposed search area for reasonably available sites across the whole Eastbourne Housing Market Area would be unreasonable. However, even if I were to agree that a smaller search area was appropriate, that would not overcome the acknowledged lack of any such search for reasonably available sites at lower risk of flooding.
21. I accept that the appeal site is within the Appellant's control and that development on an alternative site may not be a viable proposition for him. However, the PPG states that lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available' for this purpose. The PPG also confirms that absence of a five year housing land supply is not a relevant consideration.
22. While the Council did not allege any shortcomings in the proposed surface water drainage system when it considered the application, and the FRA includes evidence that the development, including pedestrian access to the Cuckoo Trail, could be made safe for its lifetime, neither fact overcomes the failure to apply a sequential approach as required in the Framework and PPG.
23. For the above reasons, based on the evidence before me, I conclude that the appeal site is not a suitable location for housing having regard to application of the sequential test in relation to the risk of surface water flooding. While there would be no conflict with Policy CS2 of the WLP, which focusses on the technical arrangements for surface water drainage, there would be some inconsistency with Spatial Planning Objective SPO10 of the WCS, which directs planned development away from areas affected by flood risk. The proposal would also conflict with relevant paragraphs in the Framework and PPG, as summarised above.

Other Matters

24. Planning permission was granted for two dwellings on the site in 2020, but not implemented. The appeal proposal differs from the approved scheme in a number of respects and the PPG has subsequently been updated in relation to the application of the sequential test to all forms of flooding. Therefore, circumstances have changed, and I have considered the appeal proposal on its merits.
25. The Council acknowledges that the settlement boundaries in the WLP are out of date due to the lack of a five year housing land supply, and the Appellant has drawn my attention to housing permitted outside settlement boundaries in the locality. The Cuckoo Trail provides a route into Hailsham on foot or by bicycle, and there is a bus route along Ersham Road. Therefore, although the site is in the countryside, future occupiers would have reasonable access to services without being entirely reliant on travel by car. The Council did not allege any harm as a result of the site's location in relation to the settlement boundary. I have likewise given very limited weight to the conflict with policies in the WLP which define those boundaries.
26. By virtue of the shortfall in housing land supply, paragraph 11d of the Framework, and the similar provisions of Policy WCS14 of the WCS are relevant. However, in this case there is a clear reason for refusing the development based on the application of policies in the Framework relating to areas at risk of flooding. Therefore, the test set out in paragraph 11d ii of the Framework, sometimes referred to as the 'tilted balance', is not applicable.
27. Although I have found that there would be no harm to the character and appearance of the area, that is a neutral consideration which weighs neither for nor against the proposed development. Likewise, the absence of any alleged harm to highway safety, living conditions within neighbouring properties, existing trees or ecology are neutral considerations.
28. The proposal would make a small contribution to the supply of family housing, within a District where there is an acknowledged shortfall in housing land supply. It would also make more efficient use of a previously developed site, which is supported in Policy SPO14 in the WCS and in the Framework.
29. Set against those benefits is the harm associated with development in an area at risk of surface water flooding, at odds with the sequential approach set out in the Framework and PPG. This is a matter to which I give significant weight, and which outweighs the modest benefits associated with the proposal's small contribution to the supply of new homes.

European Sites

30. The appeal site is within an Impact Risk Zone (IRZ) for the Pevensey Levels Special Area of Conservation (SAC) and Ramsar Site. Within the IRZ, development affecting water levels and water quality could have a likely significant effect on this European Site⁴. Both parties propose that such effects could be mitigated by means of planning conditions relating to pollution control and maintenance of the surface water drainage system.

⁴ As defined in the Conservation of Habitats and Species Regulations 2017

31. The Council's Officer Report also indicates a requirement for mitigation of likely significant effects on the Ashdown Forest Special Protection Area, arising from increased recreational pressure. However, the Appellant disputes that the site is within the 7km buffer zone where such mitigation is required and highlights that this issue was not raised in connection with earlier applications on the appeal site.
32. In any case, since I am dismissing the appeal for other reasons, there is no need for me to undertake an Appropriate Assessment or to give the proposed approach to mitigation of likely significant effects on European Sites further consideration.

Conclusion

33. For the reasons given above the appeal should be dismissed.

Jane Smith

INSPECTOR