
Appeal Decision

Hearing Held on 14 May 2024

Site visit made on 14 May 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2024

Appeal Ref: APP/P1425/W/24/3337649

Manor Nursery, Theobalds Road, Burgess Hill, East Sussex

- 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 Mr R Mellett on behalf of Rego Property Development against the decision of Lewes District Council.
 - The application Ref is LW/23/0114.
 - The development proposed is erection of two detached dwellings with garages and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In considering whether to grant planning permission for development which affects a listed building or its setting, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I shall have regard to this statutory duty in my consideration of this appeal.
3. A pair of revised plans¹ have been submitted at appeal stage and thus after the Council resolved to refuse planning permission. These incorporate minor changes related to indicative planting in the interests of ensuring alignment with the appellant's approach to delivering biodiversity net gain. I am content that no party with a potential interest in the outcome of the appeal is prejudiced by me accepting the revised plans for determination purposes.
4. A new Local Plan is in the process of being drafted by the Council. However, as still at a relatively early stage in the plan-making process, its emerging policies currently attract limited weight. I shall determine the appeal on this basis.
5. Whilst the Council resolved to refuse planning permission for three separate reasons, it has opted, following full consideration of the supporting evidence submitted at appeal, not to defend its third refusal reason, which related to protected species and biodiversity net gain. I have formulated the appeal's Main Issue accordingly.

¹ Ref: Masterplan RCo329/Fig01 Rev 01 and Aerial Contextual Plan RCo329/Fig02 Rev 01, each supersedes Rev 00

Main Issue

6. The effect of the proposal upon the character and appearance of the area, having particular regard to its effect upon the setting and thereby the significance of the Grade II* listed building known as 'Theobalds'.

Policy Context

7. In line with spatial priorities, the Lewes District Local Plan Part 2 (February 2020) (the Part 2 LP) designates planning boundaries, and the Wivelsfield Neighbourhood Plan (December 2016) (the WNP) defines housing boundaries, within which the principal of new housing development is supported. The appeal site sits outside of any such boundary – although in proximity to Burgess Hill's planning boundary – and thus within the countryside as defined in local planning policy terms.
8. Policy DM1 of the Part 2 LP sets out that, amongst other provisions, new development will only be permitted outside of planning boundaries where it is consistent with a specific development plan policy or where the need for a countryside location can be demonstrated. Similarly, Policy 1 of the WNP indicates that proposals for housing development outside of defined housing boundaries will only be granted where consistent with the countryside policies of the development plan. As consistency with any such countryside policy or a clear need for a countryside location has not been demonstrated, there is identifiable conflict with both Policy DM1 and Policy 1.
9. However, it is common ground between the main parties that the spatial strategy outlined in the Lewes District Local Plan Part 1 (May 2016) (the Part 1 LP) is based upon a now outdated housing requirement and that the anticipated level of growth in Burgess Hill shall be higher than that indicated in both the Local Plan and the WNP. Indeed, an Interim Policy Statement for Housing Delivery (2021) (the IPS), which seeks to ensure a consistent approach to determining proposals outside of planning boundaries, acknowledges a stark increase in housing need when calculated in accordance with the Government's standard method.
10. As such, the parties have agreed that development plan policies relating to the delivery of new housing, which include Policy DM1 and Policy 1, can be afforded reduced weight. Thus, whilst the distinctive character and quality of the countryside would have influenced the positioning of designated planning and housing boundaries at plan-making stage, the site's position outside of said boundaries is not a determinative factor in the context of the outcome of this appeal. My following considerations are made accordingly.

Reasons

11. The site is situated to the rural fringe of Burgess Hill and abuts the northern side of Theobalds Road (the road), which serves as a bridleway. Established planting is in place to various stretches of the site's perimeter, including to its southern boundary with the road, and surround a somewhat overgrown central area. The site historically comprised farmland but accommodated a plant nursery for several decades prior to its closure in the 1990s, and the remnants of former non-domestic glasshouses/nursery buildings can be found in locations setback from the road.

12. Upon approach to the site from the west, the road is addressed by various residential properties that tend to be arranged in a linear pattern upon former field plots. These properties impart a strong suburban influence upon the character of this section of the road. The site itself occupies something of a point of transition. Indeed, despite influences of modern development, including off Orchard Close, the road takes on a noticeably more rural appearance to the east. This is owing to a prevalence of undeveloped spaces and verdant features, including a close by open area of grassed land that, relative to the site, sits beyond a buffer of woodland planting.
13. Whilst the site is not an untouched virgin field and sits alongside developed plots and associated domestic boundary treatments to the west, its makeup remains intrinsically rural, verdant, and open/undeveloped. Further, consistent with the findings of an Inspector (the previous Inspector) whom in 2021 considered the merits of a proposal² for three dwellings, the site is perceived as forming part of the rural setting of the settlement. Further, whilst an agglomeration of glasshouses and other buildings once occupied the site, merely their remnants now remain. In any event, a generally open and rural character would likely have prevailed. This is in-part owing to the simple and non-domestic specification fairly anticipated of former nursery buildings and structures.
14. On the opposite side of the road to the site is Theobalds, a Grade II* listed building. The significance and special interest of Theobalds is drawn, in part, from its age, its historic function as a farmhouse, its architectural form, and its relevance to the historic evolution and rural history of the area. This significance and special interest is further underpinned by the continued legibility of a farmstead complex and by the spaciousness and verdancy that defines the asset's grounds.
15. Consistent with Theobalds' farmhouse beginnings, its historic setting was once predominated by a broad amalgamation of agricultural land that often had a direct functional connection. The appeal site was in separate ownership when Theobalds first originated, and then again after the wider estate into which Theobalds was subsumed during the 19th-century was broken up and sold off in the early part of the 20th-century. Nevertheless, notwithstanding any suggestion of decline as a tenant farmhouse, it remains that the appeal site was farmed (even if as part of a larger field) by the occupiers of Theobalds for a considerable portion of the listed building's history.
16. It is relevant to my considerations that the historic setting of Theobalds has been significantly eroded by modern housing developments, including to the south, east and west. Moreover, the asset's rural setting has been compromised to a significant degree. In this context, even though not recently in active agricultural use and situated to the opposite side of the road relative to the historic farmstead, the appeal site, with its past functional connection, provides a valuable spatial link between Theobalds and its historic rural setting. Whilst other rural sites free from substantive development comprise part of Theobalds' setting, these are, in comparison, more peripherally situated. This includes the wooded land to the immediate east, notwithstanding its proximity to Theobalds' access point.

² Ref: APP/P1425/W/20/3265944

17. The physical relationship between the historic farmhouse and the appeal site is of an oblique nature, and a curtilage-listed barn that abuts and backs on to the road constrains intervisibility to some degree. Even so, a visual connection does ensue, as is apparent from locations along the road, including upon a westward orientation where the site and former farmstead can be experienced together and from the current point of access to Theobalds (which I acknowledge has relocated eastwards in recent history), as well as from selected points within the grounds and upper floors of Theobalds.
18. The appeal site's well-planted southern edge offers an important softening influence upon available views from the road and the grounds of Theobalds. Nevertheless, this planting does not provide an especially thick or impenetrable buffer and could not be relied upon to offer a consistent screen to views. This is not least due to a prevalence of deciduous species and to planting being ever evolving. It is also the case that the site's access point provides an opening through which the main body of the site and its rural edge character remains clearly appreciable, albeit from a constrained range of potential vantage points. Thus, the site's value to the setting of Theobalds is undeniably wider than any contribution made by existing boundary planting.
19. The design concept that has been followed has sought to take a contemporary approach to local distinctiveness. In the context of the built variety that is in existence along the road, I take no issue with the proposed designs of the dwellings in terms of their architectural form, detailing and materiality. Even so, the scheme involves new-build development at up to two storeys in a fundamentally rural location that, for reasons already set out above, has sensitivity in a heritage significance sense.
20. I note that one less unit is now proposed when compared to the scheme determined by the previous Inspector. This has allowed the intended southernmost dwelling to be shifted back from the road. Reductions in height and mass are also distinguishable when individual dwelling designs are compared. Even so, the proposal, which also includes freestanding garages and elements of hardstanding, would still dominate the site and obviously equate to further suburbanisation of the area. It is relevant in this respect that the intended open area to the front of the site would function as a domestic garden and be likely to accommodate a range of residential paraphernalia inconsistent with the site's current simple, natural, and open character. Moreover, a full encirclement of Theobalds by residential development/land uses would effectively materialise at odds with its historic rural farmhouse origins.
21. I am content that the scheme would not realistically necessitate works to the southern belt of planting that runs along the road. This is even when factoring in the need to ensure ample visibility in both directions from the site's entrance. I have also noted the intention to supplement existing on-site planting through a comprehensive scheme of soft landscaping, the intentions for which have evolved since the previous three-unit scheme was considered. Any such future detailed scheme to be secured via condition would be focussed upon the introduction of native species, would be formulated in broad accordance with the masterplan updated at appeal, and thereafter be maintained for a period of at least 30 years in line with the appellant's biodiversity net-gain aspirations.

22. However, new planting would take time to properly establish and, even if to be actively managed for a long time, could not be fairly anticipated to comprehensively disguise the introduction of residential development rising to two storeys nor the associated pronounced domestication of much of the appeal site that would inevitably prevail. Thus, even if future rights to utilise a range of permitted development rights were to be withdrawn, a material loss of rural character and value from a site that comprises an important part of Theobalds' setting would follow.
23. For the above reasons, the proposal would cause harm to the character and appearance of the area and fail to preserve the setting of Theobalds. As a result, harm would be caused to the designated asset's heritage significance. In the terms of the National Planning Policy Framework (December 2023) (the Framework), I would qualify that the degree of harm would be less than substantial. Whilst it would be fair to identify this harm to fall towards the lower end of any less than substantial spectrum, a failure to preserve the setting of a designated heritage asset of especially high value, reflected through its Grade II* classification, carries considerable importance and great weight. The Framework requires less than substantial harm to be outweighed by public benefits, which I shall return to within my Heritage and Planning Balance below.
24. From a local policy perspective, there is conflict with Policies CP10 and CP11 of the Part 1 LP, Policies DM1, DM25 and DM33 of the Part 2 LP, and Policies 1 and 5 of the WNP in so far as these policies promote the conservation or enhancement of the historic environment, define planning/housing boundaries, and require housing developments to reflect site context including the character of the surrounding area. For the avoidance of doubt, any suggestion of compliance with criteria contained within the IPS does not alter nor supersede this assessment against relevant policies of the development plan.
25. In the context of this Main Issue, I do not identify material conflict with either Policy DM35 of the Part 2 LP or Policy 6 of the WNP. Indeed, without prejudice to my above findings, given the localised nature of the scheme's visual influence and the intended setback position of the proposed dwellings, it cannot be fairly asserted that the scheme would cause material harm to the amenity value or attractiveness of the District's bridleway network taken as a whole. Further, whilst Policy 6 (Green Infrastructure and Biodiversity) contains a reference to the key features of the Parish landscape, it is a policy principally centred upon matters falling outside the remit of this Main Issue.

Other Matters

26. It has been brought to my attention that a major enlargement involving refurbishment of The Peak was granted planning permission in 2019. This neighbouring property is situated directly north from Theobalds and closer to the historic farmhouse when compared to the position of either new dwelling now proposed. However, this neighbouring scheme related to an enlargement of an existing dwelling and cannot be fairly or directly compared to a proposal for two new dwellings upon land that does not currently have a residential use. The 2019 permission at The Peak is thus of limited relevance.

27. I have been made aware of a proposal³ for six dwellings at a site off Slugwash Lane, Wivelsfield, where a positive recommendation was recently made at officer level despite that site acting as a point of transition between the built environment and the rural environment. However, unlike with respect to the site before me, an important role in providing rural character and value to the setting of a neighbouring listed building is not provided by this other site. Further, there is no confirmation before me that planning permission has in fact been granted for six dwellings. Thus, the Slugwash Lane proposal is of limited relevance to my considerations.
28. My attention has also been drawn to alleged inconsistencies in the positions taken by specialist consultees with respect to past proposals for development at the appeal site. However, of greatest relevance to my considerations are the consultation responses received in specific response to the scheme now before me for determination. Even so and for the avoidance of doubt, I have given due consideration to all submitted evidence.
29. I have noted objections/concerns raised by interested parties with respect to matters including highway safety, the construction phase, drainage, and the effect of past on-site tree removals. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters any further here.

Heritage and Planning Balance

30. As discussed above, the scheme would cause less than substantial harm to the significance of Theobalds and fail to preserve its setting and special interest, contrary to the expectations of Section 66(1) of the Act. It must be noted that even less than substantial harm to a designated heritage asset carries importance and attracts great weight.
31. In terms of public benefits, the scheme would deliver two accessibly located additional dwellings in a District where there is an acknowledged housing land supply shortfall. Indeed, the latest published position of a 3.02-year supply represents a significant shortfall. Thus, notwithstanding the findings of the previous Inspector in this regard and even though the contribution to be made towards boosting supply would be small, the provision of two additional dwellings attracts moderate and meaningful weight as a public benefit.
32. The scheme would also generate investment in the local economy during the construction phase as well as once occupied. I attribute limited weight to such benefits in lieu of the time-limited nature of construction works and the small scale of development under consideration.
33. The appeal submission is supported by a Biodiversity Net Gain Assessment (January 2024) that utilises The Statutory Biodiversity Metric to forecast a 14.31% increase in habitat units on-site and a 70.9% increase in hedgerow units on-site. Even so, these percentage increases, upon a site of not especially large size, translate to a somewhat modest number of additional habitat/hedgerow units when factoring in the baseline value that has been calculated. As such, limited weight can be fairly attributed to biodiversity net-gain as a public benefit.

³ Ref: LW/23/0532

34. In cumulative terms, the proposal's public benefits attract moderate weight. In the circumstances of this case, such benefits would not, in my judgement, outweigh the less than substantial harm that I have identified would be caused to the heritage significance of Theobalds.
35. The proposal conflicts with the historic environment conservation and enhancement policies contained within the Framework, which provide a clear reason for refusing the development proposed. Thus, the presumption in favour of development, as set out at paragraph 11 of the Framework, is not engaged. Moreover, there is identifiable conflict with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conclusion

36. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Peter Young	Planning Consultant, Dowsett Mayhew Planning Partnership
Charles Wagner	Heritage Consultant, Charles Wagner Heritage and Planning
Ronan Mellett	Appellant

FOR THE COUNCIL

James Smith	Principal Planning Officer
Tanya Szendeffy	Specialist Advisor, Design and Conservation

INTERESTED PARTIES

Harriet Martin	Chair, Wivelsfield Parish Council
Jack Warshaw	Heritage Consultant, Theobalds Road Residents Association
Simon Whitmill	Theobalds Road Residents Association
Shelia Blair	Wivelsfield History Study Group and local resident
Richard Maltby	Local resident
Antonia Okey	Local resident
Sarah Roberts	Former local resident