



Appeal Decision

Site visit made on 4 June 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2024

Appeal Ref: APP/C1435/W/23/3333025

Criss Cross, Wellbrook, Mayfield, East Sussex, TN20 6EA

- 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 Brookworth Homes Limited against the decision of Wealden District Council.
 - The application Ref is WD/2022/3248/F.
 - The development proposed is for the demolition of existing residential property and the erection of 6 dwellings and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing residential property and the erection of 6 dwellings and associated works at Criss Cross, Wellbrook, Mayfield, East Sussex, TN20 6EA in accordance with the terms of the application, Ref WD/2022/3248/F, subject to the conditions in the attached schedule.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

3. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became "National Landscapes". AONBs have been renamed and rebranded as National Landscapes to reflect *"their national importance: the vital contribution they make to protect the nation from the threats of climate change, nature depletion and the wellbeing crisis, whilst also creating greater understanding and awareness for the work that they do"*. Therefore, I have replaced references from AONBs to National Landscapes.
4. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published, however the changes do not materially alter the sections of the Framework most relevant to this appeal. Any references to the Framework hereafter in this decision are to the latest version.

Main Issues

5. The main issues are:
 - whether the proposal would contribute to a sustainable pattern of development having regard to the Council's spatial strategy and accessibility to services and facilities;

- the effect of the development on the character and appearance of the area, having particular regard to the High Weald National Landscape; and
- the effect of the proposed development on the ancient woodland.

Reasons

Spatial Strategy

6. The appeal site is located outside the development boundary of Mayfield where saved Policies GD2 and DC17 of the Wealden Local Plan (WLP) adopted December 1998 states that housing development will not be permitted unless it conforms with other policies in the plan. The supporting paragraph¹ of WLP Policy DC17 lists the types of development which are acceptable in principle outside development boundaries, and the specific local plan policy which applies to each. The proposal would not fall into any of these categories and therefore it would be in direct conflict with WLP Policies GD2 and DC17, and there is a presumption against this type of development in this location.

Access to services and facilities.

7. The Framework advises that housing development in rural areas should be located where it will enhance or maintain the vitality of rural communities and identify opportunities for villages to grow and thrive, especially where this will support local services. The Framework also seeks to promote alternative forms of transport other than the private car. Saved Policy EN1 of the WLP relates to sustainable development, which reflects the aims and objectives of the Framework in regard to rural development.
8. The Transport Report² highlights that Mayfield benefits from amenities and services, including a pre-school, St Leonards School, and limited shops and community facilities which are within a reasonable walking and/or cycling distance. Despite these facilities I accept that occupiers of the proposed development would also have to travel onwards to the services and facilities and employment opportunities within the larger settlements of Crowborough, Eastbourne, Heathfield or Tunbridge Wells to access a wider range of shopping, healthcare, leisure and entertainment facilities.
9. There are two bus services (Nos 51 and 226) providing routes to larger settlements, and from which future occupants could access other facilities. Whilst this would be an available alternative to the private car, it would be unlikely to be a realistic substitute to the convenience of a private car.
10. As such, given the scheme is outside of the defined limits of a settlement the proposal would be in conflict with WLP Policies GD2, DC17 and EN1 and the provisions of the Framework relating to sustainable access to shops and services.

Character and appearance

11. Paragraph 182 of the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes which has the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also

¹ Wealden Local Plan adopted December 1998 – Paragraph 5.91

² Transport Report prepared by GTA dated November 2022 Ref: 12106

important considerations in these areas. The scale and extent of development within these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. WLP Policy EN6 applies similar principles for protecting and enhancing these settings where possible.

12. The High Weald is characterised by predominantly open countryside of small pasture fields and blocks of woodland, enclosed by hedgerows and wooded shaws, in an undulating landscape of valleys and ridges. The settlement pattern tends to consist of smaller settlements strung out along the main roads which include remote farmsteads and villages.
13. The area to the rear of the site is open and relatively undeveloped providing a predominantly rural landscape indicative of the High Weald. The existing site is well screened with vegetated boundaries contributing to the verdant feel of the area, thus providing a relatively secluded location with restricted views from outside the site. It is acknowledged that there are some minor short views from the Mayfield Cricket Club and longer views from a public right of way to the south of the site, however any views of the proposal would be limited to glimpse views only, as highlighted in the visualisations contained in the Landscape and Visual Impact assessment³.
14. Whilst the appeal site contributes to the rural character of the surrounding area, it is also viewed in the context of the development within Rosland Avenue and Knowle Hill and the built development associated with the cricket club, albeit these are behind an established tree line. Nevertheless, given its position amongst the existing built structures, it would appear as part of this more developed section, thus its contribution to the open character of the High Weald National Landscape would be limited.
15. The scheme has been appropriately laid out, with a mixture of dwelling types, sizes and heights, which are adequately spaced from one another and the neighbouring developments not to appear cramped, providing a density representative of the local area. The proposed new dwellings have been suitably designed and have sought to replicate the general vernacular and traditional design features in the immediate area, to provide a respectful built form. It is acknowledged that the proposed gardens are relatively long, and the introduction of domestic equipment and paraphernalia could have a negative impact on the locality. However, the provision of appropriate conditions securing materials and restricting permitted development would mitigate any harm.
16. Consequently, the proposal would assimilate appropriately within the wider setting and conserve the landscape and natural scenic beauty, visual qualities and essential characteristics of the High Weald National Landscape, and the character and appearance of the surrounding countryside.
17. It would, therefore, comply with the relevant provisions of WLP Policies EN6 and EN27; Policies SPO1 and SPO13 of the Wealden District Core Strategy Local Plan (WCS), adopted February 2013 and the Framework insofar as they seek high quality design, respecting local, natural and historic character, appropriate to local landscape character and does not have a significant adverse impact on the setting of the High Weald National Landscape.

³ Landscape and Visual Impact Assessment prepared by Fabrik dated November 2023

Ancient Woodland

18. The Planning Practice Guidance and the Framework advises that ancient woodland is an irreplaceable habitat and is an area that has been wooded continuously since at least 1600 AD. Paragraph 186 c) of the Framework states that development resulting in the loss or deterioration of ancient woodland should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.
19. The appellants have supplied an Arboricultural Integration Report⁴ (AIR) and an Arboricultural Appeal Statement⁵ (AAS) which advise no development would be within the 15 metre buffer zone, as recommended by Natural England and the Forestry Commission to avoid root damage within root protection areas (RPAs). There are no significant RPA incursions that require precautionary measures. However, the AIR does indicate that low-quality trees and shrubs are to be removed⁶. Given that these specimens are categories 'C' and 'U' and are of low amenity value, their removal is not considered to harm the character and appearance of the area.
20. The AAS and AIR, provide details of replacement species, a report on the condition of trees, and also provides comprehensive advice on the loss of connectivity between ancient woodlands. They conclude that the most significant feature of the site currently providing that connectivity, namely the wooded belt along the southern site boundary, will be retained intact; and the network of proposed new native hedges will provide further linkages. The AIR further provides details, in the form of a Tree Protection Plan, of the necessary protection works to be undertaken during any construction work, and this could be conditioned as part of any approval.
21. The appellant has also provided an Ecology Report⁷ (ER) alongside an Ecology and Nature Conservation Statement⁸. The ER highlights that the development would not cause harm to wildlife, including a day roost for brown long-eared bats, and provides proportionate mitigation which is deliverable on site. The ER further highlights a range of enhancement measures to ensure that there would be no adverse impact to any protected species and the local wildlife. The Ecology and Nature Conservation Statement also highlights that the proposed landscaping plan will deliver gains to the ancient woodland, and that biodiversity gains can also be achieved. Therefore, based on this evidence, and in the absence of any to the contrary, I do not consider that the proposal would result in significant harm to the biodiversity of the area.
22. Subsequently, for the above reasons I do not consider that the proposal would result in the loss or deterioration of the ancient woodland or cause significant harm to existing biodiversity. It would therefore not cause harm to the character that the ancient woodland provides to the surrounding area. The proposed development would therefore accord with the relevant aims and objectives of the Framework; WCS Policies SPO1, WCS12 and WCS13 which amongst other things, seek to protect biodiversity, ancient woodland and irreplaceable habitats.

⁴ Tree Survey Arboricultural Integration Report prepared by Quaife Woodlands Ref: AR-4259-TSAIR-230302

⁵ Arboricultural Appeal Statement prepared by David Archer Associates dated October 2023

⁶ Ten trees and seven groups of trees and shrubs

⁷ Ecological Report prepared by AAe Environmental Consultants dated November 2022 Ref: 223334

⁸ Hearing Statement in respect of Ecology and Nature Conservation prepared by Ecology Solutions dated December 2023

Other Matters

23. The appellant cites several other appeals determined, including those within Wealden District. Based on the limited information before me, it is evident that they turned on their own particular merits. I therefore give these examples limited weight, as I cannot be certain that they are directly comparable. In any event, each case must be judged on its own merits, and I must determine the appeal on the merits of the case before me.
24. I have taken into account all of the other matters and concerns raised in the submissions by interested parties, which include but are not limited to, impact on biodiversity and protected species, the living conditions of neighbours, landscaping, removal of trees, drainage, impact on neighbouring conservation area and pressure on local services. Whilst I take these issues seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Some of the issues raised can also be controlled through conditions and by other regulations. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Planning Balance

25. In regard to housing land supply, both parties agree the Council cannot currently demonstrate an appropriate supply of deliverable housing sites, with both parties highlighting the Council's housing land supply as 3.83 years (76.6%) of land supply as of 1 April 2023. This is a substantial shortfall and carries significant weight.
26. Therefore, the provisions of footnote 7, paragraph 11 (d)(ii) of the Framework should be applied. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme.
27. I have found that the proposed development would conflict with WLP Policies GD2, DC17 and EN1 in terms of its location outside of the defined limits of development, which is a harm that attracts significant weight.
28. Having regard to the Government's objective of significantly boosting the supply of homes, the proposed development would have the benefit of contributing a net increase of 5 dwellings towards the undersupply of housing in Wealden District. Whilst this is a modest increase it is an increase, nonetheless. Furthermore, an appropriate commuted sum can be secured through a planning obligation towards the local supply of affordable housing. These are benefits attracting moderate weight in favour of the proposal.
29. There would also be temporary economic benefits during the construction phase to the local economy, and for the potential benefits of delivering biodiversity net gain and other environmental enhancements. To these social, economic and environmental benefits I attach moderate weight in favour of the proposal.
30. Taking all of the above into account, in applying paragraph 11(d)(ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission relating to the first main issue, would not significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.

Conditions and planning obligation

31. The Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework state that planning obligations must only be sought where they meet all of the relevant tests.
32. A planning obligation has been submitted within a Section 106 agreement to secure an offsite affordable housing contribution for the indexed sum of £404,958 in lieu of an onsite provision. The Section 106 legal agreement would meet the tests as it is necessary to make the development policy compliant, is related directly to the development and provides a fair and reasonable contribution from the appellant related in scale and kind to the proposal. Consequently, in terms of my considerations this represents a benefit of the development, weighing in its favour.
33. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance and have amended the wording of some without altering their fundamental aims. I sought the views of the parties on the conditions, including the appellant's agreement to pre-commencement conditions.
34. As well as the standard implementation condition, I have imposed a condition to ensure that the proposal is carried out in accordance with the approved plans to provide certainty.
35. Conditions relating to materials, hard and soft landscaping, and boundary treatments are necessary to secure the satisfactory appearance of the High Weald National Landscape and the enhancement of the immediate setting.
36. I have imposed conditions to ensure that there is appropriate vehicle and cycle parking provision, and a suitable car parking layout is maintained in the interests of highway safety and the living conditions of future residents.
37. Conditions relating to tree protection, ecology, biodiversity and external lighting are necessary to secure adequate protection for nesting birds, bats and other wildlife on and around the site and for the enhancement of biodiversity. The external lighting condition is also necessary to conserve dark skies in the High Weald National Landscape.
38. A condition to secure surface water drainage is required in the interests of sustainable water management and to reduce the risk of flooding both on and off site. A condition is also required to secure details of noise specification from heat pumps to ensure that the amenities of existing and future occupiers are protected.
39. Finally, I have also attached a condition removing permitted development rights for extension, alterations and additional structures within the curtilage of the properties to protect the openness and character and appearance of the High Weald National Landscape and countryside.

Conclusion

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Collectively the material considerations in this particular case, when set against the particular policy context and housing shortfall, clearly outweigh the harm as a result of the breach of WLP Policies GD2, DC17 and EN1.
41. For the reasons given above I conclude that the appeal should be allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
FL22-1919-050 A, FL22-1919-060 K, FL22-1919-061 J, FL22 -1919 – 070 C, FL22-1919-071 C, FL 22 - 1919 – 080 E, FL 22 - 1919- 090 D, FL 22 - 1919- 091 D, FL 22 - 1919- 092 D, FL 22 - 1919- 093 D, FL 22 - 1919- 094 C, FL 22 - 1919- 095 C, FA 22 - 1919- 096 C, FA 22 - 1919- 097 C, FA 22 - 1919- 098 C, FA 22 - 1919- 099 C, FL 22 - 1919 – 100 A, FL 22 - 1919 – 101 A, 12106_2100 P4, 12106_2200 P4, 12106_2201 P5, 12106_2202 P5, FL22-1919-072 C, FL 22 - 1919 – 073 C, FL 22 - 1919 – 074 C, 12106-1101 P5, 12106-1600 P5, 12160/1200 P3, FL 22 - 1919 – 085, BRO24022 10, BRO24022 – 11 SHEET 1 OF 3, BRO24022 – 11 SHEET 2 OF 3 and BRO24022 – 11 SHEET 3 OF 3
- 3) No development above ground level, including demolition, shall take place until details / samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted; the hard landscaping surfaces; and hard boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details / samples.
- 4) No development above ground level, including demolition, shall take place until a scheme for the enhancement of the site for biodiversity purposes, to include timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained for the lifespan of the development.
- 5) No external lighting shall be installed in connection with the development hereby permitted until such details have been submitted to and approved in writing by the Local Planning Authority. The details should demonstrate that the scheme will not disturb bat activity. All external lighting shall be

installed in strict accordance with the approved details and maintained and retained thereafter. No further external lighting shall be installed.

- 6) The development hereby approved shall be implemented strictly in accordance with the recommendations/measures stated in the supporting document: Precautionary Working Method Statement: Great Crested Newts, Ranmore, Wellbrook Hill, Mayfield (AA Environmental Limited, January 2023) and thereafter shall be retained for the lifespan of the development.
- 7) The development hereby approved shall be implemented strictly in accordance with the approved landscaping plans:
BRO24022 10, BRO24022 – 11 SHEET 1 OF 3, BRO24022 – 11 SHEET 2 OF 3 and BRO24022 – 11 SHEET 3 OF 3.

All planting, seeding and/or turfing comprised in the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

- 8) The development hereby approved shall be implemented strictly in accordance with the recommendations/measures stated in the supporting document: Drainage Report Ranmoor, Wellbrook, Mayfield, East Sussex TN20 6EA (GTA Civils & Transport, December 2022 Ref: 12106) and the approved Drainage Strategy Layout Plan 12106-1600 P5 and thereafter shall be retained for the lifespan of the development.
- 9) The development hereby approved shall be implemented strictly in accordance with the recommendations/measures stated in the supporting document: Tree Survey Arboricultural Integration Report (Quaife Woodlands Ref: AR-4259-TSAIR-230302) and the details contained in the Tree Protection Plan AR-4259 TPP-230302 included at Appendix D.
- 10) Before first occupation of the development hereby approved, the car parking spaces and turning area shown on drawing no FL 22 - 1919 - 073 Rev C and FL22-1919-060 Rev K shall be provided, and thereafter shall be retained for such purposes for the lifespan of the development.
- 11) Before first occupation of the development hereby approved, the cycle storage areas shown on drawing no FL 22 - 1919 - 073 Rev C and FL22-1919-060 Rev K shall be provided, and thereafter shall be retained for such purposes and shall not be used other than for the parking of cycles for the lifespan of the development.
- 12) Before first occupation of the development hereby approved, an acoustic report for the installation of heat pumps across the development site shall be submitted to the Local Planning Authority for approval. The report shall outline schemes to reduce noise and vibration arising from

each heat pump. The schemes shall ensure that noise levels from each heat pump will match or be lower than typical background sound levels obtained prior to development, at the nearest receptor. Neighbouring gardens shall be treated as a receptor if closer to a heat pump than a residential building. The scheme shall include the provision for post-installation noise monitoring to be undertaken by the applicant at the reasonable request of the Local Planning Authority.

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no extension, enlargement, alteration or provision within the curtilage of each of the dwellinghouse as provided within Schedule 2, Part 1, Classes A, B and E other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

END OF CONDITIONS