



Appeal Decision

Hearing held on 23 July 2024

Site visit made on 23 July 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/C1435/W/24/3343246

Chelwood, Pound Lane, Laughton, East Sussex BN8 6BE

- 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 Andrew Moxon of Helix Homes Limited against the decision of Wealden District Council.
- The application Ref is WD/2023/1925/F.
- The development proposed is for the erection of two dwellings, access, landscaping and associated infrastructure.

Decision

1. The appeal is dismissed.

Applications for costs

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

Preliminary Matters

3. The appellant has provided evidence that a District Level Licence (DLL) for Great Crested Newts has been secured. This partly satisfies the Council's third reason for refusal. Whilst this information has not been subject to any public consultation, the Council have had the opportunity to provide comments in relation to the additional information. On this basis, I am satisfied that no injustice would occur in accepting this information. The Council has indicated that, in light of the DLL, it is satisfied that subject to planning conditions, the proposal could be acceptable in regard to this issue, and as such it will not be pursuing the first part of the third reason for refusal.
4. Prior to the hearing opening the appellant sought to submit an updated Internal and Garden Daylight Assessment¹ which included specific reference to modelling the overshadowing effects for future occupiers within their garden areas. I was satisfied that the details were material to my decision. Whilst this was not submitted with the planning application, as part of the appeal process the Authority and interested parties have had the opportunity to comment on its contents. Therefore, I am satisfied that no party would be unfairly prejudiced by my consideration of this item of evidence, and I therefore exercised my discretion to accept it.
5. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the

¹ Prepared by Impact Sustainability (Ref: 2336/IDA/02 Rev 02) dated 09/07/2024

Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.

6. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023, and any reference to paragraph numbers are to this version.

Main Issues

7. The main issues in this appeal are the effects of the proposed development on:
 - the character and appearance of the surrounding area including trees;
 - the setting of Chelwood² a Grade II listed building;
 - biodiversity and wildlife habitats; and
 - the effect on the living conditions of future occupiers with specific regard to overshadowing.

Reasons

Character and appearance

8. The appeal site is located at the northern end of Pound Lane in Laughton and consists of a verdant area of land designated as lowland mixed deciduous woodland, a priority habitat. The site is subject to a group Tree Preservation Order (TPO)³ and due to their size and prominence the trees make a significant and positive contribution to the character and appearance of the area.
9. The south of the appeal site has a more developed feel, with several dwellings fronting Pound Lane albeit set back from the roadside, with local village facilities located further south, which include a post office/village shop and The Roebuck Inn public house both fronting Lewes Road. Adjoining the site to the north is Chelwood a Grade II Listed Building. Despite the presence of built development, both parties agree that the area has a bucolic feel to it.
10. Both parties agree that the site would represent previously developed land (PDL) as the site was historically used as a brickworks and would have provided low level linear brick drying sheds as highlighted in the historic maps and LiDAR ground surveys. However, the brick drying sheds have been demolished with only a small single-story storage building now occupying the site. The proposal would provide two detached dwellinghouses located within the existing wooded area. The proposal includes a modern interpretation of the historic linear brick drying sheds, albeit that the scheme would provide a "cranked" appearance to provide a more contemporary living arrangement for potential occupiers.
11. The density of development coupled with the restrictive nature of the plot size and retention of the TPO trees, provides a layout and overall footprint which would have an awkward relationship within the plot. The introduction of a built

² Official list entry number: 1436424

³ Wealden District Council Ref: TPO/2016/0001

- form into the appeal site would also erode the site's green nature and its positive contribution to the area as part of the bucolic environment.
12. Despite being enclosed (post and rail fencing), the sites' verdant and rural quality is distinct from the adjoining built forms and positively contributes to the rural character of the immediate area. A close board boundary fence provides a visual demarcation between the appeal site and Chelwood to the north. Nevertheless, the trees, shrubs and self-seeded vegetation which are interspersed within the site itself and also along its boundaries still provide an important buffer, which is key to the rural landscape characteristics.
 13. The proposed development will result in the removal of 23 trees, consisting of category B, C and U trees. Some of which are suffering from Ash dieback, a fungal disease affecting the common Ash tree and are likely to need removing in the future. The appellant has submitted an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan⁴, which highlights the trees to be retained and protected (during the construction phase) alongside mitigation planting. Whilst the proposal has been designed around the existing trees and seeks to retain as many as possible, it does not prevent the loss of the undeveloped nature of the site or its buffer function, and therefore results in harm to the character and appearance of the area.
 14. I have given careful consideration to the protection of existing trees offered by the TPO and the use of conditions which could protect the retained trees in order to mitigate any harm. However, the introduction of residential accommodation in this particular location, would increase need for more extensive and regular pruning. This would diminish the contribution the trees make to the character and appearance of the area and, in combination with the proposed built development, would impact negatively on the character of the area. As such, I am not persuaded that the imposition of conditions would mitigate the likelihood of further harm to the character and appearance of the area arising from the development's effect on trees in the longer term.
 15. Despite the dense and green screen, there would be good views of the proposed development from public vantage points along the footpath at the front of the appeal site. Whilst it is acknowledged that the trees could limit some views of the dwellings, this would be diminished in the winter months when there is less foliage. Furthermore, the use of fencing to screen the development would provide further built structures within this important buffer between the village and the rural setting. As such the imposition of residential development and associated domestic facilities, within the rural setting would provide a noticeable change in character, which would be especially apparent from users of the footpath, notwithstanding any potential landscaping scheme.
 16. In line with national policy, the proposed development would optimise the potential of the site to accommodate new housing. However, the proposed development would fail to respond positively to the existing character and appearance of the area and would have an unacceptable effect on the health and life expectancy of the trees, which are important landscape features.
 17. Accordingly, the scheme would be contrary to saved Policy EN27 of the Wealden Local Plan (WLP), adopted December 1998 and Policies SPO13, SPO14

⁴ Arboricultural Impact Assessment, Method Statement and Tree Protection Plan prepared by PJC (Ref: PJC/6553/24-01 Rev -) dated 24/04/2024.

and WCS14 of the Wealden District Core Strategy Local Plan (WCS), adopted February 2013 which collectively seek to secure high quality development, promoting local distinctiveness and securing the most efficient use of PDL, amongst other things. The proposal would also conflict with the Framework insofar as it requires development to be sympathetic to local character and seeks to safeguard significant trees.

Impact on setting of listed building

18. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.
19. The glossary of the Framework gives a definition of the setting of a heritage asset as "the surroundings in which a heritage asset is experienced". It goes on to advise that the extent of this setting is not fixed and may change as the asset and its surroundings evolve.
20. Chelwood is a Grade II listed building located adjoining the appeal site to the north. The listing indicates that the property's significance is derived from its architectural and historical interest. Chelwood is a good example of a small vernacular building which retains a significant proportion of its three-bay timber frame highlighting its architectural interest, with its historic interest derived from its evolution since the 16th Century, reflecting aspects of the changing pattern of rural domestic buildings and their occupation in the post-Medieval period. Despite the retention of its timber-framed construction much of the ground floor has been rebuilt in brick, with the front laid in Flemish bond.
21. Both parties agree Chelwood's setting is strongly rural in nature reflecting its historic origins as part of the wider agricultural landscape. Nevertheless, its setting has evolved over time through the operation of a brickworks at the appeal site during the 18th Century. The brickwork use has since ceased, and the appeal site has been subject to formal planting and self-seeded vegetation, providing the aforementioned green buffer. The existing boundary vegetation and close board fence at Chelwood, coupled with the extensive vegetation buffer at the appeal site, limits views of the property. Thus, its setting as an isolated rural cottage served by a single access from Pound Lane is retained. This treatment would therefore be more representative of its original relationship, and setting, within the surrounding agricultural landscape.
22. I acknowledge that Chelwood has undergone alterations overtime. The appellant makes specific reference to a replacement detached garage at the front of the site, and also a contemporary styled single storey extension to its rear⁵. These have been considered on their own merits. The Council granted the relevant consents finding the schemes would not overwhelm or compete with the main listed building, nor negatively affect its setting within the wider rural scene.

⁵ Wealden District Council Planning Refs: WD/2018/0234/F and WD/2018/0235/LB

23. The property has been listed a significant time after the nearby housing was constructed, as a rural domestic building. Despite the modest built development in the vicinity, the verdant and rural setting one experiences, when approaching Chelwood from Pound Lane, contextualise the listed building's rural origins, which contribute positively to its special interest and significance. The current verdant buffer at the appeal site reflects its original architectural and historic interest as a traditionally constructed remote agricultural cottage, opposed to any functional relationship with the brickworks at the appeal site.
24. As such, the provision of two contemporary dwellings at the appeal site would adversely affect the aforementioned characteristics, eroding its rural location and its contribution to the listed building's setting, special interest and significance. Nevertheless, I find the harm to the setting of the listed building to be less than substantial in this instance.
25. In accordance with paragraph 207 of the Framework, that harm, albeit limited, should be weighed against any public benefits of the proposal. The site would give rise to some economic benefits during the construction phase, and I consider that there would be modest social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. There are also benefits arising from the opportunity for a modest biodiversity net gain from the site.
26. However, these modest benefits are not considered to outweigh the identified harm to which I must attach considerable importance and weight. The proposal would, therefore, fail to preserve or enhance the setting, and thereby the significance of, the designated heritage asset. It would not accord with the policies of the Framework which seek to conserve and enhance the historic environment. Consequently, I have found conflict with the statutory presumptions under Section 66(1) of the Act, which carries considerable importance and weight, and I have also found that there would be conflict with WCS Policy SPO2 and the Framework, insofar as they relate to heritage assets.

Biodiversity

27. The main parties submitted a signed Statement of Common Ground (SOCG). The SOCG confirms that the parties are in agreement that the application was submitted prior to 01 April 2024 and is therefore not subject to a 10% biodiversity net gain (BNG) subject to Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environmental Act).
28. WCS Policies SPO1 and WCS12 seek to protect and enhance biodiversity, and where possible achieve a net gain. Policy WCS12 further indicates that there may be exceptional circumstances where compensatory measures for a net loss of biodiversity will be required.
29. Paragraph 180 of the Framework states that planning decisions should contribute to and enhance the natural and local environment protecting and enhancing sites of biodiversity and minimising impacts on and providing measurable net gains for biodiversity, amongst other things. Paragraph 186 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with

less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

30. The appellant provided a Preliminary Ecological Appraisal⁶ and Reptile Survey Report⁷ as part of their initial submission. As part of the appeal a BNG Assessment⁸ has also been undertaken to establish the baseline habitat at the site using the Statutory Biodiversity Metric. The BNG Assessment identifies four habitats within the survey area, one of which is lowland mixed deciduous woodland. This is a priority habitat listed in the Natural Environment and Rural Communities (NERC) Act 2006. Priority habitats cover a wide range of semi-natural habitat types and are identified as being the most threatened and requiring conservation action under the UK Biodiversity Action Plan.
31. With the use of the Statutory Biodiversity Metric, the BNG Assessment calculated the biodiversity score for the site as 2.08 units prior to the development. Post-development, the value would drop to 1.47 units which would represent a net loss in biodiversity of 29.44%.
32. Given the scale of the proposal, the loss of priority habitats cannot be re-provided on-site, nor does the Statutory Biodiversity Metric trading rules allow for a loss of high distinctiveness area habitats. Nevertheless, the appeal submission pre-dates the national BNG requirements, and whilst the metric aids decision making, it is not a decisive tool. The metric does provide a sensible baseline for considering the biodiversity value of the site, however given the timings of the scheme the proposal need only provide a modest BNG.
33. Therefore, based on the mitigation hierarchy, the appellant has sought the provision of an off-site BNG. From the evidence before me, they have engaged with Environment Bank to purchase 1.02 units of local lowland mixed deciduous woodland and heathland shrub, within the Wealden area, as an off-site BNG contribution in order to achieve the requisite gain. As such the off-site contribution would represent a last resort, in order to compensate for the loss of the priority habitat. Whilst off-site and only a limited gain, it is a gain, nonetheless.
34. Consequently, I am satisfied that in principle, subject to a condition and satisfactory arrangements to secure off-site contributions, that the development could result in net biodiversity gain. It would not, therefore, conflict with the relevant sections of WLP Policies EN1 and EN12; WCS Policies SPO1 and WCS12; nor paragraph 186.d) of the Framework, which collectively seek to secure measurable net gains for biodiversity.

Living conditions – overshadowing

35. An Internal Daylight Assessment was submitted with the planning application. The Councils delegated report and Statement of Case noted that the assessment did not consider the provision of daylight for the proposed garden amenity areas for the development. A revised Internal and Garden Daylight Assessment (IGDA) has been submitted with the appeal which seeks to address the outstanding issues in respect to the daylight received in the garden areas. Given that the updated IGDA provides further clarification on the living conditions, it does not alter the proposal under consideration.

⁶ Phlorum Ltd – Preliminary Ecological Appraisal Ref: 9473 Pea Rev2

⁷ Phlorum Ltd – Reptile Survey Report Ref: 9473 Chelwood Reptile Rev0

⁸ Phlorum Ltd – Biodiversity Net Gain Assessment Ref: 9473 Bng V1 Rev 0.2

36. In terms of daylight, the IGDA models the proposal in accordance with the tree constraints plan⁹ which includes the partial works undertaken as part of the approved TPO application¹⁰ referred to at the hearing. The IGDA sets out the results of Climate Based Daylight Modelling (CBDM). CBDM assesses daylight, sunlight and overshadowing effects using sun and sky conditions taken from weather data sets to assess average daylight factor. The results demonstrate that all the rooms meet the minimum guidance criteria of BS EN 17037 and therefore would meet the minimum daylight provision within UK dwellings. Accordingly, I am therefore satisfied that the overall daylight provision for the internal habitable rooms would be acceptable.
37. The updated IGDA also provides details on the potential overshadowing experienced in the proposed garden amenity spaces. In assessing the impacts of the trees on these amenity areas the assessment calculates the proposed amount of direct sunlight each area would receive on 21 March in accordance with the Building Research Establishment (BRE) document BR 209 – *"Site Layout Planning for Daylight and Sunlight, 2022"*. This advises that at least 50% of the garden area should receive at least 2 hours of direct sunlight on 21 March. The assessment indicated that all the amenity areas tested would meet the BRE guidelines in respect to overshadowing, as at least 50% of the garden spaces assessed would receive 2 hours or more direct sunlight on 21 March.
38. However, providing residential use in close proximity to the retained trees, would create an inevitable need for more regular and extensive pruning, to maintain sufficient clearance to minimise leaf litter and detritus. In addition, there is likely to be increased pressure to prune trees and canopies due to the degree of shading that would be experienced within the proposed developments and their gardens, irrespective of their protected status.
39. Nevertheless, the Council has submitted limited evidence to counter the findings of the updated IGDA. The appellants assessment confirms that the proposal would achieve the minimum requirements in respect to daylight on internal rooms and external amenity areas for the living conditions of future occupiers. Given its acceptability in this regard, and lack of evidence to the contrary, I am satisfied that any loss of light or overshadowing would not be significant.
40. For the reasons given above, the proposal would provide suitable living conditions for future occupiers in terms of the provision of daylight to internal and external amenity areas. It would therefore accord with WLP Policy EN27 which seeks to ensure a satisfactory environment for future occupants including adequate provision for daylight and sunlight, amongst other things. It would also accord with paragraph 135.f) of the Framework, which amongst other things, seeks to achieve high quality housing and a good standard of amenity for future occupants of buildings.

Other Matters

41. The appellant has drawn my attention to another scheme in Wealden District which has been granted planning permission at appeal¹¹. Based on the limited information before me, it is evident that the character and appearance of the

⁹ Drawing number PJC/6553/24/A

¹⁰ Wealden District Council Planning Ref: TM/2018/0006/TPO

¹¹ PINS Ref: APP/C1435/W/23/3328682

site differs to this appeal, as it appears more open and not subject to the same level of trees, shrubs and vegetation as the scheme subject to this appeal. Nevertheless, the scheme turned on its own merits, and as such I give this example only limited weight, as I cannot be certain it is directly comparable. In any event, each case must be judged on its own merits, and I must determine the appeal based on the evidence before me.

Planning Balance and Conclusion

42. It is not disputed that the Council has a shortfall both in its supply of deliverable housing land and its delivery of new housing in recent years. Paragraph 11.d) of the Framework therefore states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
43. The proposed development would deliver two new homes on the site, providing good quality accommodation. The site could be redeveloped quickly, and it would represent a more efficient use of PDL. The redevelopment of the site would deliver both social and economic benefits. I have also found that the proposal could provide modest BNG subject to suitable provisions to secure off-site BNG, although this is a neutral factor in my decision.
44. However, the appeal proposal would result in less than substantial harm to the significance of the Grade II listed building and this would not be outweighed by the public benefits of the development. The application of policies in the Framework which seek to conserve and enhance the historic environment therefore provide a clear reason for refusal. In addition, the appeal proposal would result in harm to the character and appearance of the area. This adds further weight against granting planning permission.
45. Therefore, in conclusion, whilst acceptable in some regards, the proposal conflicts with the development plan as a whole and there are no material considerations, including the Framework, which outweigh that conflict.
46. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal is dismissed and planning permission is refused.

Robert Naylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Moxon	Appellant, Helix Homes Limited
Mr Mark Pender	PMM Planning
Mr Liam Russell	LRA-R Retinue
Mr Steve Handforth	Handforth Heritage
Miss Olivia Dry	Phlorum, Environmental Consultants
Mr Peter Davies	PJC Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rob Berwick	Assistant Team Leader, Wealden District Council
Mr Thomas Chicken	Planning Officer, Wealden District Council
Ms Jo Tucker	Senior Conservation Officer, Wealden District Council
Mr David Massheder	Tree and Landscape Officer, Wealden District Council

INTERESTED PARTIES:

Ms Miranda Dart	Local resident
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