



Appeal Decision

Site visit made on 4 September 2024

by **Stewart Glassar BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th October 2024

Appeal Ref: APP/C1435/W/23/3330381

The Orchard, Ersham Road, Hailsham, East Sussex BN27 3PN

- 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 Mrs Tracey Cross against the decision of Wealden District Council.
 - The application Ref is WD/2023/0515/F.
 - The development proposed is the erection of a single dwelling, with parking provision and soft landscape scheme.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development is suitable for the site having regard to the character and appearance of the area and the living conditions of future occupiers.

Reasons

3. The Orchard comprises a chalet bungalow and garden. The plot as a whole is broadly linear in shape, with the existing dwelling positioned at the wider, northern end. Although the host property is more prominent and closer to Ersham Road than most of its nearest neighbours, overall, the plot makes a positive contribution to the spacious and open character of the area. The appeal site comprises the narrower, southern part of the plot. This land is essentially open in character and currently assists in the transition of the area's spatial character from town to countryside.
4. Given the shape of the appeal site and its relatively contained area, the arrangement and scale of built form as proposed would result in a dwelling positioned close to the site boundaries and Ersham Road. As such, it would appear in practical and visual terms cramped within its setting and squeezed into the plot. This would be harmful to the wider street scene and the more spacious character of the immediate area.
5. The proposed dwelling would have a contemporary design, which I do not find to be unacceptable. However, this does not overcome the awkward nature of the plot and that the development would appear cramped within it.
6. As a result of the building's proximity to the site boundary, there will be development within the root protection areas (RPA) of many of the trees bordering the site. The RPA is where roots and soil structure are most

important for a trees' viability and so there should usually be an overriding justification for construction within it. No such justification has been provided by the appellant.

7. The method of construction has been described as inserting piles and maintaining an air gap above the ground in order to protect the trees' viability. However, the positioning of the piles appears to be a somewhat 'trial and error' approach, given the unknown number and positioning of the trees' roots. Furthermore, even if the proposed piles of the houses were to not affect the trees' roots, the rear garden is positioned such that it would be overshadowed by trees for large parts of the day. There is likely to be pressure from subsequent occupiers to have some trees removed or reduced. Overall, the proposal does not give me confidence that it would sufficiently protect the integrity, health or longevity of the trees. Their loss would further contribute to the harm to the character and appearance of the area.
8. The use of features such as the internal courtyard, voids and high level glazing, together with the less encumbered outlook from the north west and south east elevations, would ensure that most of the internal spaces would be likely to receive adequate natural light and outlook. However, the use and enjoyment of Bedroom 3 is likely to be compromised by the existing boundary planting. Whilst this in itself may not be a reason to dismiss the appeal, it further underlines the restricted nature of the site and reinforces my conclusions regarding the effect of the proposal on the character and appearance of the area.
9. Consequently, I find that the proposed development is not suitable for the site. It therefore would be contrary to saved policies EN12, EN27 and TR16 of the Wealden Local Plan 1998, Policy WCS 14 of the Wealden Core Strategy Local Plan 2013, and Policies Hail D1 and Hail D2 of the Hailsham Neighbourhood Plan 2021 which, amongst other things, seek to ensure developments respect and are in keeping with the character of the area, and retain and enhance the contribution of trees to the landscape character of the area.
10. The proposal would also be contrary to Paragraph 135 of the National Planning Policy Framework (the Framework), which amongst other things, seeks to ensure developments are sympathetic to local character, including landscape setting.

Other Matters

11. The site is outside the built-up area of Hailsham. However, the Council has acknowledged that given its current housing land supply position, settlement boundaries will need to be breached. It does not object in principle to the location of this site for a new dwelling. Given the information before me, I see no reason to disagree.
12. The appellant has produced amended plans, including a swept path analysis, designed to demonstrate that there would be sufficient parking and turning space on site. The Council has indicated that this would overcome their immediate concerns in these respects, subject to appropriate conditions, although it would alter the red line boundary of the site. However, even if I were to accept the amended plans, this would not alter or outweigh the harm I have identified in relation to the main issue.

13. It is suggested that the host property is positioned close to the boundary trees but there has been no need to fell them. However, the existing dwelling is set slightly further away from the boundary planting than the proposed dwelling. Furthermore, it has usable outside areas positioned immediately around the building and existing residents currently have use of the appeal site. As such, the context and effect of the trees is different.
14. I note that the proposed terrace on the upper floor would offer some additional outside space. However, its size, position and accessibility would limit its practical uses and would not compensate for the harm I have identified in relation to the rear garden.
15. It would be open to the Council to consider imposing Tree Preservation Orders on some or all of the trees in question but this would not address the concerns I have identified in relation to the construction of the dwelling and the longer term health and retention of the trees.
16. The scheme would include an energy efficient design and offer ecological improvements. Although such measures are becoming more common, they nevertheless can be given a small amount of positive weight.
17. I acknowledge that the appellant received pre-application advice on the appeal proposal, some of which was broadly positive. However, in my experience, pre-application advice is usually given without prejudice and cannot pre-determine the outcome of a subsequent application. In any case, I have agreed with the Council's wider concerns insofar as the proposal would be harmful to the character and appearance of the area.
18. Although the proposal would meet the appellants' personal circumstances and that of their family, Planning Practice Guidance advises that planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission but there are no grounds in this case to justify such an approach.

Planning Balance

19. As the Council cannot demonstrate a five-year housing land supply, Paragraph 11(d)(ii) of the Framework is engaged.
20. The proposal would make a small numerical contribution to reducing the housing supply deficit but would nevertheless accord with the objective outlined within the Framework and recent Written Ministerial Statement to boost the supply of homes from a variety of sites. The development could be delivered in a reasonably short space of time and there would likely be small local employment benefits during the construction phase and some limited economic and social benefit from the additional people living there. Overall, the benefits associated with the scheme are modest in scale, as is the weight attributable to them.
21. Conversely, the Framework is clear that the provision of housing should not be at the expense of its environmental objectives and that development should be sympathetic to local character. I have found that the space proposed for the dwelling would be too small to accommodate the proposal and the new house would appear cramped and 'squeezed in' which would be harmful to the

street scene. It is not clear that the dwelling could be erected and/or occupied without compromising the adjacent trees. Overall, these harms would be prominent and long lasting and so they would attract significant weight.

22. This leads me to the view that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore does not apply.

Conclusion

23. Overall, the proposal conflicts with the development plan when taken as a whole and there are no material considerations, including the Framework, that outweigh that conflict. Therefore, the appeal is dismissed.

Stewart Glassar

INSPECTOR