
Appeal Decision

Site visit made on 5 November 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2024

Appeal Ref: APP/C1435/W/24/3339566

Fairfields Farm, Tunbridge Wells Road, Rotherfield, East Sussex TN6 3QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Henderson against the decision of Wealden District Council.
 - The application Ref is WD/2023/1959/O.
 - The development proposed is demolition of barn and erection of 5 No. detached houses with garages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was in outline with all matters reserved. Therefore, details of access, appearance, landscaping, layout and scale would be for later consideration. While the Location Plan was the only drawing listed on the decision notice, a site layout is included in the Noise Report¹. For the avoidance of doubt, I have treated those details as being indicative.
3. Areas of Outstanding Natural Beauty (AONB) are now referred to as 'National Landscapes', so I have referred to the High Weald National Landscape (HWNL) in this decision.
4. 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. On the same date, the Secretary of State made a written ministerial statement entitled 'Building the homes we need'. Both parties have had the opportunity to comment on any implications for consideration of the appeal and I have taken comments received into account.

Main Issues

5. The main issues are:
 - whether the proposed development would be a suitable location for housing having regard to the Council's spatial strategy and access to services and facilities,
 - the effect on the character and appearance of the area, with particular reference to whether the proposal would conserve and enhance the natural beauty of the High Weald National Landscape,

¹ Southdowns Environmental Consultants Final Noise Assessment March 2022

- whether adequate arrangements would be made to safeguard health and public safety, having regard to the alignment of the high pressure gas pipeline, and
- whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Suitability of Location

6. The appeal site is at the junction of Yewtree Lane and the A267 Tunbridge Wells Road, at the periphery of existing loose-knit ribbon development along both those roads. It contains a modern industrial style shed clad in metal sheeting, with a hardstanding for parking in front of the building and grassed, open land to the side. There is a cluster of housing opposite, including some recently erected dwellings at the Walled Garden.
7. In the Wealden Local Plan 1998 (WLP) Policies GD2 and DC17 restrict the development of new housing outside defined development boundaries. Policy WCS6 of the 2013 Core Strategy² retains development boundaries at Rotherfield and Mayfield but deletes a previous settlement boundary at the smaller village of Mark Cross. Neither Town Row nor Trulls Hatch are recognised as settlements within the hierarchy in Policy WCS6, and the appeal site is well outside any defined development boundary.
8. The Framework allows for some housing in rural areas, where it would not be isolated and would enhance or maintain the vitality of rural communities. At the same time, it directs significant development towards locations where the need to travel can be limited. In a similar vein, Spatial Planning Objective SPO8 of the Core Strategy allows for some growth to maintain and enhance an effective network of villages to support the needs of rural communities, while SPO7 aims to reduce the need to travel by car, by concentrating development where it most closely relates to public transport opportunities.
9. WLP Policy EN1 and Core Strategy Spatial Planning Objective SPO9 aim to address climate change, including through the location of development (EN1) and by minimising emissions of greenhouse gases (SPO9), which would encompass those associated with transportation.
10. Taking account of the other development close to the appeal site, and the network of nearby villages, the proposed housing would not be isolated. Future occupiers could make use of local services in Town Row and Mark Cross, including the village shop on Yewtree Lane. They would have access to more extensive services and facilities at Rotherfield and Mayfield. The introduction of five additional households may help to support the viability of services in these rural communities, although, as the appellant acknowledges, future occupiers could also drive easily to larger settlements such as Tunbridge Wells, Heathfield and Crowborough, so that cannot be guaranteed.
11. In terms of transport options, the site is located at the intersection of the main A267 and the much more rural Yewtree Lane, neither of which provide pavements or dedicated cycle facilities. Speed is unrestricted on the A267 and at the time of my site visit, there was steady, fast-moving traffic. While it is

² Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan adopted 2013

possible to walk along the grass verges, this is not a convenient or pleasant option given the traffic conditions and the distance to the nearest services.

12. The shop in Town Row is over 1km away. Some people may choose to walk or cycle there, along Yewtree Lane, but that would not be a feasible option for all future occupiers, including those with restricted mobility, or accompanying young children. In order to reach the public footpath into Mayfield, the main road has to be crossed and this rural right of way is not likely to be a suitable option for regular trips to shops, schools and services. As such, walking and cycling would not be realistic options for accessing local services on a frequent or routine basis.
13. The nearest official bus stop is also over 1km away and not conveniently accessible on foot, for the reasons outlined above. Although the appellant reports that buses will stop on request outside the site, and that there is a local school bus, the provision of a formal on-demand service is questioned by the Council, and it is not certain whether this arrangement could be relied on for the long term. Overall, while there is some access to public transport, the site is not in a location with a good range of travel choices.
14. For the reasons given above, I conclude that the proposed development would not be a suitable location for housing having regard to the Council's spatial strategy and access to services and facilities. In the WLP, it would conflict with Policies GD2 and DC17 as explained above and Policy EN1 which says that sustainable development principles will be applied when considering the location of development. The location would also be contrary to Policy WCS6 and Spatial Planning Objectives SPO7, SPO8 and SPO9 of the Core Strategy, which collectively direct growth towards locations with good access to services and facilities and which limit the need to travel by car.

Landscape

15. The appeal site is within the High Weald National Landscape (HWNL), which is characterised amongst other things by gently rolling topography and a patchwork of small fields and woodland. Fields are largely grassed, and roadside hedgerows and tree belts are prevalent. There is a pattern of dispersed rural settlements, including along the main roads and rural lanes, but the rural landscape of fields, woodland and hedgerows is a key contributor to the natural beauty of this nationally designated landscape.
16. Policy EN6 of the WLP requires that the natural beauty and character of the HWNL is conserved or enhanced and Spatial Planning Objective SPO1 in the Core Strategy makes clear that nationally designated landscapes will be protected. The Framework furthermore makes clear in paragraph 182 that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes.
17. While there is existing housing on the opposite side of the main road, and sporadically along Yewtree Lane and Argos Hill, the site otherwise adjoins extensive areas of open land. There is furthermore only limited built development within the site itself. The existing building is discreetly sited, set back from the road and on lower ground. It is painted dark green and enclosed within a backdrop of trees and scrub. Although utilitarian in appearance, it is neither conspicuous nor unduly unsightly, being typical of agricultural or small-scale commercial buildings in rural surroundings.

18. The building and parking area do not occupy the whole site frontage. The rest of the land is grassed and unfenced, allowing for a direct connection and outlook into the wider site at the rear, across the ponds. This opens up attractive longer views of the rolling landscape of small fields and woodland beyond the site, which are characteristic of the HWNL. These open parts of the site also blend into the wider landscape of open fields behind roadside hedgerows to either side of the A267, beyond the existing housing.
19. The plan in the Noise Report implies that the proposed dwellings would be in a broadly linear layout, parallel to the road. Given the shape of the site and the amount of development proposed, it is unlikely that the final layout would depart from that to a significant degree. As such, the development would encroach significantly into currently open parts of the site. While the design and scale of the dwellings may well reflect that of the nearby ribbon development and vernacular Wealden housing, there would inevitably be a substantial increase in building mass, as well as additional access roads, hard surfacing and domestic paraphernalia.
20. Even allowing for the fact that the trees and vegetation filter views from the road, there would be a much-reduced sense of connection with the surrounding landscape. The existing outlook across the ponds and into the wider landscape would be obscured by the dwellings and associated development, extending the built-up frontage on the north side of the A267. Consequently, the development would erode and undermine the site's positive relationship with the surrounding open land and therefore with the landscape characteristics and natural beauty of the HWNL.
21. Little detail has been provided of the circumstances leading to new dwellings being erected opposite. There is reference to replacement and conversion of existing buildings, but the evidence does not describe their extent or how they related to the landscape. In any case, the presence of these dwellings, and others approved nearby, does not justify further encroachment of residential development where that would be harmful to the HWNL, taking account of the specific circumstances of this site and its relationship with the rural landscape.
22. Given the limited extent of the existing building and parking area, it has not been clearly established that the whole site is previously developed land. Even if the whole site is regarded as being within the curtilage of the building, the definition in Annex 2 of the Framework makes clear that it should not be assumed that the whole curtilage should be developed. While both the Core Strategy³ and the Framework are supportive of redevelopment of previously developed land in principle, in neither case is that at the expense of other relevant considerations. Although the recently proposed planning reforms include an increased focus on previously developed land, no changes are proposed to the approach to development in National Landscapes.
23. For the reasons given above, I find that the proposed development would have a harmful effect on the character and appearance of the area and would neither conserve nor enhance the natural beauty of the HWNL. As such, it would conflict with relevant requirements in policy EN6 and Spatial Planning Objective SPO1, as summarised above. There would also be conflict with the focus of policy EN1 of the WLP on pursuing sustainable development, which the supporting text confirms includes the protection of important landscapes.

³ Spatial Planning Objective SPO14

24. Policies EN27 and SPO13 are of less direct relevance, since no detailed design or layout is under consideration. However, the adverse effect on the HWNL would conflict with the requirement in both cases that local distinctiveness should be promoted.

High Pressure Gas Pipeline

25. A high pressure gas pipeline runs broadly parallel to the A267, just outside the site, but across the vehicular access⁴. Consequently, the Council consulted Scotia Gas Networks Ltd (SGN) and the Health and Safety Executive (HSE) on the application, in accordance with paragraph 45 of the Framework. Both organisations objected to planning permission being granted based on the details in the planning application.
26. According to the appellant, sufficient separation could be maintained between the proposed dwellings and the pipeline. Evidence has been provided of an exchange of emails to that effect, in which an SGN representative refers to a required 16.5m building proximity distance, which the appellant is confident could be achieved. However, the correspondence in question is very brief and does not include full details of any wider technical requirements or working arrangements which would be necessary to maintain public safety.
27. In any case, subsequent to the above email exchange, both SGN and HSE objected to planning permission being granted. SGN's response maintains an objection until such time as a detailed consultation has taken place. Notwithstanding the appellant's letter seeking further advice from both bodies in respect of this appeal, there is no evidence before me confirming their objections have been overcome. Therefore, I cannot be confident that all relevant technical and safety requirements can be addressed.
28. Consequently, I conclude that it has not been demonstrated that adequate arrangements would be made to safeguard health and public safety, having regard to the alignment of the high-pressure gas pipeline. In this regard, the proposal would conflict with requirements in the Framework that relevant bodies should be consulted on development around pipelines and that planning decisions should promote public safety.

Affordable Housing

29. Policy AFH1 of the Wealden District Council Affordable Housing Delivery Local Plan 2016 requires amongst other things that affordable housing is provided at a level of 35% of the number of dwellings on development sites with 5 (net) dwellings or more. Although paragraph 65 of the Framework says that affordable housing should not be sought for residential developments that are not major developments, the proposal is major development due to the size of the site. Consequently, the requirement in Policy AFH1 is applicable.
30. No affordable housing is proposed on site, but the Council has confirmed that, given the nature and scale of the proposal, a commuted sum would be acceptable in lieu of on-site provision. Policy AFH1 allows for this approach in exceptional circumstances, including where a Registered Provider finds it uneconomic or impractical to provide the units in the scale or form agreed. The Framework also allows for financial contributions towards off-site provision

⁴ As illustrated on map attached to SGN letter dated 2 October 2023

where the approach can be robustly justified, and where the agreed approach contributes to the objective of creating mixed and balanced communities.

31. Even if I were to find that the proposed approach is justified, the question is moot, since no legal agreement has been submitted to secure payment of a commuted sum. The appellant confirms that a financial contribution can be offered and alludes to approaches having been made to the Council in the past in relation to drafting of an appropriate legal agreement. However, there is no such planning obligation before me and the appeal form confirms that it is not intended to provide one.
32. Had I been otherwise minded to allow the appeal, this is a matter on which I could have sought clarification from the parties. However, based on the evidence before me, no adequate details are available as to the proposed commuted sum, a legal mechanism to secure it, or any other proposed form of affordable housing provision. Consequently, I conclude that the proposed development would not make adequate provision for affordable housing and would conflict with the requirements of Policy AFH1, as outlined above.

Other Matters

33. Planned development on the edge of urban settlements would generally benefit from a wider range of services and transport options, even if it doesn't itself include new shops and services. Little detail has been provided of the recent additional dwellings which the appellant refers to Town Row, or whether they have a similar relationship with local services and the HWNL. On the other hand, the Council's evidence highlights a fairly recent appeal decision in relation to land very close to the appeal site⁵ which found that the location was unsuitable for further residential development for similar reasons to those set out above. Considered in the round, nothing in the evidence about other developments nearby or in the wider District clearly outweighs the conclusions reached above in relation to the suitability of the location.
34. It is not the function of this appeal to consider the authorised use of the existing building or whether it benefits from permitted development rights allowing for its conversion to residential use. Even if it could be converted, that would involve a smaller portion of the site and would not elongate the developed frontage to a similar extent. Therefore, this potential fallback position does not outweigh the conclusions above in relation to the harmful effect on the HWNL.
35. While the Council concluded that no Environmental Impact Assessment (EIA) was required, this does not mean that there would be no impact on the HWNL, but only that the threshold for EIA is not breached.
36. The Council acknowledges that there is a shortfall in housing land supply, with less than four years' supply being in place at the time of the Council's decision. There was also a shortfall in housing delivery based on Housing Delivery Test results at that point. No updated or contrary evidence has been provided. Based on the evidence before me, the shortfall is significant and there is no clear indication that it will be resolved in the near future.
37. The proposed development would make a modest but meaningful contribution towards housing supply and would make increased use of a relatively small

⁵ Appeal Ref: APP/C1435/W/22/3290889, decision dated 24 March 2023

site where there is already some built development. However, the dwellings would not be in a suitably accessible location. While a highly energy efficient scheme may be achievable, that cannot be clearly determined in the absence of a detailed design or layout. Furthermore, any contribution towards addressing the effects of climate change through the design and construction process would be offset by the need to travel by car.

38. No safety concerns were raised by the Highways Authority, but nor is there any indication of any likely highway safety improvement. As such the highway safety considerations are broadly neutral. However, the Highways Authority did raise an objection due to the level of car-reliance, and additional representations made on their behalf in response to this appeal maintain that objection. Other technical matters raised by consultees could be addressed through conditions or the reserved matters.

Planning Balance

39. The harm to the HWNL is, of itself, a matter carrying great weight, in accordance with paragraph 182 of the Framework. In addition, the lack of a secured approach to provision of affordable housing and lack of adequately demonstrated measures to maintain public safety weigh significantly against the proposal. Against that background, even if I were to ascribe reduced weight to the conflict with the Council's spatial strategy, in light of the housing land supply position, the collective harm would very clearly outweigh the benefit arising from five additional dwellings.
40. Given the housing land supply position, paragraph 11d of the Framework is relevant. However, there is a clear reason for refusing the proposal, based on the application of policies in the Framework that protect the HWNL. Therefore, the test in paragraph 11dii is not applicable.

Conclusion

41. For the reasons set out above, the proposal does not benefit from the presumption in favour of sustainable development as articulated in paragraph 11 of the Framework and Policy WCS14 of the Core Strategy.
42. The proposed development would conflict with the development plan and no material considerations indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

Jane Smith

INSPECTOR