



Appeal Decision

Site visit made on 7 November 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 2 December 2024

Appeal Ref: APP/C1435/W/24/3340787

Talisker, Vines Cross Road, Horam, East Sussex TN21 0HF

- 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 and Mrs H McCowan against the decision of Wealden District Council.
 - The application Ref is WD/2023/2139/F.
 - The development proposed is replacement of an agricultural barn with a single-storey carbon positive dwelling including change of use of land to residential, associated new access and landscape and biodiversity enhancements.
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of an agricultural barn with a single-storey carbon positive dwelling including change of use of land to residential, associated new access and landscape and biodiversity enhancements at Talisker, Vines Cross Road, Horam, East Sussex TN21 0HF in accordance with the terms of the application, Ref WD/2023/2139/F, subject to the conditions in the attached schedule.

Preliminary Matters

2. Consultation on an emerging Local Plan (eLP) for Wealden up to 2040 concluded in May 2024. The eLP is at a very early stage of production, the extent to which there are unresolved objections to relevant policies is unknown, and the degree of consistency of the policies to the National Planning Policy Framework (the Framework) has not been tested. Consequently, very limited weight is given to the policies within the eLP.
3. Following a review of the land registry document¹ provided by a neighbouring landowner and the Location Block Plan². There is no evidence to indicate that the Appellant has not served the correct notices.

Main Issues

4. The main issues are:
 - whether the appeal site is an appropriate location for residential development, having regard to the spatial strategy and the accessibility of services and facilities; and,
 - the effect of the proposal on the character and appearance of the area.

¹ Title No. ESX87374

² Drawing No. 7709/LBP/B

Reasons

Location of proposal

5. Policies GD2 and DC17 of the Wealden Local Plan, December 1998 (WLP), indicate that outside of the development boundaries residential development will not be allowed, unless it conforms with other policies in the plan. The appeal site is located outside of the development boundary and the proposal would not conform with other policies relating to the location of residential development. Therefore, it would be contrary to WLP's spatial strategy. In addition, the appeal site is outside of the amended development boundary for Horam within the eLP. Therefore, the appeal proposal is also contrary to the spatial strategy set out in the eLP.
6. The Framework does not seek to restrict residential development in the countryside. Instead, it indicates that significant development should be focused on locations which are, or could be, sustainable through limiting the need to travel. It also seeks to promote walking, cycling and public transport. Paragraph 109 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
7. Horam is a rural village and the number of facilities, and the provision of public transport is limited. However, it accommodates a dentist, supermarket, pharmacy, takeaway and hairdresser, amongst other facilities. There are also bus stops in proximity to the appeal site which provide services to larger settlements that have a greater provision of facilities. Most of the facilities within Horam are significantly less than 1 mile walking distance from where the proposed dwelling would be sited. Although the route undulates, there is a footpath between the village centre and the appeal site along residential roads. Given the distance, topography and characteristics of the road, future occupiers of the proposed dwelling would not be overly disincentivised from walking or cycling to facilities within Horam.
8. The distance to the village's facilities is greater than 800m, as recommended within Manual for Streets, and the distance to the bus stops is greater than 400m, as recommended by the Chartered Institution for Highways and Transportation. Nevertheless, this is guidance and not a strict requirement for new development. I acknowledge that future occupiers of the proposed dwelling may be somewhat dependent on the use of private motor vehicles given the rural location. However, in the context of paragraph 109 of the Framework, the site has good access to facilities which are within walking and/or cycling distance and there is a moderate provision of public transport.
9. Overall, I conclude that the appeal site is not an appropriate location for residential development having regard to the spatial strategy. It would be contrary to WLP policies GD2 and DC17, for the reasons given above. Nonetheless, services and facilities are accessible from the appeal site via walking, cycling, and/or public transport. As such, the appeal proposal would be in accordance with policies SPO7 and SPO8 of the Wealden District Core Strategy Local Plan, February 2018 (WCS). These policies indicate that the Council will seek to reduce the need to travel by car and will accommodate growth in villages where it would be sustainable.

Character and appearance

10. Section 85 of the Countryside and Rights of Way Act 2000 indicates that in exercising any function in relation to, or so affect, land in National Landscapes, public bodies must seek to further the purpose of conserving and enhancing the natural beauty of the area. Further to this, the Planning Practice Guidance (PPG)³ advises that this duty is relevant in considering development proposals that are situated outside of National Landscape boundaries, but which might have an impact on their setting. The land on the opposite side of the access track is within the High Weald National Landscape (HWNL). I therefore have a statutory duty to seek to further the purpose of conserving and enhancing the natural beauty of the HWNL.
11. The appeal site is a field located behind houses on Vines Cross Road. It is largely free from development other than a modestly sized barn. The sites boundaries are well defined by mature vegetation including several large trees. There are relatively open views between the site and neighbouring rear gardens. However, there are only glimpsed views between the site and the HWNL. Therefore, the site is visually well contained from the HWNL and relates to the residential development. The site appears as a verdant transition between residential development on Vines Cross Road and the vineyard. The area is suburban in character.
12. Whilst the proposed dwelling would be sited in a similar position to the existing barn it would be significantly larger. The proposal would also lead to domestic paraphernalia and residential activity being introduced to the site. This would alter the character and appearance of the appeal site. Nonetheless, the proposed dwelling would be set in spacious grounds and most of the existing verdant borders would be retained. The proposal would respond to the suburban character of the area and would, therefore, be in accordance with the Wealden Landscape Character Assessment. Furthermore, a two-bedroom dwelling would only lead to a modest increase in activity. As such, the tranquillity of the area would not be materially harmed.
13. The proposal would include four rooflights, which would be commensurate to the size of the proposed dwelling. A condition could be attached to any planning permission which would restrict the installation of external lighting. The proposal would therefore not have a harmful effect on the dark night sky.
14. The proposed dwelling would be sited behind properties on Vines Cross Road and would appear as backland development, which is not supported by the eLP. However, the proposal would create a more defined edge to Horam by partially infilling the gap between residential development at the vineyard and Vines Cross Road. The proposal would also utilise the existing access track, so it would follow the established road layout. I therefore consider that backland development in this instance would not be harmful to the character and appearance of the area. As such, the proposal would not set a harmful precedent.
15. Whilst the design of the proposed dwelling would not conform with the design guide for the HWNL, the appeal site is located outside of its boundary. Also, a condition requiring the specification of external materials to be agreed with the Council would ensure that the proposed dwelling does not appear incongruous.

³ Natural Environment Chapter, Paragraph 039, Reference ID:8-039-20190721

The proposal would therefore assimilate with its surroundings and conserve the natural beauty of the HWNL and its setting.

16. Overall, I conclude that the proposal would not have a harmful effect on the character and appearance of the area. The proposal would comply with WLP policies EN8 and EN27 and WCS Policy SPO1 which indicate that particular regard will be had to the setting of settlements in the Low Weald; the scale, form, density and design of the development should respect the character of adjoining development; amongst other matters.

Other Matters

17. The appeal site is in proximity to the Grade II listed 'Thatched Cottage'. The significance of the listed building includes its traditional architecture and its rural setting. The appeal site is located on the other side of Vines Cross Road behind large residential properties. The visual connection between the appeal site and Thatched Cottage is tenuous. The proposal would assimilate with the suburban character of the area and would not alter the rural setting of the listed building which is largely associated with the farmland to the south and vineyard immediately opposite. As such, the appeal proposal would preserve the listed building, its setting, and any features of special or historic interest that it possesses.
18. There is no substantive evidence that an appropriate surface water drainage scheme could not be design. A condition could be attached to any planning permission requiring details of a drainage scheme to be agreed with the Council to ensure it does not increase flood risk elsewhere or lead to contamination. Also, conditions attached to any planning permission would ensure that trees and protected species are adequately protected. The proposal also includes biodiversity enhancement measures which could be secured via condition.
19. With appropriate protection measures the public right of way (PROW) which runs along the access track could be kept open during construction. Similarly, the limited increase in activity once the proposed dwelling is occupied, would not render the use of the PROW unsafe.
20. Although the sub-division of the field would be harmful to the ongoing viability of its agricultural use, there is no substantive evidence that it could not form part of a wider agricultural unit. Moreover, the age of the existing barn, whether it has been actively used for agricultural purposes, and the proposed dwelling not being an affordable home are not matters which alter my assessment on the acceptability of the appeal proposal.

Planning Balance

21. As the proposed dwelling would be sited outside the development boundaries it would be contrary to WLP policies GD2 and DC17. There are no policies within the development plan which would support residential development of this nature at this location. Therefore, the proposal is contrary to the development plan when considered as a whole.
22. In accordance with paragraph 226 of the Framework the Council is only required to identify four years' worth of deliverable housing land supply. The Council can only demonstrate 3.83 years supply of deliverable housing land.

Consequently, because of the provisions of footnote 8, paragraph 11 d) ii of the Framework applies.

23. The WLP dates from 1998 but the weight to be attached to its policies does not hinge on its age. Rather paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework makes it clear that the planning system should be genuinely plan led. Notwithstanding this, the Framework directs development toward places which are sustainable and reduce the need to travel and promotes walking, cycling and the use of public transport. Thus, harm persists as the proposal is not in accordance with the spatial strategy, but the extent of the harm is limited as where the appeal site is located would promote walking, cycling and the use of public transport.
24. Set against the harm identified would be several benefits. This includes an additional dwelling toward the overall supply of housing. An increased local population would improve the vitality of local businesses and there would be economic benefits associated with the construction period. Although the environmental credentials of the property are disputed there would be some benefit associated with the construction of an energy efficient home and the inclusion of biodiversity enhancements. Considering the modest scale of the development and the Council's supply of deliverable housing land, I ascribe moderate weight to the benefits of the proposal.
25. Consequently, the adverse effects of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development applies, as set out in the Framework and WCS policy WCS14.

Conditions

26. The Council has indicated the conditions that it considers would be appropriate. I have considered these in light of the guidance contained within the PPG and the Framework.
27. Conditions specifying a time limit to implement the permission and approved plans are required in the interest of certainty. Conditions requiring details of the external finishes, hard and soft landscaping schemes, and external lighting to be approved by the local planning authority are required in the interest of character and appearance. Moreover, a condition restricting certain forms of permitted development is necessary to ensure that the proposed dwelling or development footprint could not be significantly extended without prior consent of the Council to ensure the development retains its spacious setting.
28. Conditions requiring surface water and foul drainage to be agreed with the local planning authority are necessary to ensure the site drains appropriately. Similarly, a condition requiring assessment of the risk of contamination is necessary to ensure that the development does not lead to an increased risk of contamination from water sources. Furthermore, a condition requiring a remediation scheme to be agreed if previously unknown contaminated land is discovered, is necessary to ensure the construction of the proposal does not contaminate neighbouring land.

29. A condition requiring the PROW to remain free of obstruction is necessary to ensure that the public would be able to continue using it. Similarly, a condition requiring the access to be laid prior to occupation and for it not to restrict the use of the PROW is reasonable to ensure the proposed dwelling could be safely accessed.
30. A condition requiring details of a tree protection plan to be agreed with the local planning authority is necessary to ensure retained trees are not harmed by the proposal. Conditions requiring details of the carbon positive and biodiversity measures to be agreed with the local planning authority are necessary to ensure that these measures would be delivered and to ensure these benefits of the scheme are realised.

Conclusion

31. The proposed development would conflict with the development plan but material considerations, notably the presumption in favour of sustainable development, indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be allowed.

J Hobbs

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. 7709/LBP/B; 7709/L1/E; 7709/L2/A; and 7709/P1/C
- 3) No development shall commence until full details of the proposed means of surface water disposal has been submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed prior to occupation of the dwelling and retained thereafter.
- 4) No development shall commence until full details of the proposed means of foul drainage disposal has been submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed prior to occupation of the dwelling and retained thereafter.
- 5) No development shall commence until an assessment of the risks posed by any contamination including water quality has been submitted to and approved in writing by the local planning authority. This assessment must be in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
 - iii) An appraisal of remedial options and proposal of the preferred option(s)
- 6) No development shall commence until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
 - 7) No development above ground level shall commence until a scheme of landscape proposals has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include full specifications for all hard and soft landscape works, including the species of proposed planting. The approved landscaping details shall be carried out and retained as such thereafter.

All planting, seeding or turfing comprised in the approved details of landscaping 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 or plants which within a period of 5 years from the completion of the 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.

All hard landscaping shall be constructed prior to the first occupation of the dwelling.

- 8) No development above ground level shall commence until a scheme for enhancement of the site for biodiversity purposes to include timescales for implementation and future management has been 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 retained thereafter.
- 9) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces, including specifications for the rooflights, 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.
- 10) No development above ground level shall commence until details of the 'carbon positive' measures, including the incorporation of water and energy efficiency measures, the promotion of renewable energy, and sustainable construction within the development has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter so retained.
- 11) Prior to the occupation of the dwelling the access shown on drawing no. 7709/L1/E shall be laid out. The access shall be laid out in such a way as to not preclude access to, or block the use of, the Public Right of Way identified as Horam 23a. The access shall be retained thereafter.
- 12) No external lighting shall be installed until full details including height, design, location, and intensity has been submitted to and approved in writing by the local planning authority. The lighting installation shall then be carried out in accordance with the approved details and retained thereafter.
- 13) In the event that contamination is found that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which shall be submitted to and agreed in writing by the local planning authority.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, E, and F of Part 1 of Schedule 2 to the Order shall be undertaken.
- 15) The Public Right of Way identified as Horam 23a shall remain clear and unobstructed at all times and no materials or plant shall be stored on the

footpath both during and after the construction period. All waymarking and furniture shall be retained.