
Appeal Decision

Site visit made on 11 December 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/U1430/W/24/3341436

Coombe Cottage, Ewhurst Lane, Northiam, East Sussex TN31 6PD

- 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 Gavin Pierce and Mr James Pierce against the decision of Rother District Council.
 - The application Ref is RR/2023/2358/P.
 - The development proposed is described as the 'Demolition of existing bungalow. Provision of two 2 bed house and one 4 bed bungalow'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by the Government in December 2024, after the determination of the planning application. It does not raise any new considerations in relation to this appeal.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to the High Weald National Landscape.

Reasons

4. The appeal site is located within the High Weald National Landscape (HWNL) an area designated for its landscape and scenic beauty. The Framework places the highest status of protection on these issues. The local planning policies are broadly reflective of this approach.
5. The appeal site comprises an existing single storey dwelling and is one of a ribbon of houses at the western end of Northiam. Development along Ewhurst Lane is only on one side of the road and the surrounding area is generally characterised by undulating verdant landscape, interspersed by tree belts.
6. The houses in the immediate vicinity of the appeal property, whilst of various designs are similarly single storey, albeit some of them have accommodation within the roofspace. The properties do also generally share a similar palette of external materials, are set behind mature boundary planting and benefit from being within well sized plots and set apart from one another. The area therefore has a rural and spacious character to which the appeal site positively contributes.

7. The loss of the existing dwelling is not a contentious issue between the two main parties, and I have no reason to come to a different conclusion. The two replacement dwellings at the front of the site would be positioned either side of a new vehicular entrance and set in from the side boundaries. As a result, the plots and dwellings would appear narrower and so contrast with the more spacious character of the immediate vicinity.
8. These new dwellings would have accommodation in the roof. Their overall height would not appear excessive. However, given the roof designs and the building's footprint, meeting the necessary building standards would result in a top-heavy appearance which would visually jar with the proportions of the nearby houses.
9. A new single storey dwelling would be positioned on the rear part of the site. It would be on lower lying, sloping ground, and so would be tiered into the site and have a mono-pitch green roof. Notwithstanding these features, by virtue of its size and design, the dwelling would be a notable built presence in what would be an otherwise open and spacious edge of village location. It would be particularly evident when viewed from the public footpath to the southeast of the appeal site, as it is at a higher land level.
10. Taking all of the above into account, including that the three dwellings would each have double garages, the proposed scheme would not reflect the prevailing spacious pattern and form of built development. It would appear at odds with the open character of its surrounds and result in an increased prominence of built form in the landscape which would be detrimental to the landscape and scenic beauty of the HWNL.
11. New planting could help to screen the development. However, this would be a form of mitigation of harm rather than an enhancement of the landscape. In any event the purpose of landscaping is to integrate a development into its surroundings, not to hide something which is otherwise unacceptable.
12. There have been other instances along Ewhurst Lane where sites have been developed for multiple dwellings. However, in my opinion, they have a different context and setting from the appeal site, which being at the edge of the village has a more noticeable sense of being part of the transition to the surrounding countryside.
13. The proposed scheme differs from the previously dismissed appeal, reducing both the size and number of dwellings. Nevertheless, it would fail to integrate within the wider area and so its overall effect would be to detract from its setting.
14. On this main issue, I therefore find that the proposal would cause harm to the HWNL and the character and appearance of the area, conflicting with Policies OSS2, OSS3, OSS4, RA2, RA3, EN1 and EN3 of the Rother Local Plan Core Strategy 2014 (Core Strategy) and Policies DEN1 and DEN2 of the Rother and Site Allocations Local Plan 2019 (Local Plan). These policies collectively, amongst other things, require proposals to have regard to the character and setting of a site's location, as well as the intrinsic value of the countryside and surrounding landscape and, in particular, the HWNL.
15. Policy DIM2 of the Local Plan seeks to focus development within settlement boundaries. As the site is within the settlement of Northiam it is not clear that

this policy would be breached. However, this does not detract from my overall findings.

16. The proposal would also be contrary to the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character, and conserve and enhance designated areas of National Landscape.

Protected Species

17. The substantive evidence from the Council's advisors NatureSpace, indicates that the site is within an area where Great Crested Newts are likely to be found. The redevelopment of the site could have implications for the newts, which are protected under the Conservation of Habitats and Species Regulations 2017 as amended (the Regulations).
18. Given the reasonable likelihood of their presence, the precautionary principle applies. Therefore, I cannot conclude that the proposal would not risk harming the habitat of newts. As such, the proposal would risk committing an offence against the Regulations, thus requiring a licence.
19. The appellants have not entered into an agreement for the proposal to be authorised under the Council's District Licence (DL). In the absence of any authorisation from the DL, I must be satisfied that a licence would be likely to be granted for the proposal by Natural England.
20. I have no evidence from the appellants to indicate the ability of the scheme to secure a favourable conservation status of the impacted species. Furthermore, the appellants do not suggest that there is no satisfactory alternative to the proposal, or that there are imperative reasons of overriding public interest for the development. Therefore, having regard to the relevant tests in the Regulations, I cannot be satisfied that a licence would be granted.
21. In view of all of the above, planning permission could not safely be granted, even with a planning condition as suggested by the appellants. Whilst I understand that there are costs involved for the appellants in employing their own consultants or subscribing to the DL, this does not absolve me from making an assessment as to the effects of the development in regard to Great Crested Newts.
22. I therefore find the proposal would have an unjustified harmful effect on protected species, namely newts. It would therefore conflict with Policy EN5 of the Core Strategy and Policy DEN4 of the Local Plan which require developments to have suitable regard to biodiversity and to conserve and enhance protected species. It would also conflict with the similar requirements of the Framework.

Other Matters

23. The Council's decision notice refers to the development setting a precedent for further similar developments. However, each case must be considered on its own merits. It therefore does not automatically follow that the same circumstances would apply to other sites or other proposals. Accordingly, this is a neutral matter in my decision.
24. The appellants' case refers to a legal agreement which would ensure two of the three dwellings were provided as affordable housing. It is said that there is

demand in the area for such housing and that this would compensate for the harm to the HWNL.

25. However, Paragraph 58 of the Framework states that a planning obligation should only be sought where it meets all of the following 3 tests: it is necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development. The Council indicate that there is no policy requirement for the affordable housing in this case and there is no information before me to indicate how the provision of two affordable units would meet the tests in the Framework.
26. Furthermore, the submitted agreement is in draft and unsigned. The 'Procedural Guide: Planning appeals – England' requires the appellant, in cases such as this appeal, to submit an executed and certified copy of any planning obligations at the time of making the appeal. It explains that the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances.
27. Thus, even if the provision of affordable housing met the tests in the Framework, the submitted agreement is incomplete. In the light of all of the foregoing, I am therefore unable to attach any weight in my decision to the draft agreement.

Conclusion

28. The Council acknowledges that it is unable to demonstrate a five-year supply of deliverable housing sites. At the time it made its decision the supply was said to be 2.79 years and there is no information to indicate that the situation has substantially altered in the intervening period. In these circumstances Paragraph 11 d) of the Framework is engaged.
29. The proposal would add to the provision of housing in the area and be located where some local services and facilities would be accessible without needing to rely on the use of a car. There would be some economic benefits both during the construction phase and upon occupation. The additional dwellings may bring some social benefits and assist in the vitality of the village. There would also be additional benefits such as the green roof and the water storage and foul water systems which would have energy and CO2 reduction advantages. Given the scale of the proposal these benefits attract moderate weight.
30. Whilst there are clearly benefits of the scheme which would accord with the Framework's policies, the harm I have found to the HWNL carries substantial weight and provides a clear reason for refusing the development such that the presumption in favour of sustainable development does not apply. Consequently, the Council's housing shortfall does not provide a reason for allowing the appeal.
31. The proposal would conflict with the development plan taken as a whole. There are no material considerations, including the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Stewart Glassar INSPECTOR