



Appeal Decision

Site visit made on 26 November 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th January 2025

Appeal Ref: APP/U1430/W/24/3342884

Farmside, Fishponds Lane, Westfield, East Sussex TN35 4SX

- 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 Barry Coleman against the decision of Rother District Council.
 - The application Ref is RR/2023/2493/P.
 - The development proposed is a new drive, access and extension to the curtilage of Fishponds.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit, a new drive and access had been installed, along with a close boarded fence with concrete posts next to Fishponds Lane. The additional curtilage the subject of this appeal was incorporated into the garden of Farmside and was mostly laid to lawn. The gates and rendered returns shown on the proposed drawings had not been installed. I note that the application had been submitted to regularise the situation. I have dealt with the appeal on that basis; my decision is necessarily based on the proposed drawings.
3. In 2023, designated Areas of Outstanding Natural Beauty in England and Wales became "National Landscapes". The appeal site falls within the High Weald Area of Outstanding Natural Beauty (the AONB) which has become the High Weald National Landscape (HWNL).
4. Section 245 of the Levelling Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of National Landscapes, as set out in Section 85 of the Countryside and Rights of Way Act 2000 (as amended) (CRWA). In so far as it relates to this appeal, the amendment now requires relevant authorities "in exercising or performing any function in relation to or so as to affect land in an AONB... to seek to further the purpose of conserving and enhancing the natural beauty of the AONB". As such, it is incumbent on me to evidence consideration of ways to further the purpose of conserving and enhancing the natural beauty of the HWNL.
5. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. Insofar as is directly relevant to the appeal, there are no substantive changes. Neither main party were asked for their views and no parties have been prejudiced as a result.

Main Issues

6. The main issues are the effect of the proposal on:

- the character and appearance of the area with particular regard to whether the proposal would conserve and enhance the landscape, scenic and natural beauty of the High Weald National Landscape; and,
- biodiversity, with particular regard to protected species.

Reasons

Character and appearance

7. The High Weald AONB Management Plan 2019-2024 (AONB Management Plan) finds that the HWNL in this area is characterised by a historic irregular field pattern, surrounded by hedges and areas of dense woodland. Its outstanding beauty derives from its essentially rural and human scale character, high proportion of natural surfaces, tranquillity and dark skies.
8. Fishponds Lane is a single track, unmetalled no through road. It is very rural in character, lined with trees and hedgerows, with the few dwellings interspersed with paddocks and fields. Boundary treatments along the lane are generally open style post and rail fencing or hedgerows, which reinforce the rural character of the immediate area and allow views across the landscape. Part of the appeal site is within an area protected by a group Tree Preservation Order (TPO) which covers a large area along Fishponds Lane, extending over land bordering the housing along New Moorsite.
9. The solidity and height of the installed fencing is at odds with the rural landscape in the immediate area as it has introduced a more suburban style, solid boundary treatment. The proposed gates and rendered supports would have a similar effect on the landscape. Whilst the lane is isolated, there is nevertheless a Public Right of Way that runs along it and as such the site is not hidden from public vantage points. I note the appellant's evidence indicates that laurel hedging is intended to provide additional screening to the fences. Any planting would take time to establish, and the laurel would in any event not be a native hedgerow characteristic of the HWNL. The photographs of the former boundary treatment of the appeal site show some boarded fencing and gates. There is little evidence before me to indicate that any of those fences were authorised and, in any event, their former presence would not justify an unsuitable replacement.
10. The extension of curtilage is significant. Whilst I appreciate that the original plot was large, the additional area could not reasonably be described as a modest extension, as referred to by Policy DHG8 of the Development and Site Allocations Local Plan 2019 (DASA). The introduction of a very large area of lawn with the potential to contain residential paraphernalia introduces a more domestic character to the surrounding countryside. It would not conserve or enhance the natural beauty of the HWNL. Although the evidence indicates the land had been neglected, this is not justification in itself to significantly extend the residential curtilage of the appeal site. Similarly, the introduction of an extensive area of hardstanding from the access to the house has the effect of compounding the suburbanisation of the appeal site, making the extended curtilage appear more domestic in nature.

11. The appellant indicates two ash trees which were in or on the boundary of the TPO area have been removed. I note the appellant's point that one of the trees in particular required removal due to a split in the trunk. No further analysis was provided by a suitably qualified professional regarding the health of the tree and there is insufficient evidence to conclude that there was no other option but to remove the affected tree.
12. The value of this group of protected trees is derived from their collective contribution to the rural character of the surrounding area. Whilst individual specimens make a limited contribution in their own right, the piecemeal removal of trees would nevertheless erode the significant contribution the protected group makes to the wooded, natural landscape character of the local area and the wider HWNL.
13. Taken together, the solid boundary treatment, gates, hardstanding, extended domestic curtilage and loss of protected trees would have the effect of creating a more suburban character to the immediate area. This would cause significant harm to the intrinsic natural beauty of the HWNL and rural character of the surrounding area.
14. For the above reasons, despite the localised effect of the proposal, it would appear as a visually intrusive development that would neither conserve nor enhance the landscape, scenic and natural beauty of the HWNL. Hence, it would fail to accord with Section 85 of the CRWA, as amended by LURA; the aims regarding the built and natural environmental of the Borough, particularly to the HWNL, as expressed in Policy EN1 of the Core Strategy, Policies DEN1 and DEN2 of the DASA; and Framework paragraph 189.
15. The proposal would also conflict with Core Strategy Policies EN1, OSS4, RA2 and RA3 and DASA Policies DHG8, DHG11, DHG12 insofar as they seek to conserve the intrinsic value and rural character of the countryside and ensure garden extensions, boundary treatments and new accesses would not harm the character and appearance of an area.

Biodiversity

16. The appeal site is within an area that is deemed a suitable habitat for Great Crested Newts and their presence in the area is highly likely given the proximity of ponds to the appeal site. Great Crested Newts are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
17. The Council indicate that planting a lawn on the extended curtilage and the removal of other natural vegetation from the land has harmed its ecological and biodiversity value; the works undertaken may already have resulted in harm to Great Crested Newts and their habitats. The loss of the two ash trees could also have resulted in harm to biodiversity. An updated consultation response from NatureSpace, the Council's District Level Licensing provider, clarifies that the appellant must submit a NatureSpace report or certificate prior to determination to demonstrate that the impact of the development can be addressed through the Council's District Licence.
18. No quantitative assessment of the effect of the appeal scheme on biodiversity, including the loss of the ash trees, has been provided. Given there is no evidence of a NatureSpace report or certificate having been issued for this

site, I conclude that there is insufficient information before me to provide certainty as to how the appeal scheme has and would affect Great Crested Newts and their habitats, along with appropriate mitigation measures, to ensure it does not have an unacceptable effect on biodiversity. As there is no agreed strategy or specific mitigation proposed by the appellant, given the high level of certainty required to rule out adverse impacts on the protected species, it would not be appropriate to address this matter through the use of planning conditions.

19. Paragraph 193(a) of the Framework is clear that where significant harm to biodiversity from a development cannot be avoided or adequately mitigated then planning permission should be refused. The appeal proposal conflicts with Core Strategy Policy EN5 and DASA Policy DEN4, which taken together and amongst other things, seek to protect biodiversity and protected species, both within and outside designated sites.

Other Matter

20. I note the appellant's point regarding the extension of curtilage preventing speculative residential development. I have little substantive evidence before me to confirm that this would be the case and in any event future proposals would have to be considered on their own merits at the time of application.

Planning Balance and Conclusion

21. The appeal scheme, though the extension of residential curtilage, has enabled the tidying up of land that had been neglected, removed a sheet timber boundary and introduced new planting.
22. However, the harm I have identified to the character and appearance of the area and harm to biodiversity outweighs the identified benefits and draws the proposal into conflict with the development plan read as a whole. The material considerations in this case do not indicate that the decision should be taken otherwise than in accordance with the development plan. The appeal should therefore be dismissed.

L Francis

INSPECTOR