



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: 21 January 2025

Appeal Ref: APP/U1430/W/24/3345193

46 North Trade Road, Battle TN33 0HS

- 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 Robert Regan against the decision of Rother District Council.
 - The application Ref is RR/2023/1815/P.
 - The development proposed is the part-demolition of No 46 and subsequent erection of 4 pairs of 4-bed semi-detached dwelling-houses, construction of access drive and associated scheme of hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended plan has been submitted with the appeal. This shows the addition of a footway next to the access road to the site, connecting to the footway along North Trade Road. The appellant has also provided an acoustic report to address the reason for refusal relating to noise and disturbance from the driveway, an updated Preliminary Ecological Appraisal (PEA) to address the biodiversity reason for refusal and a transport appeal statement.
3. What is considered at appeal should be essentially the same scheme that was considered by the local planning authority. I am satisfied that the drawing and additional reports do not result in a substantially different scheme to that originally considered and that no party has been prejudiced giving rise to any procedural unfairness. I therefore proceed to determine the appeal on the updated documents. The Council accept that the path shown on the drawing would overcome the fourth reason for refusal in respect of pedestrian permeability and I have therefore not included this as a main issue.
4. 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).
5. 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.

6. 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

7. 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;
- whether the proposal would provide a suitable range of housing sizes;
- the effect of the proposal on biodiversity; and,
- the effect of the proposal on the living conditions of the occupiers of 44 and 46 North Trade Road, in respect of noise and disturbance.

Reasons

Character and appearance

8. The appeal site comprises a parcel of undeveloped scrubland and garden land which would be accessed via an expanded driveway running adjacent to 46 North Trade Road. It borders Vale Road to the north, and the remaining boundaries are shared with gardens of the dwellings at 38 to 48 North Trade Road. The land within the site runs gently downhill towards Vale Road. There is open countryside beyond Vale Road.
9. The surrounding area along North Trade Road typically comprises chalet style or two storey detached dwellings which are well-spaced and set back from the road in large plots. The area has a spacious character and there is no particular uniformity to the style of buildings but open countryside is frequently visible in the gaps between buildings. North Trade Road is punctuated by residential streets leading off it, typically cul-de-sac style development with suburban housing lining both sides of each street. There are also occasional 'backland' style developments with private roads leading to groups of houses. Vale Road, immediately to the rear is developed with a row of mostly semi-detached cottage style dwellings to its north side. The use of dormer windows in the vicinity is relatively common, predominantly first floor front dormers or in chalet style dwellings. Similarly, the use of bay windows at ground floor is a reasonably common design feature in the area.
10. Planning Practice Guidance (PPG) refers to the relevance of management plans for National Landscapes for assessing planning applications. Whilst these do not form part of the development plan, they help to set out the strategic context for development and provide evidence of the value and special qualities of these areas. The High Weald AONB Management Plan 2019-2024 (AONB Management Plan), is therefore a material consideration. The HWNL 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.

11. Paragraph 189 of the Framework sets out that great weight should be given to conserving and enhancing the landscape and scenic beauty of these areas. This is supported by Policy EN1(i) of the Rother Local Plan Core Strategy 2014 (Core Strategy) and Policy DEN2 of the Development and Site Allocations Local Plan 2019 (DASA).
12. Vehicular and pedestrian access to the site would be from North Trade Road and the orientation of the dwellings would result in the rear elevations facing Vale Road. I consider therefore that the site would be more functionally and visually related to North Trade Road. The proposal, with four pairs of three storey semi-detached dwellings, would span almost the full width of the site. Taken together, the buildings' height and roof form, strong vertical emphasis, minimal separation and small plot sizes would be at odds with the prevailing pattern of lower density development along this part of North Trade Road.
13. The use of dormers to the rear second floor would exacerbate the vertical emphasis, adding bulk at a high level. The ridge height of the proposed dwellings would be contiguous with that of the host property at No 46, which is significantly higher than the dwellings at 40, 42 and 44 North Trade Road. As such, the proposed houses would likely be highly prominent behind the houses on North Trade Road, particularly given the spaces between them where trees and vegetation are currently visible. Consequently, the height, bulk and pattern of development would have a harmful urbanising effect in a semi-rural location.
14. Whilst the plot size and configuration would be more akin to the linear development on Vale Road, the proposal has little relationship with Vale Road given the orientation of the proposed houses and gardens. Although the houses would be set back from Vale Road itself, they would nevertheless be an imposing three-storey built form, at odds with the more rural setting of Vale Road with its two storey houses set at a lower level than the appeal site. The dwellings would be visible from Vale Road and would also appear prominent in private views from the houses opposite the appeal site, particularly during winter months when there would be less leaf cover on the trees and vegetation lining the south side of the street. For this reason, a landscaping scheme or additional hedgerow planting would not mitigate the presence of an uncharacteristic scale of development in this location.
15. Whilst DG2 of the High Weald Housing Design Guide (HWDG) is not supportive of new cul-de-sac style development, the numerous cul-de-sacs and backland housing sites off North Trade Road form part of the established character of the surrounding area. Hence, I consider the principle of a cul-de-sac would not be out of character in itself. I note the site was proposed for housing allocation under the 2013 Strategic Housing Land Availability Assessment, though this document pre-dates the site allocations set out in the DASA. Furthermore the Council acknowledges that in principle the site would be suitable for housing.
16. The HWDG also advises the sparing use of semi-detached buildings in new residential developments, which should be interspersed with the more prevalent built forms. However, there is a wide variety of built form and detailed design within the vicinity of the appeal site. As there is no strong vernacular in the surrounding area, and there are several examples of cul-de-sacs containing housing of a reasonably uniform appearance, I do not find the

detailed design of the dwellings in itself would be harmful to the character and appearance of the area. Nevertheless, this would not alleviate the harm arising from the proposed bulk, scale and pattern of development.

17. For the above reasons, despite the localised effect of the proposal, it would appear as a visually intrusive development and its scale, bulk and position within the site would be harmful to the appearance of the surrounding area. For the same reasons the development 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.
18. The proposal would also conflict with Policies EN3, OSS4 and BA1 of the Core Strategy and Policies HD4, HD5 and HD6 of the Battle Civil Parish Neighbourhood Plan 2020-2028 (NP). Taken together, and amongst other things, these policies require development to be of high design quality, respect the character and appearance of the area and maintain local distinctiveness.
19. The scheme would run contrary to objectives S2 and S3 of the High Weald AONB Management Plan 2019-2024 which, amongst other things seek to protect the historic pattern and character of settlement and enhance the architectural quality of the High Weald.
20. I note the Council's reason for refusal also refers to Policy DIM2 which relates to development boundaries. I do not consider this is directly determinative with regards to character and appearance and the HWNL.

Dwelling mix

21. Core Strategy Policy LHN1, whilst not being prescriptive on the proportions of unit types, requires developments of six units or more to provide housing for a range of differing household types. Policy HD3 of the NP similarly sets an expectation for housing developments to deliver a range of house types.
22. Both parties have referred to a 2024 Housing and Economic Development Needs Assessment along with draft Policy HOU1 of the Draft (Regulation 18) version of the Rother Local Plan 2020-2040. This was not referred to in the reason for refusal and there is no substantive evidence as to whether there are outstanding objections to the policy. Accordingly, I can attach no more than limited weight to it. Nevertheless, I note that the draft policy in relation to developments of six or more units requires a mix of housing sizes and types unless the particular characteristics of the proposal or site makes this inappropriate.
23. The appeal scheme's layout in a single line of identical pairs of semi-detached houses would be a reasonably efficient use of the land whilst providing garden space and parking. The size of the houses would offer flexibility in terms of the size, layout and use of rooms and it would help meet the need for 4-bedroom houses within Battle. However, the lack of smaller properties would reduce affordability and market choice for a range of potential occupiers. The site is reasonably regular in shape and there is no substantive evidence before me that it would present constraints which would mean that a range of housing

sizes could not be accommodated in line with the expectations of the development plan.

24. The scheme would therefore fail to provide a suitable range of housing sizes. Hence, it would conflict with the aims of Core Strategy Policy LHN1 and NP Policy HD3 insofar as they require housing developments to deliver a range of different unit types for a range of households.

Biodiversity

25. The appeal site is within an area that is deemed a suitable habitat for Great Crested Newts and their presence in the area has been confirmed through the appellant's PEA. Great Crested Newts are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
26. The PEA recommended a district licence should be obtained prior to determination of the application. However, there is no evidence of a NatureSpace report or certificate having been issued for this site. Accordingly, there is insufficient information before me to provide certainty regarding the proposal's effect on Great Crested Newts and their habitats, or any appropriate mitigation measures, to ensure that there would not be an unacceptable effect on biodiversity. 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.
27. In terms of other protected species, the PEA concludes that the vegetation and structures on site are not suitable for roosting bats, though the site provides commuting and foraging opportunities. Whilst no evidence of badger activity was identified through the PEA, it recommends a further survey is carried out prior to the commencement of work. Notwithstanding the above, I am satisfied that these particular matters, including mitigation, could have been secured though the use of appropriate conditions.
28. The appeal proposal would have a harmful effect on biodiversity. Hence it would conflict 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. Furthermore, 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.

Living conditions

29. The driveway proposed to serve the eight dwellings in the appeal scheme would run alongside 46 North Trade Road in place of its existing side extension. The drive would also run alongside the garden of No 44. Although there would be vehicles and pedestrians using the driveway, the pattern of movement is unlikely to be constant given the scale of the proposal. I note that the appellant's acoustic report concludes that any vehicular noise would be negligible.
30. There would inevitably be some disturbance from car doors slamming and general activity arising from the occupation of the proposed housing. However, given the existing residential character of the area and reasonably small scale of the development, the additional activity would not introduce unreasonable

harm to the living conditions of the occupiers of Nos 44 and 46. Moreover, mitigation could be secured by condition to visually screen and landscape between the adjoining dwellings and the proposed driveway, manoeuvring and parking areas.

31. Accordingly, the proposal would not have a harmful effect on the living conditions of the occupiers of Nos 44 and 46, in respect of noise and disturbance. The proposal would therefore accord with the aims of Core Strategy Policy OSS4 insofar as it requires development not to unreasonably harm the amenities of adjoining properties.

Other Matters

32. The Council is satisfied with matters including parking, access, highways, drainage, refuse and recycling and flood risk. I do not have substantive evidence to contradict the conclusions of the Council in these matters, so I see no reason to disagree. Nevertheless, the absence of harm means these are neutral considerations in my determination of the appeal.

Planning Balance and Conclusion

33. The appeal proposal is in a sustainable location and would provide eight additional dwellings, that could be built out relatively quickly, with parking and gardens. It would align with the Framework in seeking to boost the supply of housing. Some socio-economic benefits would arise from the construction of the houses and through new residents using local services. These benefits attract moderate weight given the scale of development under consideration.
34. The Council is unable to demonstrate a five-year supply of deliverable housing sites, the Council's delegated report quoting a supply of 2.79 years. Consequently, paragraph 11 d) of the Framework is applicable. However, paragraph 11 d) i) states that there are circumstances where the application of policies in the Framework to protect areas or assets of particular importance provides a strong reason for refusing the proposal. Footnote 7 identifies National Landscapes as such an area, and as I have found that the proposal would cause harm in this respect, it follows that the appeal proposal does not benefit from the presumption in favour of sustainable development set out in paragraph 11 d) ii) of the Framework.
35. Despite the absence of harm to the living conditions through noise and disturbance, I have found the proposal would harm the character and appearance of the area, including the HWNL. The proposal would not provide a suitable mix of housing units, as required by the development plan, and there is insufficient evidence to conclude there would not be unacceptable harm to biodiversity. Taken together, this draws the proposal into conflict with the development plan read as a whole. The material considerations in this case, including the Framework, 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