
Appeal Decision

Site visit made on 5 February 2025

by **D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)**

an Inspector appointed by the Secretary of State

Decision date: 14th February 2025

Appeal Ref: APP/U1430/W/24/3352916

Hillside Nursery, Woodmans Green Road, Whatlington, BATTLE, TN33 0NR

- 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 Steed Construction Ltd against the decision of Rother District Council.
 - The application Ref is RR/2024/579/P.
 - The development proposed is an outline application for demolition of dilapidated glasshouses, for the erection of five dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made in outline form with all matters reserved except for the matter of access. An illustrative layout, reference BA21107.10A has been provided for information purposes, but any reserved matters application would not be bound by its terms. I have determined the appeal on this basis.
3. The Council has suggested, through the appeal, that the description of the development be changed so as to read “for the erection of *up to* five dwellings.” I note the appellant has written to accept such an amendment. Whilst I do not consider any party to be unduly prejudiced by this description change, this is not what was applied for on application. I have proceeded to determine the appeal on the original description of development.
4. The Council has raised concerns regarding ecology and biodiversity, though have stopped short of making this an additional reason for refusal, stating a condition may suffice. I have taken account of this in making my decision.

Main Issues

5. The main issues for the appeal are:
 - the effects of the development upon the character and appearance of the landscape, including upon the High Weald National Landscape;
 - the effects upon designated heritage assets;
 - whether or not a suitable mix of housing would be provided; and
 - whether or not safe and suitable vehicular and pedestrian access would be provided.

Reasons

Landscape Effects

6. The appeal site and its surroundings fall within the High Weald National Landscape (HWNL). Paragraph 188 of the National Planning Policy Framework (the Framework) states great weight should be given to conserving and enhancing the landscape and scenic beauty of the National Landscape.
7. This area of the HWNL features undulating land, with distant views from the ridges and crests over a vast open landscape. I noted from my site visit that tranquillity and wildness rapidly increased with distance from the main roads, in this particular instance being the A21 and the B2090, and this adds to the sense of place created by the vastness of the landscape. Outside of settlements, development is sporadic in nature or, where it does occur, is generally linear in pattern.
8. The appeal site sits within this wider expanse of landscape, currently accessed in between the properties known as Little Dorrells and Dorrells. There are large metal and glass greenhouses within the appeal site that, due to the prominent sloping land, are staggered down the terrain from the west to the east. I observed from my visit that other areas of land containing storage tanks, workshops, a mobile home and grassland fall outside of the appeal site boundary, notwithstanding that they fall within the overall land holding known as Hillside Nursery.
9. It is proposed to open up a new access onto the A21 to the north of Little Dorrells, demolish all existing greenhouses and construct five new dwellings in a cul-de-sac formation with associated external parking areas and gardens. The new houses are shown on the illustrative layout to be provided on the western half of the appeal site, with a pair of semi-detached dwellings proposed along the access road adjacent to, and in line with, Nos 1 and 2 Dorrells Cottages. The other three dwellings would sit deeper into the grounds of Hillside Nursery, with only the footprint of the proposed plot 5 partially overlapping the footprint of one of the greenhouses.
10. I note that drawings BA21107.04, BA21107.10A and BA21107.11, upon which the Council based its decision, give varying impressions of the appeal site and do not appear consistent with each other. Of particular concern is that the illustrative plots 2 and 3 appear to fall outside of or straddling the appeal site boundary shown on BA21107.11. Further, the width of the proposed access off the main road would appear to conflict with the position of plot 1.
11. In my view, the sum total of these inconsistencies, discrepancies and omissions shed considerable doubt over the resulting form of development on the land. It would appear that the proposal could not be delivered as indicated on the illustrative plan. This would potentially result in more land being required for the residential development, with such extending further east than presently shown.
12. Even if this were not the case, the cul-de-sac formation of the proposed units would appear very urban compared to the verdant surroundings and would introduce residential paraphernalia deeper into the rural setting. Whilst this 'backland' form of development may be traded off through the demolition of the greenhouses, the fact would remain that residential development would occur in depth away from the A21, contrary to the pattern of the built environment in this area.

13. Removal of the greenhouses from the appeal site should be secured through the description of development alone, or if not through a planning condition. However, I note that other elements of Hillside Nursery are to remain including the buildings described as workshops and storage tanks. There are also no proposals to remove the existing access to Hillside Nursery. The proposed residential units would sit alongside these remaining structures and uses, intensifying a proliferation of different developments in this rural landscape.
14. In visual terms, the development would be visible from across the wide undulating landscape to the east and would appear as an urban enclave into an agricultural setting. I acknowledge the greenhouses are not attractive and are in a poor physical condition at present, thus their removal may contribute positively to local landscape character. However, I do not consider the introduction of housing into this land in the manner proposed would achieve the important mandate to conserve and enhance the HWNL.
15. In spatial terms, even with the clearance of the greenhouses, the proposal would introduce housing and residential paraphernalia into the countryside. It would be an unwelcome urban incursion, eroding the characteristics of the surrounding landscape and rural nature of this part of the HWNL. Such spatial discordance would be amplified if my concerns regarding the layout of the dwellings were to be realised and more of the appeal site was required for the proposal.
16. My attention is drawn to the presence of nearby liveries and stables, but I consider these are uses typical with rural areas in much the same way that greenhouses are normally part and parcel of a countryside environment. I observed the nearby Vinehall Business Centre being a significant urban feature, but this is some distance northwest of the appeal site and is much more enclosed within its setting.
17. Overall, I find the development would adversely impact upon the character and appearance of the landscape, including the special qualities of the HWNL. This would be contrary to policies OSS4, RA2, RA3, EN1, EN2 and EN3 of the Rother Local Plan Core Strategy (RLCS) and policies DEN1 and DEN2 of the Rother Development and Site Allocations Local Plan (RLP). These policies together seek to ensure well designed development that is compatible with the receiving environment and respectful of place.

Heritage Assets

18. There are four listings that have been drawn to my attention. These are for the properties known as Dorrells, Nos 1 and 2 Dorrells Cottages, Scrays Farmhouse and Maddomswood. All are grade II listed heritage assets. The Framework sets out that great weight should be given to an asset's conservation irrespective of the level of harm caused to its significance.
19. The design and appearance of the proposed dwellings are reserved matters, but the access details show a new engineered access in close proximity to Nos 1 and 2 Dorrells Cottages. The illustrative layout plan, notwithstanding its inconsistency with other plans, shows that four of the proposed plots would be in close proximity to the side and rear garden of No.2 Dorrells Cottages.
20. No heritage assessment has been submitted with the application nor with the appeal. The significance of the assets and their settings has not been considered by the appellant and neither has the impact upon them from the proposals.

21. Whilst Scrays Farmhouse and Maddomswood are further away from the appeal site, they nonetheless may have some cultural or historical association with the land. Without any evidence by way of a heritage assessment to contradict this view, I cannot rule against any harm being caused to these assets.
22. The removal of the large expanse of greenhouses may be a potential improvement for the settings of the nearby heritage assets, but I have no information as to whether the proposed development would be any less harmful.
23. On this basis, the appeal proposal would have an unsubstantiated and unjustified harmful impact on the settings of nearby heritage assets. This would be contrary to policies DEN1 and DEN2 of the RLP, which seek well designed developments compatible with the site and surroundings.

Mix of housing

24. The application form and the illustrative layout plan show that the proposed dwellings would be delivered with 2-bed, 4-bed and 5-bed dwellings. The appellant states that two would be affordable housing units and one would be a First Home, and that such housing could be secured through a negatively worded condition requiring the appellant to enter into a legal agreement with the Council.
25. The Council, in relying on the Housing and Economic Development Needs Assessment, states the mix of dwellings would not meet the requirements of the RLP nor the needs of the Whatlington locality. In addition, the Council cites paragraph reference 21a-010-20190723 of the National Planning Practice Guidance (NPPG) in defence of its position that a negatively worded condition is not acceptable in this instance.
26. Whilst the size of the housing units could be redefined and determined at reserved matters stage, the same does not apply to securing the affordable housing and first homes units for which, at present, there is no formal legal mechanism. I note the Council has suggested a commuted sum in lieu of affordable housing that the appellant is willing to pay, but again no formal legal mechanism is provided.
27. The advice from the NPPG is clear that only in exceptional circumstances should a negatively worded condition be used, possibly applying in the case of particularly complex development. I do not consider exceptional circumstances are demonstrated by the appellant and therefore find it inappropriate in this instance to require a legal agreement be provided via planning condition.
28. The proposal would therefore fail to secure a suitable mix of housing sizes and types. This would be contrary to policy LHN1 of the RLCS, which seeks to secure housing to meet the needs of the Council and its communities.

Access

29. A new access is proposed onto the A21, which is part of the strategic road network (SRN) operated by National Highways. The road has a 40mph speed limit outside the appeal site, accommodates two-way traffic and has a double white line down its centre indicating it is unsafe to overtake.
30. National Highways have written to the appeal stating that whilst no objection is raised, there is insufficient information at the present time to inform an assessment of the proposal's impact on the SRN. A walking, cycling and horse-riding

assessment report is requested alongside a road safety audit, collision analysis and demonstration that the access would comply with the Design Manual for Roads and Bridges. I note that the officer's delegated report also informs that National Highways desired the existing Fairmead access onto the A21 to be permanently stopped up if the proposed new access opens for use.

31. The matter of access is before me, so the safety of the proposed new access is within my determination. Given the amount of information requested by National Highways together with the speed and design of the A21 in the locality, I am not confident to leave the safety aspect of the access to conditional approval.
32. Bus stops are not on a safe walking route from the appeal site and the potential for a flexible bus service directly serving the appeal site appears limited on the evidence before me. Whilst the number of trips generated by the development would be limited given its scale, these would all be by private car in my view given the remoteness of the appeal site and the lack of footway along the A21. The use of an access, not yet proven safe, by multiple private cars would cause an unnecessary degree of hazard to users of the highway.
33. Even if all the information requested by National Highways were supplied, there is no certainty that the resulting assessment of impacts on the SRN would be favourable to the appellant. Therefore, deferring assessment of such an issue to the reserved matters stage would be inappropriate in my view. There is also no written commitment from the appellant to stopping up the existing access, which falls outside of the appeal site boundary and appears to be retained for the benefit of the remaining workshops at Hillside Nursery.
34. I take a precautionary approach, in the interests of highway safety, and consider the proposed new access would have an adverse impact upon the SRN. This would be contrary to policies CO6 and TR3 of the RCLS and policy DHG12 of the RLP, which together seek to ensure the safety of all aspects of the highway network for all users.

Other Matters

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that my determination must be in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
36. The Officer's delegated report states the Council can only demonstrate a 3.09-year housing land supply at present. Therefore, the strategic housing policies for the Council are out of date and my attention is taken to paragraph 11(d) of the Framework.
37. I have already found the proposal to cause harm to the HWNL and to designated heritage assets. Therefore, under paragraph 11(d)(i), the policies of the Framework provide a very clear and strong reason for refusing the development proposed. I do not therefore need to consider or weigh the identified harms against any of the proclaimed benefits of the proposal.

38. There are no material considerations that would warrant a decision otherwise than in accordance with the development plan.

Conclusion

39. For the reasons given above the appeal should be dismissed.

D Wallis

INSPECTOR