



Appeal Decision

Site visit made on 4 March 2025

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 11th March 2025

Appeal Ref: APP/C1435/W/24/3348674

Land north and west of 2 Estate Cottages, Heathfield Road, Halland, East Sussex BN8 6PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Millen, Millen Homes Ltd against Wealden District Council.
 - The application Ref is WD/2024/0584/O.
 - The development proposed is 9 dwellings, office space and children's play area.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with access and layout included. Appearance, landscaping and scale are reserved for future consideration.
3. In October 2024, the East Hoathly with Halland Neighbourhood Plan (the NP) was adopted. In December 2024, a number of changes were made to the National Planning Policy Framework (the Framework). The main Parties were given the opportunity to comment on the implications of the revised Framework for this appeal.
4. From 2 April 2024, Biodiversity Net Gain (BNG) became a mandatory requirement for non-major developments and there were various associated regulatory provisions¹. This required details to be submitted as part of the application to enable it to be valid. The appeal is accompanied by a Unilateral Undertaking dated 7 October 2024 to secure and implement a 10% BNG either on or off the site although this was not submitted with the planning application.

Main Issues

5. This appeal is against the Council's failure to give notice of a decision on a planning application in the requisite time period. It results from a validation dispute between the main parties regarding the requirements relating to BNG. An assessment of the scheme's planning merits has now been undertaken by the Council. I have identified the main issues in this appeal taking into account the

¹ The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (the BNG Regulations) amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 to include provisions in respect of applications for planning permission and the submission and determination of Biodiversity Gain Plans (BGP).

Council's Statement of Case, which sets out their main concerns should it be determined that a valid planning application was in fact made.

6. The main issues are:

- a) whether or not the planning application was validly made; and,
- b) in the event that I find the application was validly made,
 - whether or not the site is an appropriate location for residential development taking account of spatial planning policies;
 - the effect of the proposal on the character and appearance of the area (including the effect on the hedgerow);
 - the effect of the proposal on the setting of heritage assets including the Grade II Listed Hartfield and the non-designated Nos 1 and 2 Estate Cottages and Yew Tree House;
 - whether or not safe and convenient access would be provided for all; and
 - whether or not appropriate provision has been made in respect of protected species and biodiversity.

Reasons

7. The Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended (the DMPO) provides the regulatory framework for planning applications. The Planning Practice Guidance (PPG) explains that the submission of a valid application for planning permission requires, amongst other things, compliance with national information requirements and the provision of local information requirements (Paragraph: 016 Reference ID: 14-016-20140306).
8. Part 3, Article 7 of the DMPO requires completion of an application form; plans identifying the land; and plans and information necessary to describe the development. Articles 13 and 14 require notice of the application to be given to the owner of land to which the development relates and the applicant must certify, in a form published by the Secretary of State, or in a form substantially to the same effect, that the relevant requirements of article have been satisfied. The form for a Certificate requires the owner's name; the address at which notice served; and the date it was served. There are different forms for different circumstances. In this case Certificate B is appropriate.
9. A planning application was originally received by the Council on 7 March 2024. The Council sent the applicant a letter on 26 March 2024 (the March letter) asking for clarification of some 15 missing or contradictory items. The fifth item states that the originally submitted Certificate B only provided house numbers and postcodes which is insufficient to identify the owners as prescribed in the Regulations and the PPG. The information to complete Certificate B was subsequently provided and the accompanying necessary declaration by, the then, applicant is dated 10 April 2024. Until that date there was no valid application in terms of the national information requirements.
10. It would appear that the originally submitted site layout plan included reference to retail space. This was inconsistent with the description of development on the planning application form. In order to comply with Part 3 Article 7 of the DMPO

clarification of this inconsistency (item 7) is necessary in the interests of certainty as to what development was being proposed.

11. The Council's Planning Validation Guide: A guide to submitting applications: National and Local List of Planning Application Requirements February 2023 (the Local List) specifies the information that the Council considers is necessary and reasonable for the determination of different development proposals. Items 10, 12, 13 and 14 of the March letter advises of information the Council considered should have been submitted to satisfy the requirements of the Local List.
12. By way of background, the site is not allocated for development in the Wealden Local Plan 1998 or the Wealden Core Strategy Local Plan 2013, is outside any defined settlement boundary, and is therefore subject to rural restraint development plan policies. The appeal proposal is for residential and office development so the starting point at the time the application was originally submitted is that it would conflict with spatial strategy policies. Nor does the subsequently adopted NP contain allocations for housing or business sites. Accordingly, I consider the Local List requirement for a Planning Statement (item 10) setting out the context and justification for the development to be reasonable and proportionate.
13. Under Article 5(3) of the DMPO an application for outline planning permission must also indicate where access points to the development will be situated, even if access has been reserved. In this case access is included for consideration and the appeal proposal includes a new or altered access onto the classified Heathfield Road (B2192) that would be likely to generate significant levels of movements to and from the site compared to the existing situation. It is necessary and proportionate that safe access for all is demonstrated (item 12) as required by the Local List.
14. The appeal site is close to heritage assets including the Grade II Listed Hartfield and the non-designated Nos 1 and 2 Estate Cottages and Yew Tree House. Given the proximity of the site to these assets the appeal proposal has the potential to affect the setting within which they are appreciated. In such circumstances I consider the Local List requirement for a Heritage Statement that assesses the significance of the assets; the contribution of that setting to that significance; and the effect of the proposal (item 13) to be reasonable and proportionate.
15. The proposal would require new or changed foul and surface water systems. Accordingly, the Local List requirement for a drainage strategy (item 14) is reasonable and proportionate.
16. For the above reasons I find that the Council was correct to identify the items that were missing from the original submission and at that time, prior to 2 April 2024, the application could not be registered as valid. The remaining items of the March letter relate mainly to other factual inconsistencies.
17. Further information was submitted to the Council on 10 April 2024 and on 17 April 2024 although the evidence before me does not clearly indicate which information was provided on which date. As of 17 April, the Council considered sufficient additional information had been provided to complete the application and it was registered as valid on 17 April 2024.
18. However, between the time that the application was originally submitted and the time it was considered to be complete by the Council, the mandatory BNG

requirements had come into force. There had been a transition period for these requirements to be enacted and the Council subsequently reviewed all applications received during the transition period. As a result, on 23 July 2024, the Council advised the then applicant that it had made an error such that, contrary to what was thought at the time, the application had not been valid on 17 April 2024 because the mandatory BNG metrics and Biodiversity Gain Plan (BGP) had not been provided as part of the application.

19. The Council considered it was unable to determine the application because it had subsequently found that the application was not valid. The requisite period for determining the planning application, from the point it had been registered by the Council, had expired so the applicant submitted the appeal which is now before me.
20. In conclusion, taken altogether the above matters amount to sufficient technical, legislative and factual reasons for me to be unable to lawfully conclude the application was valid before 2 April 2024. After that point, the BNG Regulations took effect and this required the mandatory BNG metrics and the BGP requirements had not been provided as part of the application. Accordingly, although the application was deemed complete by the Council on 17 April 2024, the BNG legal requirements had not been met so the application was not valid and should not have been registered.
21. The Council realised its mistake and, subsequently, informed the applicant. These outstanding matters were not submitted while the application was before the Council. The result of this is that the application had no legal standing and to proceed the applicant was required to provide the minimum national information requirements related to BNG for it to be able to be registered. None of the other matters raised during the appeal, including the submission of the Unilateral Undertaking, leads me to any different conclusion. I therefore conclude that the planning application was and is not valid.
22. It is unfortunate that the Council mistakenly treated the application as complete and valid, and I understand the frustration of the appellant. Nevertheless, I am mindful of the case of *Geall v SSE (199) 78 P. & C. R. 264* where it was held that an invalid planning application cannot be the foundation for any jurisdiction in an appeal.
23. There is a validation dispute process under Article 12 of the DMPO under which an applicant *may* (my emphasis) send a notice to challenge the Council's position. However, in my judgement Part 6 Article 34 of the DMPO does not require this procedure to be followed in order for an appeal against the failure of the Council to give notice within the prescribed period of a decision on an application for outline planning permission.
24. My conclusion is that the appeal should fail on the first main issue. The application was and is not valid and it has no legal basis on which a decision can be made. The appeal should therefore be dismissed on this basis. Consequently, it is not necessary for me to consider the planning merits of the proposal, because I do not have a valid application to make a decision on.

Conclusion

25. For the reasons set out above I conclude that the appeal should be dismissed.

S Harley INSPECTOR