
Appeal Decision

Site visit made on 3 March 2025

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Appeal Ref: APP/U1430/W/24/3352473

Braemar - land to the North, High Street, Etchingham TN19 7AD

- 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 C. J. Gowing & Sons Ltd against the decision of Rother District Council.
 - The application Ref is RR/2023/2184/P.
 - The development proposed is for 2 No. four bed, two storey detached dwelling houses, access drive, parking & turning area, refuse and cycle storage provisions, and private amenity spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for future consideration. I am determining the appeal on this basis. Drawings have been submitted showing a layout, floor plans and elevations. I have treated the drawings as illustrative.
3. The application form states that the site address is 'The Orchard', whereas the decision notice refers to the site as 'Braemar – land to the North' and the appeal form refers to the site as 'Land north of High Street'. I have taken the address from the decision notice as this is more precise. I do not consider that this has prejudiced any of the parties and I have proceeded on this basis
4. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024 and is a material consideration in planning decisions. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by taking this approach.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, including whether the proposed development would conserve and enhance landscape and scenic beauty in the High Weald National Landscape;
 - the living conditions of the occupants of neighbouring properties, with regard to privacy and outlook;
 - highway safety, with regard to the safety of highway users (refuse); and

- ecology.

Reasons

Character and appearance

6. The appeal site comprises land to the rear of two pairs of semi-detached properties and an existing access from High Street. The site is within the High Weald National Landscape (NL). Paragraph 189 of the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the NL. Section 245 of the Levelling-up and Regeneration Act 2023 places a duty upon me to seek to further the statutory purposes of NLs, which is to conserve and enhance the natural beauty of the area of outstanding natural beauty.
7. The NL is partly characterised by the verdant and rural landscape and includes an undulating patchwork of woodland and farmland. Settlement in the NL is typified primarily by hamlets and villages with few larger urban areas, contributing to the overall rural character of the NL.
8. Development in the area has a largely linear pattern with two-storey dwellings fronting the road, giving a predominantly urban character. The gaps between the frontage buildings provide glimpsed views towards the largely undeveloped rear gardens, which give way to the undulating landscape of open fields beyond the rear boundaries. There are cul-de-sacs on either side of the High Street, including at Oaks Close and Park Farm Close, which are comprehensive forms of development that add depth to the built form of the settlement.
9. The main part of the site is on rising land and is set back from the frontage development. A line of mature trees encloses the site and the rear gardens of the neighbouring properties. The trees visually contain the urban confines of the settlement, separating the dwellings and gardens from the open fields and wider landscape beyond. The site is primarily viewed within the context of the development forming the settlement of Etchingham, including the dwellings facing High Street and those at Oaks Close. Consequently, the site makes a limited contribution to landscape and scenic beauty in the wider NL.
10. The proposal is for two detached dwellings. While the proposal is in outline form, the submitted drawings indicate that the dwellings would be sited to the rear of an existing pair of semi-detached dwellings. Given the spacing between buildings fronting High Street, the proposed dwellings would be viewed from the road. The position of the dwellings immediately to the rear of the frontage dwellings would appear incongruous with the predominantly linear pattern of development in the settlement.
11. The elevated position of the proposal above the dwellings fronting High Street would emphasise the poor relationship that the development would have with the road and the frontage dwellings. While the dwellings at Oaks Close and Park Farm Close are largely to the rear dwellings fronting High Street and Oxenbridge Street, the developments are more comprehensive, where the formal cul-de-sac arrangement provides an appropriate relationship with the High Street. Moreover, these developments are on a lower land level that relates well with the frontage development. Consequently, the proposal would be in an incongruous position and would be at odds with the character and appearance of the area.

12. Policy DEN2 of the Development and Site Allocations Local Plan 2019 (DSALP) requires development within the NL to conserve and seek to enhance its landscape and scenic beauty and should be small-scale. Although the proposal would harm the character and appearance of the surrounding area, the harm would be localised and viewed within the context of the existing development forming the settlement of Etchingham. Moreover, the proposal would not encroach into the open countryside beyond the rear boundary. Accordingly, harm would be localised and would not result in harm to the wider NL.
13. I conclude that the proposal would harm the character and appearance of the area. The development therefore conflicts with Policies OSS4, EN1 and EN3 of the Rother Local Plan Core Strategy (CS) 2014 and Policies DIM2, and DEN1 of the DSALP, which collectively seek to ensure that development is in keeping with local character and respects and does not detract from the character and appearance of the locality.

Living conditions

14. The site is to the rear of the gardens serving two pairs of semi-detached dwellings. The proposed dwellings would be positioned on the main part of the site, which is reasonably distant from the rear elevations of the neighbouring dwellings. However, the raised position of the main part of the site would allow for unobstructed views towards the rear gardens serving the dwellings at Meadow View, Circles, Mafeking, Braemar and Eastern House.
15. The plans indicate that the two-storey dwellings would be set back from the rear elevations of the two pairs of semi-detached dwellings, beyond two single-storey garage blocks. Nonetheless, the proposal is in outline form with all matters reserved, including the appearance, landscaping, layout and scale of the development. There would be capacity within the site that satisfies me that the proposal could be developed without harming the living conditions of occupants of neighbouring properties. A suitable layout of fenestration within the upper floors and a sensitive development layout could be incorporated that would safeguard the privacy and outlook of the occupants of neighbouring properties.
16. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupants of neighbouring properties, with regard to privacy and outlook. The development therefore accords with Policy OSS4 of the CS, which requires development to not unreasonably harm the amenities of adjoining properties.

Highway safety

17. Although the scheme is in outline, the submitted plans indicated that the site would be accessed from High Street utilising an existing vehicular access. Due to the restricted width of existing access point, there would be limited space to provide a waste and recycling collection area. Consequently, given the distance of the main part of the site from the highway, refuse collection vehicles would be required to enter the site,
18. The access between Braemar and Mafeking to the main part of the site is narrow and would restrict vehicle movements to a single track. The plans indicate that a parking and manoeuvring area could be provided within the main part of the site. Nevertheless, there is no substantive evidence before me that demonstrates that a

large refuse collection vehicle could manoeuvre within the site to safely enter and exit in a forward gear. Accordingly, it is likely that larger refuse collection vehicles would need to either enter or exit the site in reverse gear, which may lead conflict between users of the highway.

19. However, the proposal is submitted in outline form with access and layout reserved for future consideration. While the evidence before me is limited, the site is nonetheless of a size that could allow for larger refuse collection vehicles to access the site or provide an alternative method of bin storage and collection.
20. I conclude the proposal would not have an unacceptable impact on highway safety. The development therefore accords with Policy CO6 of the CS, which seeks to ensure that all development avoids prejudice to road and/or pedestrian safety.

Ecology

21. The Natural Environment and Rural Communities Act 2006 places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. In addition, Circular 06/2005 states that the presence of protected species is a material consideration when a development proposal would be likely to result in harm to the species or its habitat. It goes on to say that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
22. The proposal is accompanied by Preliminary Ecological Appraisal¹ (PEA), which concluded that development at the site would have a negligible ecological impact and made recommendations, including carrying out a series of Reasonable Avoidance Measures prior to, and throughout, habitat management for herptiles. However, the PEA notes that areas of forest brash are present on site from the recent clearing of scrub and apple trees on the site. In addition, the Arboricultural Impact Assessment and Method Statement² (AIA), stated that the main body of the site was assessed as being recently cleared, as patches of bare ground persisting amongst areas of deadwood and tree stumps and considered to be highly disturbed and appeared recently cleared.
23. While the clearing of the site prior to the PEA survey had taken place is unfortunate, there is no substantive evidence before me that details the condition of the site prior to the clearance works, or that protected species were present. If protected species were present on the site prior to, or during, the clearance works, there is other legislation available to if harm has occurred to protected species and/or their habitats. While I note that the Forestry Commission has been notified in respect of the felling of trees, the evidence before me does not demonstrate that any felled trees were protected.
24. The mandatory condition requiring biodiversity net gain of at least 10% will be imposed on permissions granted pursuant of a planning application made on or after 12 February 2024 or 2 April 2024 for small developments such as this. Given that the application was made before 2 April 2024, this mandatory requirement

¹ Dated January 2024, prepared by CLM.

² Dated February 2024, prepared by Lizard Landscape Design and Ecology.

does not apply. Nonetheless, Policy EN5 of the CS requires developers to integrate biodiversity into development schemes by avoiding adverse impacts from development on biodiversity or habitat, or where wholly unavoidable, provide appropriate mitigation against or compensation for any losses.

25. There is scope within the site for landscaping within and outside of the garden areas, which would ensure that appropriate mitigation is in place to compensate for the loss of trees and habitat at the site. This could include planting of orchard trees or similar species to those that have previously been removed. Moreover, the line of trees to the rear boundary of the site would be retained and a buffer could be included to provide suitable commuting habitat for bats. Given that landscaping is a reserved matter, the retention and provision of landscaping and biodiversity enhancement of the site could be secured, in accordance with the recommendations of the PEA, as part of a detailed landscaping scheme.
26. I conclude that the proposal would not have a harmful effect on ecology. The development therefore accords with Policy EN5 of the CS, as set out above, and DEN4 of the DSALP, which requires that proposals seek to conserve and enhance protected species, both within and outside designated sites.

Planning Balance

27. There is no dispute that the Council is currently unable to demonstrate at least a five year supply of housing land that the Framework requires. The Council states that it is able to demonstrate a 2.79 year supply, which is substantially below the required level of five years.
28. Paragraph 11 d) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
29. The proposed development would make a positive contribution to the supply of housing through the efficient use of land. The Framework explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. In addition, the proposal would deliver social and economic benefits both during construction through the creation of jobs, and following occupation through the use of facilities and services in the surrounding settlements. However, the contribution of two dwellings and the associated benefits are limited by the scale of development proposed.
30. In the particular circumstances of this case, I have concluded that the proposal would have a harmful effect on the character and appearance of the area and would conflict with the relevant policies of the development plan and the Framework to which I apportion significant weight. The adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Conclusion

31. The proposal conflicts with the development plan. The material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

J Pearce

INSPECTOR