



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: 02 May 2025

Appeal Ref: APP/U1430/W/24/3347789

Freezeland Farm, Freezeland Lane, Bexhill TN39 5JD

- 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 Mr B White against the decision of Rother District Council.
 - The application Ref is RR/2023/1706/P.
 - The appeal development is described as: "Proposed new development of 5 dwellings including new vehicular access".
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Decision

1. The appeal is allowed and planning permission is granted for a proposed new development of 5 dwellings including new vehicular access at Freezeland Farm, Bexhill TN39 5JD in accordance with the terms of the application, Ref RR/2023/1706/P, subject to the conditions in the attached schedule.

Preliminary Matters

2. The proposed scheme is for consideration of access and layout with all other matters reserved. The appellant has submitted plans to show how up to 5 dwellings on the site would be arranged, including circulation space, garages and gardens. The elevations submitted showing the detailed design are for illustrative purposes only and I have determined the appeal on that basis.
3. The National Planning Policy Framework (the Framework) was revised in December 2024, during the consideration of the appeal. The Council and the appellant were given the opportunity to comment upon the revisions insofar as they relate to the appeal and I have taken any comments made into account in my reasoning.
4. The Council, in its statement of case, raised objections to the appeal scheme regarding a loss of grazing land and the mix of dwelling sizes proposed. However, the Council has since confirmed that it does not wish to pursue these points and I have determined the appeal on this basis.

Main Issues

5. The main issues in this appeal are:
 - whether the proposal would comply with the Council's strategy for the location of development;
 - the effect of the proposal on the character of the area; and,

- whether the proposed development would preserve the setting of the Grade II listed building known as The High House.

Reasons

Location of Development

6. The appeal site is located at the southern edge of Lunsford's Cross which comprises a linear settlement with limited services, facilities and employment. The appeal site is not within a settlement boundary and is therefore in a countryside location for the purposes of planning policy.
7. Policies OSS2 and OSS3 of the Rother Local Plan Core Strategy 2014 (Core Strategy) set out the Council's spatial strategy for the location of new development. These policies seek to focus new development within defined settlement boundaries with regard to, amongst other things, the capacity of and access to local services, employment, the distinct character of the area, the effective use of land, and the character and qualities of the landscape. Policy RA3 of the Core Strategy only supports the creation of new dwellings in the countryside in limited circumstances. The proposal would not be provided in connection with farming and other land-based industries nor would it comprise a 'rural exception site' to meet an identified local affordable housing need.
8. To access local services, facilities and employment opportunities, residents would need to travel into nearby Bexhill or Ninfield, travelling along the A269. There are bus services from Lunsford's Cross to Bexhill or towards Hailsham and the nearest bus stop would be easily accessible from the appeal site. I recognise that this is a heavily trafficked road and has an intermittent and sometimes narrow pavement. Nevertheless, the presence of the bus service would provide an alternative means to private cars of accessing local services, facilities and employment opportunities.
9. I have been directed to 2 allowed appeals for housing development for 5 houses within the grounds of the Garden House adjacent to the appeal site (APP/U1430/W/17/3176154) and 4 houses at Thorne Close (APP/U1430/A/13/2202104) slightly further to the north. In addition, there is a 2019 planning permission for 3 houses (reference RR/2019/1477/P) in Thorne Close. I note that these residential developments are in a comparable location to the appeal site in terms of how residents would access employment and day-to-day services and facilities. The Council concluded in relation to the 2019 planning permission that the site would be in an "appropriate location having regard to the accessibility of the site to employment, services and facilities". With regard to the appeal site, there is no substantive evidence before me which would lead me to conclude otherwise in this respect.
10. Notwithstanding my findings above regarding the accessibility of employment, services and facilities, the location of the appeal scheme would conflict with the Council's strategy for the location of development. This is as set out in Core Strategy Policies OSS2, OSS3, RA3 and TR3, insofar as these policies seek to locate new residential development within settlement boundaries, minimise the need to travel, and support the creation of new dwellings within the countryside in very limited circumstances.

Character

11. The appeal site comprises an undeveloped paddock running alongside Ninfield Road to its junction with Freezeland Lane. Set at a higher level than the road, the site is lined with trees and vegetation on its roadside boundary. The trees to the boundary and interior of the site are protected by a group Tree Preservation Order (TPO) and the trees along the boundary in particular make a significant contribution to the visual amenity of the area. The site is directly adjacent to suburban housing development to the north and the more sporadic built development along Freezeland Lane.
12. The proposed layout would be low density, with the pattern of development following the suburban style of development adjacent to the north and west. Although the layout would not be the most efficient use of land, it takes into account the retention of many of the protected trees on site. These trees would provide effective screening from views into the site from Ninfield Road. Nevertheless, the proposed houses would be visible through the new access and the suburban character would be apparent. Given that the scheme would be effectively infilling an area between suburban development on Ninfield Road and the more sporadic forms of development found along Freezeland Lane, I do not consider it would unacceptably encroach upon the clear separation between the outer limits of Bexhill and the cluster of dwellings in Lunsford's Cross.
13. The proposal would not introduce a form of development which would unacceptably harm the character of the site or surrounding area given the suburban development immediately to the north and west of the appeal site. In this regard, the proposal would be in line with Policies OSS2, OSS3, OSS4, RA3 and EN1 of the Core Strategy insofar as they require proposals to be considered in the context of the character and qualities of the landscape and not detract from the character of the locality.

Heritage Assets

14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) requires me, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features or special architectural or historic interest which it possesses. The Framework sets out when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
15. The High House is a three storey Georgian dwelling which is located opposite the appeal site on Ninfield Road. The significance of the building is derived from its typical Georgian domestic architecture in terms of its use of brick, its elevational composition and window pattern. It is principally experienced in views from Ninfield Road and from the Public Right of Way to the south of the house. Historic maps show that the garden was once more extensive, running to the north-west side of the house. There has since been residential development in what was once part of the garden, along with housing immediately to the south. Its setting has clearly changed over the years, but the presence of Ninfield Road has been a constant in the experience of its setting.

16. Ninfield Road is the main road through Lunsford's Cross. The location of the appeal site on the opposite side of a fairly wide road is therefore somewhat removed from the building's immediate setting. As such, I conclude that the appeal proposal would not harm the significance of the designated heritage asset though development within its setting, such that its setting would be preserved. The appeal proposal would therefore be in line with the aims of chapter 16 of the Framework insofar as it seeks to preserve the setting of designated heritage assets.

Other Matters

17. I have had regard to the concerns of interested parties regarding highway safety including the proposed access arrangements. The Council is satisfied that the proposed means of access from Ninfield Road would be acceptable in highway safety terms. I note that the Highway Authority have not objected to the scheme, and I have no evidence before me which would lead me to disagree with the Council's conclusions in this respect. Off street parking within the site would need to be secured by condition to ensure that it is provided in accordance with the layout shown.
18. Several trees protected by the group TPO would need to be removed to accommodate the development, although these would be largely confined to the central area of the field and adjacent to the proposed access. The Council is satisfied that the removal of the trees would not prejudice the remaining trees on site provided suitable protection measures are in place. The tree protection measures outlined in the arboricultural report supplied by the appellant include root protection barriers and temporary and permanent ground protection and would need to be secured by planning condition.
19. The appellant's Preliminary Ecological Appraisal (PEA) has identified an oak tree (to be retained) as having moderate potential for a bat roost. The Appraisal also concludes that although the area is identified as a suitable environment for Great Crested Newts, due to barriers to dispersal and the distance of ponds from the site, their presence was unlikely. The Council's consultants, Nature Space, concur with these findings and I have no reason to reach a different conclusion.
20. Interested parties have raised concern over the potential for new dwellings to harm the privacy of neighbouring dwellings. The layout of the site shows that the proposed dwellings would be set well away from the boundary with adjacent dwellings such that there would not be an unacceptable loss of privacy.
21. Whilst I note the concern of interested parties regarding mains water services which may run beneath the appeal site, these concerns have not been substantiated and works affecting water services are likely to require separate consent in any event.

Planning Balance

22. The harm I have identified arises from the conflict between the appeal proposal and the Council's strategy for the location of development set out in Core Strategy Policies OSS2, OSS3, RA3 and TR3. Amongst other things, these policies focus new development within defined settlement boundaries, allowing new housing in the countryside in very limited circumstances.

23. Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework aims to achieve sustainable travel and to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The Framework does not contain any policies which specifically prohibit development outside towns and villages, and I consider that insofar as they relate to the location of development, Policies RA3, OSS2, OSS3 and TR3 take a more prohibitive approach than that contained in the Framework. As such, the conflict between the proposal and these policies should be given limited weight.
24. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites. The reported supply is equivalent to 2.63 years. In these circumstances, paragraph 11d)ii of the Framework is applicable. Footnote 8 of the Framework is clear that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard for 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.
25. The need for housing is well-established. The benefits associated with 5 additional dwellings would be significant given the Framework's objective of boosting significantly the supply of housing, and the Council's housing land supply position. There would also be some modest socio-economic benefits through construction employment and new residents using local services.
26. When assessed against the policies in the Framework as a whole, the limited weight I have attributed to the conflict with the development plan would not significantly and demonstrably outweigh the benefits of 5 additional homes in a suitable location which would preserve the appearance of the area and preserve the setting of the Grade II listed High House. The presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

27. The Council has provided some suggested conditions which I have considered in light of advice in the Framework and Planning Practice Guidance. As a consequence, I have amended or omitted some of the suggested wording. I have attached the standard reserved matters and time limit condition for outline permissions (1, 2 and 3) and a plans condition (4) as this provides certainty. The requirement for a construction management plan (5) is a pre-commencement condition to which the appellant has agreed. This is necessary in the interests of highway safety and protecting the living conditions of neighbouring residents.
28. The Council's suggested condition 5 (their original numbering) refers to matters covered by other legislation. I have omitted that wording and re-worded it to form condition 6.
29. Conditions 6, 7, 8, 9 and 10 concerning the provision of access, visibility splays, roads within the site and parking are necessary in the interests of

highway safety. Condition 11 is necessary to ensure the protection of trees within the appeal site during and after construction, in the interests of the character and appearance of the area. Condition 12 is necessary to ensure the development is carried out in accordance with the mitigation measures set out in the PEA. Condition 13 sets out the level of detail required for the landscaping reserved matters and is necessary in the interests of the character and appearance of the area.

30. Since the appellant has clarified that the proposal would not contain roads for adoption as public highway, the Council's suggested condition (12 in their original numbering) is not necessary. The Council's suggested condition requiring a turning space is not necessary since there would be adequate space for turning within the layout shown on the plans. The suggested condition (13 in the Council's original numbering) regarding drainage is not necessary since this is already covered by condition 9.

Conclusion

31. For the reasons given above the appeal should be allowed.

L Francis

INSPECTOR

Schedule of Conditions

1. Details of the appearance, landscaping and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with drawing numbers: BW/22/07/1, BW/22/07/2, BW/22/07/3, BW/22/07/4.
5. No development shall take place, including any demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant, materials and waste;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding;
 - wheel washing facilities, dust and dirt control and other works required to mitigate the impact of construction upon the public highway;
 - the anticipated number, frequency and types of vehicles used during construction;
 - means of access and egress and routeing of vehicles during construction
 - details of public engagement both prior to and during construction works.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

6. The development hereby permitted shall not be occupied until the means of access for vehicles and pedestrians has been constructed in accordance with the approved plans. The access shall be retained thereafter.
7. The 2.4m x 70m visibility splays shown on plan no. BW/22/07/4 shall be free of any obstruction exceeding 0.6m in height and shall be retained as such thereafter.
8. The development shall not be occupied until the existing access shown on drawing BW/22/07/2 has been stopped up and the kerb, footway and verge reinstated in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

9. No development above ground level shall take place until detailed drawings, including levels, sections, and construction details of the roads within the site and the associated surface water drainage, outfall disposal and street lighting have been submitted to and approved in writing by the local planning authority. No dwelling hereby approved shall be occupied until the road(s) have been constructed in accordance with the approved details.
10. The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no. BW/22/07/3. Thereafter those spaces shall be retained for the parking of vehicles only.
11. The development shall be carried out in accordance with the tree protection measures and arboricultural method statement detailed in the Arboricultural Report by the Mayhew Consultancy Ltd ref AR/84420 dated April 2023. The tree protection measures shall be in place prior to any works commencing and maintained until all construction equipment, machinery and surplus materials have been removed from the site.
12. The development hereby permitted shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal by the Mayhew Consultancy Ltd dated February 2023.
13. The landscaping reserved matters pursuant to condition 1 shall include full details of hard and soft landscaping including:
 - i) Planting plans;
 - ii) Written specifications (including cultivation and other operations associated with plant and grass establishment);
 - iii) Schedules of plants, including species, plant sizes, numbers and densities where appropriate;
 - iv) An implementation programme including details of when planting will take place and provision for the replacement of plants which die, are removed or become seriously damaged or diseased within 5 years from the completion of the development;
 - v) Surface materials;
 - vi) Boundary treatments;
 - vii) Cycle storage; and,
 - viii) Refuse storage.

The works shall be carried out in accordance with the approved details prior to occupation of the development.

END OF SCHEDULE