



Appeal Decision

Site visit made on 15 July 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/U1430/W/18/3212551

Berners Hill Poultry Farm, Berners Hill, Flimwell, East Sussex TN5 7ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Orpin against the decision of Rother District Council.
 - The application Ref RR/2018/513/P dated 8 February 2018, was refused by notice dated 27 June 2018.
 - The development proposed is outline planning application for 9 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration. I have assessed the proposal on this basis and treated the drawings as being an illustration of how the proposal could ultimately be configured.
3. The description of development on the application form refers to ten dwellings but the documents before me, including the indicative drawing and the appellant's submissions, refer to nine. I have based my assessment on the latter as this is what the Council did.
4. The site visit procedure was altered from an access required site visit to an unaccompanied visit because the appellant was not present at the prearranged time and I was able to see all I needed to from public land.
5. Since the Council issued its decision the Ticehurst Neighbourhood Plan (TNP) was approved at referendum and 'made' by the Council on the 8 July 2019. It now comprises part of the development plan. I must base my decision on the development plan as it is currently. Both the Council and the appellant were afforded an opportunity to supplement their submissions on this matter and I have taken the additional comments into account.

Main Issues

6. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development, with reference to the accessibility of services and facilities and policies concerned with the location of housing;

- The effect on the character and appearance of the area, including whether the proposal would conserve or enhance the High Weald Area of Outstanding Natural Beauty;
- Whether the proposal would preserve the setting of Fernbank, Rosedene, and Montrose, Grade II listed buildings and its effect on the significance of non-designated heritage assets;
- The effect of the proposed development on the living conditions of the occupants of Berners Hill House, with particular reference to privacy; and
- The effect of the proposed development on biodiversity.

Reasons

Whether the appeal site is a suitable location for housing

7. Policy OSS3 of the Rother Local Plan Core Strategy 2014 (CS) addresses the location of development and states that planning applications should be considered in the context of the spatial strategy for the area. In this instance, the appeal site is located outside the settlement boundary of Flimwell and is within the countryside. Policy OSS2 of the LP states that development boundaries around settlements differentiate between areas where most forms of development will be acceptable and where they will not.
8. Policy RA3 of the CS states that new housing in the countryside will be allowed in extremely limited circumstances. These include rural workers dwellings, the conversion of traditional rural buildings, replacement dwellings and rural exception sites providing affordable housing. The appeal scheme would not be any of the types of development where the principle is exceptionally permitted in the countryside by Policy RA3. Nor is the proposal the type of scheme permitted by the general strategy for development in the countryside in Policy RA2 of the CS.
9. Policy H1 of the TNP sets out the spatial strategy for the neighbourhood planning area. This is to focus development in the existing villages, with no residential development to be allowed outside the villages' development boundaries (as defined on Maps 15 and 17) unless a countryside location is essential. There is nothing of substance before me to suggest it is essential for the development to be in the countryside. In fact, the development boundary of Flimwell has been extended to accommodate and exceed the identified housing requirement in the area covered by the TNP.
10. The B2087 runs along the southern boundary of the appeal site and this provides a link between the settlements of Ticehurst and Flimwell. According to evidence supplied by the appellant, it has a generally good safety record. Nevertheless, the services and facilities in the nearby settlements, as well as the nearest bus stop, are beyond a safe and comfortable walk from the appeal site due to the distance and the unappealing walking environment created by the narrow nature of the lane, the speed of traffic and the absence of pavements. For similar reasons cycling is also unlikely to be desirable and, in any event, it would require a level of confidence, fitness and proficiency that future residents may not possess. The appellant suggests a planning obligation could secure cycle enhancements, but no such obligation is before me.

11. It may be possible to fit vehicular charging stations at each of the dwellings to support the use of low emission vehicles, but the houses are likely to be constructed in the short term and therefore it is unlikely that most future occupants would drive electric vehicles. Accordingly, this cannot be relied upon as a means of mitigating the inaccessible location of the site. In any event, the inaccessibility of the appeal site from services and facilities would not promote the social and health benefits conducive with safe and convenient walking and cycling. This could not be mitigated by electric vehicles.
12. The appellant suggests that the overall impact of the appeal scheme would be to reduce traffic movements because there would no longer be retail egg sales from the site. However, I observed no evidence of a retail premises at the appeal site, have seen nothing of substance to demonstrate that egg sales went beyond conventional 'gate sales' or that the vehicle movements and air pollution associated with existing movements to and from the appeal site are comparable to those anticipated from the appeal scheme. Accordingly, this is a point of limited weight.
13. Considering the foregoing, the proposal would not be a suitable location for housing when considering the policies of the development plan and the accessibility of services and facilities. Thus, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for the location of new development.

Character, appearance and the AONB

14. The appeal site encompasses a collection of modest structures with a functional agricultural appearance set back from, and elevated above, the B2087. The presence nearby of small fields with dense hedgerows, particularly to the north of the appeal site, and a network of narrow countryside lanes affords the area a rural character that the appeal site is viewed as being part of due to its agricultural appearance.
15. However, the rural character of the area between Ticehurst and Flimwell has been weakened by ribbon development stretching out along the B2087. This includes Clarks Yard and Berners Court Yard, which are small cul-de-sacs with a suburban layout and appearance. Thus, when moving between Flimwell and Ticehurst along the B2087 buildings are continuously apparent. In this respect, the appeal site is not isolated. Nevertheless, Policy R2 of the TNP establishes a 'Green Gap' between the two settlements (as defined on Map 9). The purpose of this is to prevent further obtrusive development that would intensify the sense of coalescence and loss of openness between Ticehurst and Flimwell.
16. The erection of nine homes with a new highway access, that would likely require significant engineering works given the steep bank, would be a prominent form of development that would harmfully intensify the visual presence of built form. This would be the case even if the overall footprint of buildings decreased. This is because the character of the site would change from an agricultural farmstead one would expect to see in the countryside, to that of a suburban enclave of housing, which is likely to take the form of a cul-de-sac with domestic features such as driveways, fencing and gardens.
17. The intensification of suburban residential development would harmfully erode the rural character of the appeal site, appear discordant in the countryside and

compromise the openness of the Green Gap. These would be inherent limitations that could not be overcome at the reserved matters stage.

18. In such circumstances, the proposal would fail to conserve the landscape character of the High Weald Area of Outstanding Natural Beauty by introducing intrusive suburban development. In this sense, the proposal would exhibit some of the top five issues identified as threats in the High Weald AONB Management Plan 2019 - 2024, including residential intensification unrelated to land management outside towns and villages. The development of the appeal site, which currently has structures within it, may be preferable to development of a greenfield site in the AONB, but this would not render the harmful impact of the proposal upon landscape character acceptable.
19. In conclusion, the appeal scheme would harm the character and appearance of the area and the landscape of the AONB, which it would fail to conserve or enhance. It would therefore be at odds with Policies OSS4, RA2 and EN1 of the CS and Policy R2 of the NP. These policies seek to secure development that respects and does not detract from the character of the area and conserves landscape character.

The effect of the proposed development on heritage

20. Fernbank, a modest brick-built cottage, is located opposite the appeal site and is Grade II listed. The appeal site is also located in the setting of the Grade II listed Rosedene and Montrose, a brick and weather boarded pair of semi-detached cottages. The appeal site is also visible in the backdrop and setting of other listed buildings including Lyndhurst, Midhill Cottages, Greystones and Chorley Cottage. These buildings have a rural setting and a vernacular character derived from the landscape in which they sit. This is key to the way the buildings are experienced.
21. Interspersed between the listed buildings is a handful of unlisted period cottages probably dating from the 18th and 19th Centuries. Of these undesignated heritage assets Berners Hill Farm and 37 Berners Hill are particularly interesting, forming what is likely to have been a small row of farm workers cottages. The general form, materials, layout and appearance of these buildings relate well to the nearby listed properties and provides both an individual and collective significance.
22. This collection of buildings has a group value derived from the common features on display and the spacious linear layout. They complement one another and the rural landscape more generally, particularly as they exhibit the rural vernacular and have a rural backdrop. The existing buildings within the appeal site have little architectural quality but they have a low profile and an agricultural character that goes a long way to mitigating their presence in the setting of the listed buildings.
23. As demonstrated on the illustrative layout, the nine dwellings proposed would probably need to be arranged in a cul-de-sac. This would appear comparatively cramped and would not respect the existing linear arrangement of the nearby houses. A modern suburban cul-de-sac at the appeal site would appear as an incongruous suburban intrusion that would jar with the layout and scale of the existing historic cluster of buildings. The elevated nature of the site would result in the new buildings appearing overly prominent and imposing, thereby providing an awkward juxtaposition with the modest period buildings.

Accordingly, the way the buildings are experienced would be seriously altered and harmed.

24. In conclusion, the proposal would result in inherent and significant harm to the setting of the listed buildings, which it would fail to preserve, and the collective significance of the undesignated heritage assets. It would therefore be contrary to Policy EN2 of the CS, which seeks to preserve locally distinctive vernacular buildings and their settings.

The effect on the living conditions of the occupants of Berners Hill House

25. The indicative layout plan suggests the access into the appeal site would be opposite the garden of Berners Hill House. This is a likely position given the archaeological constraints. The access would be on elevated ground and as a result there could be the potential for future occupants of the appeal scheme to see into the garden of Berners Hill House. However, the distance and existing hedge along the boundary of the garden would soften and filter views. The views would also be fleeting as the occupants would be moving in and out of the site as opposed to a fixed view from a house or garden. Accordingly, I am satisfied the scheme could be designed in a way that would safeguard the living conditions of the occupants of Berners Hill House and therefore a conflict with Policy OSS4, in so far as it relates to living conditions, need not be an inevitable consequence of permitting the scheme.

The effect of the proposed development on biodiversity

26. In referring to Natural England's standing advice the Council suggests the appeal site includes a number of features that could support bats, breeding birds and barn owls including mature trees, open sided buildings and hedgerows that form part of a wider network. Accordingly, there is a reasonable likelihood of protected species being present and affected by the development, particularly as the existing buildings would be demolished.
27. The appellant has not provided any biodiversity surveys because he considers they could be secured through a planning condition in the event the appeal was allowed. However, Circular 06/2005¹, states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case. It is necessary to identify the presence or otherwise of protected species before granting planning permission so that any impacts and potential mitigation can be identified and fully understood. The absence of an assessment is therefore a significant omission. Without it, there is an unacceptable risk that the proposal could harm protected species. As such, I cannot be certain the development would protect and enhance biodiversity and thus adhere to Policy EN5 of the CS.

Other Matters

Whether public benefits would outweigh the harm to designated heritage assets

28. The harm I have previously identified to the setting of listed buildings would be reasonably localised and therefore 'less than substantial' within the meaning of the National Planning Policy Framework (the 'Framework'). Paragraph 196 of the Framework requires such harm to be weighed against the public benefits of the proposal.

¹ Biodiversity and Geological Conservation – see footnote 56 of the National Planning Policy Framework

29. The proposal would provide nine homes, and this is a moderate public benefit because the Council is currently unable to demonstrate a five-year housing land supply². However, at a local level the very recently made TNP addresses the housing requirement for the neighbourhood plan area³ and the Council are in the advanced stages of preparing its Development and Site Allocations Local Plan, which should set out a strategy for addressing the shortfall in supply. There is no residual housing requirement for Ticehurst Parish up to 2028 within this draft document, although I accept this may change. Nevertheless, the benefits to housing supply are of moderate weight as a public benefit.
30. The proposal would result in benefits to the construction industry and future residents may spend locally. However, the contribution to the construction industry would be short lived and I have seen nothing to suggest the 'spend' from nine additional households would have a notable effect on the viability of facilities in the village. Moreover, evidence has not been provided to suggest local facilities are suffering for lack of patronage. As such, the likely economic benefits of the proposal carry moderate weight.
31. The appeal scheme would remove buildings of low architectural merit but replace them with a scheme that would have a greater visual presence, as such this is an adverse impact as opposed to a benefit. The proposal would not amount to the redevelopment of previously developed land (PDL) as, being an agricultural site containing agricultural buildings, it falls outside the definition of PDL in the Framework.
32. Thus, when giving considerable importance and weight to the special regard I must have to the desirability of preserving the setting of listed buildings⁴, I find that the significant harm that would arise from the appeal scheme would not be outweighed by its cumulative public benefits. Accordingly, there would be a conflict with Paragraph 194 of the Framework as harm to designated heritage assets would not have a clear and convincing justification.

Paragraph 11 of the Framework

33. Paragraph 11 of the Framework states that in situations where the Council is unable to demonstrate a five-year supply of deliverable housing sites permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development proposed.
34. In this instance, the public benefits of the proposal would not outweigh the harm to the setting of listed buildings. Moreover, Paragraph 172 of the Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs and that the scale and extent of development in these areas should be limited. The appeal scheme would fail to conserve or enhance the AONB landscape for the reasons given.
35. Thus, the policies in the Framework provide clear reasons for refusing the appeal scheme. It is therefore unnecessary to consider whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a

² The Council's monitoring report concludes that the supply is 3.9 years and I have not been presented with substantive technical evidence that demonstrates this figure is incorrect.

³ A materially different situation to appeal decision APP/U1430/W/17/3191063

⁴ See Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

whole⁵. Even if it were, Paragraph 14 of the Framework, which is relevant⁶, states that the adverse impacts of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits (of the development).

Consistency of Decision Making

36. The appellant has referred to other development schemes⁷ that have been approved nearby. Like applications should be considered in a like manner to ensure consistency in decision making within the planning system. However, the decisions referred to pre date the TNP and do not appear to have the same harmful impacts on the setting of listed buildings and the AONB. In fact, they were sites apparently allocated for development in the Rother Local Plan 2006. Accordingly, they are not sufficiently similar to the appeal scheme to be notable material considerations in favour of allowing it.

Concerns from Interested Parties

37. Various concerns have been raised by interested parties, including reservations regarding, for example, the impacts from noise and disturbance, which I have noted. However, given my findings above it has not been necessary for me to address these matters further as the appeal has failed on other grounds. Similarly, it is unnecessary for me to consider whether affordable housing is required pursuant to Policy H4 of the TNP. The appellant has not advanced the provision of affordable housing as a benefit of the appeal scheme.

Conclusion

38. The proposed development would safeguard the living conditions of the occupants of Berners Hill House but this would be outweighed by the conflict with the spatial strategy in the development plan, the significant harm that would occur to the setting of listed buildings and the character and appearance of the area, including the AONB landscape, and the risk to biodiversity. Therefore, the proposal would not accord with the development plan taken as a whole. There are no other considerations which outweigh this finding including the provisions of the Framework. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR

⁵ This is a materially different circumstances to appeal APP/U1430/W/17/3176154

⁶ Because the TNP is less than two years old and includes allocations to meet its identified housing requirement and the Council has at least a three-year supply of housing sites and a Housing Delivery Test result in excess of 45%

⁷ Corner Farm, Old Wardsdown and Broom House (the latter two are, in fact, the same site)