



Appeal Decision

Site visit made on 16 January 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/R3650/W/22/3302544

Tree Tops, Mapledrakes Road, Ewhurst, GU6 7QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Crownhall Estates against Waverley Borough Council.
 - The application Ref WA/2022/00763, is dated 23 February 2022.
 - The development proposed is for residential development, including access, following demolition of an existing dwelling.
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Decision

1. The appeal is dismissed and outline planning permission for residential development, including access, following demolition of an existing dwelling is refused.

Preliminary Matters

2. The original application was made in outline with means of access to be considered. All other matters are reserved to be considered at a later stage. I have dealt with the appeal on this basis and I have treated any details that are not to be considered at this stage as being illustrative only.

Main Issues

3. The Council have confirmed that if they had been in a position to determine the proposal then they would have recommended refusal of the application and set out six putative reasons for refusal within their appeal statement.
4. The appellant has also submitted a duly executed unilateral undertaking in order to overcome the fourth and fifth putative reasons for refusal which I have taken into account. It provides for a contribution towards open space and affordable housing and I have contemplated this further later in my decision.
5. Therefore, the main issues in this appeal are the effect of the proposed development:
 - on the character and appearance of the area;
 - on ancient woodland;
 - on protected species; and
 - on the best and most versatile agricultural land.

Reasons

Character and appearance

6. The site comprises an existing single storey dwelling, Treetops, which fronts onto Mapledrakes Road, and extends beyond the rear of the dwelling and neighbouring properties in an L-shape. The rear portion of the site was formerly a nursery, and the rear boundary is formed by mature trees and Ancient Woodland.
7. The appeal site is situated outside, but adjacent to the settlement boundary of Ewhurst, where the Council's spatial strategy at Policy SP2 of the Waverley Local Plan 2018 (part 1) (the LP), allows for limited levels of development.
8. This part of the settlement is predominately linear, as evidenced by the tightly drawn settlement boundary, which excludes the land to the rear. The established pattern of development arises from dwellings being sited along the existing road, with a variety of plot sizes, being predominately of single plot depth on this side of Mapledrakes Road. This adds positively to the character and appearance of the area.
9. The Surrey Landscape Character Assessment Waverley Borough 2015 (LCA) defines the appeal site as part of the WW8: Cranleigh to Charlwood Wooded Low Weald area. This character consists of a patchwork of arable and pastoral fields, woodland blocks and hedges/tree belts. The landscape strategy for the Wooded Low Weald area is to conserve its areas of intimate, peaceful landscape, primarily through protection of its woodland, hedgerows and trees, along with limiting the spread of settlements and other development.
10. The appeal scheme would result in the construction of 20 dwellings, replacing the existing dwelling. The development would be served off a single access point with the dwellings extending across the depth of the site. The appellants Landscape and Visual Impact Assessment (LVIA) sets out how the landscape effect at the site level are predicted to be moderate adverse, reducing to minor adverse within 15 years, with the establishment of planting.
11. In relation to the effects on the character of Ewhurst it sets out that alterations to the settlement pattern would be localised and the effect of the proposed development would be negligible adverse. It concludes however, that in respect of the development as a whole the visual effects are predicted to range between moderate adverse and minor adverse in year 1 and that from localised viewpoints the development would be noticeable.
12. The spread of the proposed development across the site would be greater than the existing frontage development and would also include the introduction of a central spine road. Furthermore, the proposed development would result in the demolition of the existing dwelling. This would alter the current pattern of development which is characterised by the closely spaced dwellings. It follows that the visual impact of the proposed development would be greater than that which currently exists and the contrast with the linear pattern of development in this location would be out of place and harmful to the character and appearance of the area.

13. I have been provided with details of a development of 49 dwellings in Ewhurst, which was allowed on appeal in 2019¹. In that decision the Inspector considered that whilst the development would turn from open countryside to developed land and result in change. The minor harm to visual amenity needed to be considered in the context of the wider strategy, which allows for development in and around the settlement. However, these dwellings would be directly adjacent to an existing cul de sac and the pattern of development does not appear, from the evidence, to be the same as the proposals before me and therefore are not directly comparable.
14. In conclusion, the increase in the amount of built development on the site and the layout of development arranged in-depth across the site, would be at odds with the established linear pattern of development. For these reasons, therefore, the proposed development would introduce a discordant built form to the locality that would be harmful to the character and appearance of the surrounding area contrary to Policy RE1 of the LP which states that the intrinsic character and beauty of the countryside will be recognised and safeguarded.
15. The development would also fail to accord with policies EEG3 and EEG4 of the Ewhurst and Ellens Green Neighbourhood Plan 2019-2032 (NP) which together seek to ensure that development enhances the local character of the area.

Trees and Ancient Woodland

16. The appeal site is bound to the rear by an area of ancient woodland. The Forestry Commission have also stated that plot 16, as indicated on the submitted layout plan, should be considered as existing woodland, and they note that the ecology report records that it contains ancient woodland indicator species. This part of the site is also mapped on the National Forest Inventory as broadleaved woodland, which is a UK Habitat of Principle Importance.
17. Paragraph 180 (c) of the Framework sets out that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland, should be refused unless there are wholly exceptional reasons (such as infrastructure projects) and a suitable compensation strategy exists.
18. The proposed layout incorporates a 15m buffer to the ancient woodland, but this area does include an area of public open space and a play area. Whilst the layout is indicative and the appellant has suggested that the play area could be relocated outside of the buffer zone, it is unclear whether sufficient space is available to achieve this.
19. Whilst a buffer zone of 15m has been proposed, this is a minimum recommendation and the Forestry Commission encourage the provision of a larger buffer to ancient woodland. The appellant's landscape masterplan does also indicate an additional 10m buffer, but this would include gardens, and the proposed Sustainable Drainage System, which is not considered best practice, by the Forestry Commission. Whilst indicative, the gardens of plots 12-15 also back directly onto the buffer zone and as such could lead to a degree of garden creep, with home owners moving or removing boundaries to incorporate woodland into their gardens, and an increased risk of garden waste being deposited into the woodland.

¹ APP/R3650/W/18/3203951 Land at Firethorn Farm & No's 44-45 Larkfield, Plough Lane, Ewhurst

20. The indicative layout also shows a dwelling, with associated garaging and garden (plot 16) which is within an area that could be subject to a Restocking Notice. The Forestry Commission have advised that any grant of planning permission would not remove the duties contained within any Restocking or Enforcement Notice. Whilst I have nothing before me to indicate that such a notice has been served, the evidence is clear that this remains a matter which is being considered. As a result, I cannot be certain that the indicative layout would be achievable as the developable area of the site could be reduced.
21. The indicative layout does not give sufficient certainty that the site could accommodate the proposed development without a deterioration of irreplaceable habitats, such as ancient woodland, contrary to paragraph 180 (c) of the Framework. It fails to accord with LP policy NE1 which states that development adjacent to locally designated sites will not be permitted where it has an adverse impact on the integrity of the nature conservation interest.

Biodiversity

22. The appellant has provided an Ecological Report which advises that further surveys are not required for amphibians, bats, dormice or badgers. However, the evidence from Surrey Wildlife Trust suggests that further information is required to adequately consider the suitability of the adjacent Cobbler's Brook to support protected species and the impact of the proposed development on the wider habitat, which has the potential to support the foraging and commuting of bats.
23. Paragraph 99 of Circular 06/2005² states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. 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 any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
24. Paragraph 175 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
25. Although further comments have been received from the appellant in response to the points raised by Surrey Wildlife Trust, these have not quantified the foraging and commuting activity of bat species over the whole site but notes that the woodland buffer should provide sufficient mitigation for these activities. However, as I am dismissing the appeal on other matters, I have not found it necessary to go back to the parties to seek their further views.
26. In conclusion, in the absence of sufficient evidence to the contrary, there is a lack of certainty that adequate mitigation is proposed to avoid unacceptable harm to protected species. This would be contrary to policy NE1 of the LP which states development will only be permitted where it ensures any adverse impacts are avoided or if unavoidable, are appropriately mitigated. It would also fail to accord with NP policy EEG7 which seeks to ensure suitable mitigation, minimise negative impacts and achieve biodiversity net gain.

² Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

27. For similar reasons, the proposal would not accord with the Framework, including paragraphs 170 and 174.

Loss of agricultural land

28. The appeal site comprises open land to the rear of the site, which has previously been used as a nursery for the growing of plants. The Council consider that the rear of the site has a classification as Grade 3 agricultural land, and the proposed development would result in the loss of this most best and versatile land.
29. Policy RD9 of the LP states that development, which would result in the loss or alienation of the best and most versatile agricultural land, will not be permitted, unless there is a strong case for the development. In addition, development will not be permitted which would result in the fragmentation of an agricultural or horticultural holding so as to seriously undermine the economic viability of the remaining holding.
30. The Framework at paragraph 174 requires decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, including the economic and other benefits of the best and most versatile agricultural land. The Framework defines the best and most versatile agricultural land as those within Grades 1, 2 and 3a of the Agricultural Land Classification.
31. The footnote to paragraph 175 sets out that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality. Whilst significant is not defined in the Framework, the ordinary meaning would be an amount or effect which is large enough to be important or affect a situation to a noticeable degree.
32. The site is located to the rear of residential dwellings and it has not been possible for the appellant to determine whether the land should be classified as Class 3a or Class 3b. However, the overall site area is approximately 1.17 hectares and part of this comprises the existing dwelling and associated garden. Furthermore, it is a relatively small parcel of land which is not part of a wider agricultural holding and given the limited opportunities for access to the land would be very unlikely to be available for commercial growing.
33. Therefore, even if it were to be Class 3a land, the proposal would not result in a significant loss of best and most versatile agricultural land so as to engage the footnote to paragraph 175 of the Framework.
34. In conclusion, having regard to the overall size of the site, its siting with limited access for commercial machinery and its position between residential development and an area of woodland, the development would not result in the fragmentation of an agricultural or horticultural holding and therefore would not conflict with policy RE9 of the LP.

Other Matters

Planning Obligation

35. The appellant has provided a duly executed legal agreement under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. The agreement secures the provision of affordable housing and open space, including a Local Area for Play (LAP).
36. I have considered the obligations in light of the Framework, Planning Practice Guidance and the Community Infrastructure Levy Regulations (the CIL Regulations). These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
37. Affordable Housing: The delivery of 6 affordable dwellings for rent and shared ownership would be in line with Policy AHN1 of the Local Plan Part 1 2018 which requires affordable housing to be provided at 30 per cent of the overall total. Furthermore, the provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs.
38. Public Open Space: The unilateral undertaking facilitates public open space provision, including a Local Area for Play (LAP) and the management of this area. Policy LRC1 of the Local Plan Part 1 sets out that proposals for new residential development will be expected to make provision for play space, having regard to the Fields in Trust Standards (FTS). These standards require for developments between 10-200 dwellings that a LAP and a Locally Equipped Area for Play (LEAP) are required, in addition a contribution towards a Multi Use Games Area (MUGA).
39. The Council have indicated that any contribution for a MUGA could be met through its CIL fund, but that the appellant has failed to make provision for a LEAP on the site.
40. The NP provides some detail as to the community facilities within the village and includes details of a children's playground at the recreation ground. It also states that the recreational facilities are well-connected to the footpath network. Therefore, whilst I am satisfied that future occupants of the proposed development would have access to a LEAP, it would not be as beneficial as provision on site and may place additional pressure on the existing facilities. This is a matter to which I have attributed limited harm.
41. Therefore, the obligations are necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind.
42. On this basis, I consider the agreement accords with the criteria of Regulation 122 of the CIL and with paragraph 57 of the Framework. I can therefore reasonably take it into account.

Planning Balance

43. Common ground exists between the main parties that the Council can not demonstrate a five year supply of housing, although the extent of this is a matter of dispute. The appellant relies on a range of appeal decisions in support of its position, with the latest decision concluding that the supply was 4.01 years³ and the council at 4.3 years.
44. Considering the current shortfall, which may be 4.01yrs, 20 dwellings would provide a meaningful contribution to housing supply in the area and thus addressing the deficit. There would be social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. In addition, the delivery of six affordable houses from this development will result in social benefits. Therefore, noting the moderate scale of the development proposed, I have attributed moderate weight to the delivery of housing in this instance.
45. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services, to which I have attributed modest weight.
46. Nevertheless, the identified adverse impacts of the development, in respect of character and appearance, trees and ancient woodland and biodiversity are matters of a high order. In addition, the lack of provision of a LEAP on site would also result in limited harm. Overall, I consider that the adverse impacts I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

47. The proposal would conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons outlined above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

³ APP/R360/W/20/3265361