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## Appeal Decision

Site visit made on 8 January 2019

**by D J Board BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 June 2019**

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**Appeal Ref: APP/C1435/W/18/3207669**

**Old Common, Little London Road, Heathfield, TN21 0LT**

- 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 Mr Gary Ferrier, Lucas Design and Construction against Wealden District Council.
  - The application Ref WD/2016/3063/MAO, is dated 20 December 2016.
  - The development proposed is demolition of existing dwelling and erection of 42no houses and maisonettes including associated external works.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The appellant has suggested that a condition could be applied reserving all matters apart from access should I consider it to be appropriate. However, this is not what was applied for. The application was submitted in outline. Details of the matters of access, appearance, layout and scale were submitted for consideration. Therefore, the appeal is considered on this basis.
3. I have been referred to the emerging Wealdon Local Plan Draft Proposed Submission. This plan has not been examined and found sound. Therefore, I can only attach very limited weight to the policies of this plan.

### Background and Main Issues

4. As set out above, this appeal is against the failure of the Council to determine the planning application. There is not, therefore, a formal decision of the Council. The evidence makes it clear that, had it been in a position to determine the planning application, the Council would have refused planning permission for the development based on the effect on character and appearance, including the High Weald Area of Outstanding Natural Beauty (AONB), highway safety and biodiversity. Accordingly, the main issues are:
  - The effect of the provision of 42 dwellings on (a) the character and appearance of the area, having regard to its location in the AONB; (b) highway safety and (c) biodiversity.

### Reasons

*Character and appearance*

5. The appeal site is a roughly rectangular piece of land. Part of the site is within the existing development boundary for Heathfield but outside of the AONB. The majority of the site area would be within the countryside and the AONB designation. The site is situated on the south and west side of Little London Road. To the north and east there are other dwellings and to the west is St Bartholomew's Church and the Heatherden Ancient Woodland. The dwellings opposite front Little London Road. They are generally detached but with average sized plots and a mix of designs and appearances. By contrast the south side of the road contains sporadic dwellings in larger plots set within a verdant setting. Beyond them to the west the area opens out to the countryside beyond. Therefore, it is my view that this area of Little London Road provides transition to the countryside beyond.
6. The appellant contends that, irrespective of the position of the settlement boundary, the proximity of the settlement of Heathfield is such that the area of site within the AONB would have a stronger affinity with the eastern part of the appeal site which already contains buildings and thus displays urban characteristics. However, even considering the existing dwelling, its ancillary elements and the fact that there is development to the north and east, it is my view that the site remains on the edge of the settlement. More specifically the sporadic development in this part of the settlement has at most a semi-rural character. In this regard it contributes as open and transitional landscape in an edge of settlement location.
7. The development would be for 42 dwellings on the settlement edge. The plans show that the dwellings would form a cul de sac style arrangement with access taken from Little London Road. It would represent a form of development that would bear no relationship to the development immediately around it. More specifically the provision of 42 dwellings would extend built development significantly into the countryside and it would consolidate development in this location. As proposed the scheme would not have a physical or visual affinity with the linear development opposite that is characteristic of Little London Road or the more sporadic pattern to its east.
8. The appellant has undertaken a Landscape and Visual Impact Assessment (LVIA). I appreciate that the Council did not undertake its own LVIA nor did it dispute the methodology adopted by the appellant. Nonetheless, the LVIA analysis is a tool to assist the decision maker in assessing the effects of the scheme. The LVIA establishes the landscape character areas for the site<sup>1</sup>. In particular that the woodlands are a key characteristic of the area with the edge of the settlement being described as containing large areas of woodland that provide a strong sense of enclosure.
9. The visual analysis of the scheme demonstrates how it would relate to the existing woodland. It also sets out how boundary vegetation would be used to the site boundaries. I appreciate that the plans show, that at completion and after 10 years, in many locations there would be no views of the scheme and in some places they would be glimpsed. Nonetheless, these plans also demonstrate that in many places glimpsed views would remain in the long term and from Little London Road and surrounding dwellings there would be an open or partial view of multiple dwellings extending into the open countryside. This

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<sup>1</sup> LVIA 3.4.1 National Character Area 122 High Weald; 3.4.2 County Scale – Character Area 5 and Area 28; 3.4.3 AONB Management Plan and 3.4.5 Wealden Landscape & Settlement Character Assessment

would not reflect the existing character of the area. In this regard it would not conserve or enhance the natural beauty and character of the AONB landscape.

10. I therefore conclude that the proposal would have a harmful effect on the character and appearance of the area. It would be in conflict with saved policies EN27 and EN6 of the Wealdon Local Plan (LP), policy SPO13 of the Wealdon Core Strategy (CS), The High Weald AONB Management Plan and the Wealdon Design Guide which amongst other things seek new development that responds to the features of its locality and conserves or enhances the natural beauty and character of the landscape.

#### *Highway safety*

11. The statement from the Local Highway Authority (LHA) sets out that since the initial consultation response was provided that exchanges with the appellant have been ongoing. The appellant has provided information from the TRICS database and has demonstrated that the scheme would not lead to a capacity issue on the road network. As a result, it is submitted that the objection raised on traffic generation has fallen away.
12. As such the remaining issues relate to whether the new access at its junction with the A267 would have substandard visibility and whether the layout and onsite parking and turning areas would be adequate. The access point for the scheme would be taken from the A267 (Little London Road). The road is subject to a 40mph speed limit and the LHA identify that this stretch of the A267 is classed as an Inter Urban Route and Main Distributor within the County Council's road hierarchy. The LHA considers that the appropriate visibility requirement, in accordance with the Design Manual for Roads and Bridges (DMRB) would be 2.4 metres x 120 metres in both directions. The appellant is suggesting that Manual for Streets 2 should be used and that its requirement of 2.4 metres x 59 metres is achievable.
13. The Council's evidence sets out that '*...this stretch of the A267 is classed as an Inter Urban Route and Main Distributor within the County Council's road hierarchy which carries vehicular traffic from one destination. It serves as a main north south route connecting to the County Boundary at Tunbridge Wells and the A22 Primary Route in the south to Eastbourne. To the west it connects to the A272 Primary Route to Winchester which is a main east/west route. It also serves the local area of Heathfield and connects to other local roads*'. Further it sets out that '*...the Annual Average Daily Traffic Flow in 2016 was 8810 vehicles on this section of Little London Road. This figure reduced in total to 8740 vehicles in 2017...*' The appellants figures<sup>2</sup> are not significantly different to this. I understand that MfS focuses on lightly-trafficked residential streets, but that many of its key principles may be applicable to other types of street, for example high streets and lightly-trafficked lanes in rural areas. Nonetheless based on the information before me in this case I agree with the Council that Little London Road cannot be considered as a 'lightly trafficked lane' and as such DMRB should be applied in this case.
14. The appellant is also suggesting that DMRB should only be applied where the actual speeds are over 40 mph for significant periods of the day. The LHA's appeal statement acknowledges that the appellant has undertaken a speed survey. This finds that '*...The 85%ile recorded speeds were 41.9 mph*

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<sup>2</sup> Baseline traffic flow figure 4.1 Highways Appeal Statement

*northbound and 38.9mph southbound. With the 2.5mph applied for wet weather conditions the speeds are 40mph for northbound and 36.5mph southbound...* Nevertheless, the recorded speeds are on or close to the speed limit. As such I consider that it is not unreasonable for the LHA to require visibility splays for a 40mph speed.

15. The appellant has submitted a further drawing 2015/2778/001 D which demonstrates that visibility splays of 2.4 x 98.5 and 2.4 x 120 metres could be provided in both directions, both entirely within public highway and without any loss of significant trees. It also shows that vegetation could be cut back on land within the appellants control or highway land to facilitate this. A road safety audit has been submitted that was undertaken based on these drawings.
16. The LHA have also objected to the amount of car parking spaces that would be provided within the scheme. The appellant's submissions have sought to demonstrate that further visitor parking could be provided within the layout. I appreciate that some of the spaces are tandem and that the LHA have concerns regarding counting garages as being available car parking spaces. Nonetheless, I am satisfied that the submitted information demonstrates that allocated parking could be provided for the dwellings. Further has I been minded to allow the appeal the additional plans demonstrate that a parking scheme for visitor/additional unallocated parking could have been secured.
17. Overall, I therefore conclude that the scheme would not have a harmful effect on highway safety. It would be in conflict with LP policies TR3 and TR16 seek appropriate parking and access for new development.

#### *Biodiversity*

18. The appeal site adjoins an ancient semi natural woodland, Heatherden Wood along its northern boundary. There are footpaths into this woodland from the nearby church. There is no substantive information about how frequently that these are used. Ecological surveys have been carried out and the Council has not raised concerns about the content of these or the mitigation required.
19. The primary concern of the Council relates to run off from the surface water drainage scheme into the woodland and ghyll habitat. More specifically the proximity of the SUDS attenuation to the buffer of the woodland. The submitted flood risk assessment included a drainage strategy. The methods for this have been explained in principle.
20. The drainage appeal statement establishes that run off from the parking areas would meet the requirements of the SuDs manual and further treatment would be provided by the attenuation pond. In particular the strategy includes permeable paving and a surface water storage pond. As such the run off quality is improved, such that there are no significant pollution hazards, before discharge into the watercourse. Overall, the SuDs methods and techniques would provide sufficient treatment to protect downstream watercourses. The system has been modelled to ensure adequate storage and the appellant has demonstrated that on site a surface water system can be provided that is policy compliant.
21. The Council is suggesting that the buffer zone between ancient woodland and the scheme should be a minimum of 15m. I appreciate that this is not a set figure and that it could be greater if there is a site specific reason. However, in

this case the Council have not provided any substantive information that a greater buffer would be necessary. The appellant has demonstrated that the drainage from the site can be managed and had I been minded to allow the appeal I am satisfied that appropriately worded conditions could have secured this.

22. I therefore conclude that the proposal would not have a harmful effect on biodiversity. It would therefore not be in conflict with CS policy WCS12 and LP policy EN13.

*Other material considerations*

23. The appellant submits that the site straddles the development boundary and as such that it is well located in relation to Heathfield itself. The site is located close to existing dwellings. There are existing facilities in Heathfield and access to them would be possible by bus or on foot. The Council are concerned about the distances involved. However, the site would be not be significantly further from the bus stop or footways than existing dwellings. As such the location of the site would not count against it.
24. The Council requires mitigation for new development within a 7km zone of influence of the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA). The mitigation would be to address the likely significant adverse effect of the scheme on the SAC, either alone or in combination with other projects, with regard to atmospheric pollution/nitrogen deposition as a result of an increase in vehicle trips on roads near to or through it. The Council has indicated in its statement of case that the site lies outside of this area, but its suggested conditions seek to secure mitigation in any event. Had it been necessary this could be addressed through a legal agreement. As I am dismissing the appeal for other reasons, I have not taken this matter any further.
25. The planning obligation submitted ensures that the scheme would contribute to meeting the need for affordable housing in the district. This would accord with the requirements of the LP as well as the aims of the Framework. I consider that this obligation would be necessary to secure the affordable housing proposed in perpetuity, directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regs) or paragraph 56 of the Framework. As such the provision of affordable housing would be a benefit of the scheme.
26. The scheme proposes off site highway works that would provide a new footway, bus stops, free bus travel for residents and traffic calming measures. The scheme would also be likely to give rise to economic benefits. Construction employment and expenditure would be associated with the implementation of the scheme. Thereafter, future residents would be likely to support local services and facilities through direct as well as indirect expenditure. However, these benefits would be limited in scale.

**Planning Balance and Conclusion**

27. Most of the appeal site is located outside of the defined development boundary for Heathfield. Therefore, for the purposes of the application of planning policies it is mainly located in the countryside. As such it would be in conflict

with LP policies DC17 and GD2. In addition, I have found that the scheme would harm the character and appearance of the area and it would not conserve or enhance the natural beauty and character of the AONB landscape and there would conflict with the development plan in this regard. There would not be harmful effects on biodiversity or highway safety and the location of the site would not count against development of the site in terms of access to services.

28. The adverse impact relates to the harm to the character of the landscape by virtue of the change from countryside to housing. This would run counter to the core planning principle of recognising the intrinsic character and beauty of the countryside and to designing developments which add to the overall quality of an area. In my judgement, this harm carries substantial weight. In terms of benefits, the construction of 42 houses would deliver market and affordable housing.
29. It is common ground that the Council does not have a five year supply of deliverable housing. The Council suggest that the emerging plan addresses the housing land supply situation. Nonetheless it has not been adopted and found sound and therefore I can only attach very limited weight to it. However, the Framework is clear that where there is the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development then the tilted balance would not be engaged. Indeed the footnote that refers to policies specifically includes AONBs. As such it is my view that my findings on character and appearance and the sites location in the AONB provide a clear reason for refusing the scheme and the tilted balance should not be applied.
30. Even if I were to accept the appellant's position that the tilted balance is engaged in this case it is my view that the adverse impacts of granting permission that I have identified would significantly and demonstrably outweigh the benefit of the provision of dwellings in this case. Therefore, I attach great weight to the conflict with the development plan. The Framework is a material consideration. However, in the circumstances of this appeal other material considerations do not justify making a decision other than in accordance with the development plan.

## **Conclusion**

31. For the reasons given and having regard to all other matters raised the appeal is dismissed.

*D J Board*

INSPECTOR