



Appeal Decision

Site visit made on 7 December 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2022

Appeal Ref: APP/C1435/W/21/3272342

Land South of Catsfield Road, Hurst Wood Green, Ninfield TN33 9JA

Grid Ref Easting: 571071, Grid Ref Northing: 112505

- 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 Bob Leckie, Ninfield Investments Ltd against Wealden District Council.
 - The application Ref: WD/2020/0246/MAO is dated 2 February 2020.
 - The development proposed is 'Erection of up to 40 dwellings including 14 Affordable units and associated infrastructure including means of access, with all other matters reserved. A new public footpath will be provided on Highways Land along Catsfield Road'.
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Decision

1. The appeal is dismissed, and outline planning permission is refused.

Preliminary Matters

2. The appeal follows the Council's failure to issue a decision within the relevant timescale. The Council has confirmed that it would have refused planning permission and I have been provided with what would have been its reasons for refusal, which the appellant has commented on. Following the submission of further information by the appellant, the Council has confirmed that it no longer objects to the proposal on highway safety grounds.
3. The application is made in outline, with all matters reserved apart from access. The description of development in the application form is different from that provided by the appellant within the appeal form. The application form refers to 'Erection of up to 43 dwellings including circa 35% Affordable units...', while the appeal form refers to 'Erection of up to 40 dwellings including 14 Affordable units...'. The illustrative site plan submitted as part of the application¹ shows 40 dwellings. The Council has submitted their representations based on up to 40 dwellings being proposed and the appellant has confirmed this is the description of the development proposed at appeal. I have therefore taken the description of the development proposed from the appeal form.
4. Notwithstanding the above, the appellant has suggested an amended illustrative site plan could be submitted to address concerns raised by the Council relating to the provision of on-site play space, which would reduce the total number of dwellings to 38. An amended illustrative site plan² showing

¹ Drawing no: SK401A, Revision A dated January 2020

² Drawing no: SK401A, Revision C dated September 2021

these changes is attached at Appendix C of a revised Unilateral Undertaking (UU) submitted at the final comments stage. The Council's comments were invited in respect of the revised UU, but no comments further to those relating to the original UU, set out in their appeal statement, were made.

5. There are a number of interested parties who would not have had an opportunity to comment on the amended illustrative site plan. Nevertheless, the amended illustrative site plan would only slightly reduce the quantum of proposed dwellings without effecting the quantum of proposed affordable dwellings. For that reason, and because it is for illustrative purposes only, I am satisfied that no injustice would be caused to any parties by me proceeding to assess the appeal based on the amended illustrative site plan.

Main Issues

6. Taking the above into account, the main issues are: (i) the principle of the proposed development with specific regard to its location; and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Location of the Proposed Development

7. The appeal site is a field on the outskirts of the rural village of Ninfield, outside the development boundary defined by the Wealden Local Plan (1998) (LP), retained via Policy WCS6 of the Wealden District Core Strategy Local Plan (2013) (CS). In summary, and amongst other things, Policies GD2 and DC17 of the LP state that housing will not be allowed outside settlement boundaries unless it conforms with other LP policies. The supporting text to these policies confirms their intention of seeking to conserve and enhance the rural environment and to protect rural amenities and services.
8. Policy WCS6 of the CS sets out provisions for 455 new dwellings to be delivered in support of rural areas over the plan period 2013 and 2027. That includes 50 new dwellings to be allocated in respect of Ninfield. The supporting text indicates that would help sustain rural living and reinforce the accessibility of the settlement whilst meeting needs and community aspirations. The delivery of 50 net additional dwellings forms part of the spatial objective of the CS to deliver at least 9440 homes across the district between 2006 and 2027. The majority of those homes are intended to be accommodated within or as sustainable extensions to existing towns, while allowing for limited growth of villages capable of accommodating development in a sustainable fashion, as set out in Spatial Planning Objective SPO3 of the CS.
9. Both main parties have indicated that more than 50 net additional dwellings have been granted planning permission at Ninfield since 2013 and I noted development ongoing at the Ingrams Farm and Manchester Road sites, which the main parties confirm will amount to 135 net additional dwellings. I have not been provided with any evidence suggesting that the proposal is required to meet an essential rural need or otherwise accords with the strategic aims of the development plan.
10. The proposed development would therefore fail to accord with Policies GD2 and DC17 of the LP and Spatial Planning Objective SPO3 and Policy WCS6 of the CS on account of it being located outside of the development boundary. The appeal site would not comprise a suitable site within an existing settlement

where the Framework³ advises great weight should be given to the benefits of windfall housing developments.

Character and Appearance

11. Ninfield is a sparsely developed rural village, arranged in a broadly linear form either side of the A269, and is served by a small range of services and facilities. Although the village is surrounded by countryside, the regularly spaced detached dwellings along the A269 which form its core to the north and south of the roundabout junction with Catsfield Road ('the Roundabout') are mainly of suburban appearance. In contrast, beyond the service station and two dwellings nearest the Roundabout, Catsfield Road is clearly rural in character. There is no footpath along this end of Catsfield Road, and east of the village land levels drop into the open countryside where the landscape comprises trees, hedgerows and open countryside. The urban core of the village does not spread along Catsfield Road.
12. The appeal site is located off Catsfield Road, and slopes down significantly into its north-eastern corner, where it is at a slightly lower level than the highway. The undulating levels allow views to the east and south from different parts of the appeal site, while the heavily planted and raised northern boundary largely prevents views into and out of the appeal site from the road.
13. Noting my reasoning in the preliminary matters section of this decision, the proposal comprises up to 40 dwellings, a footpath linking the north-western corner of the appeal site to the Roundabout, a vehicular access from its north-eastern corner onto Catsfield Road, a sustainable drainage pond adjacent to the vehicular access, on-site play space, wildlife corridor, and a footpath from the south-eastern corner to the adjacent Ingrams Farm development.
14. There are dwellings and a commercial unit located to the west of the appeal site, but these appear to be positioned over the brow of the hill and set within spacious plots. That is in marked contrast to the proposed development which would line the hill slope outside the village's urban core at a much higher density. The eventual arrangement of dwellings would inevitably need to be tight knit with changes in levels throughout the site on account of its topography and extent of space shown to be needed for a sustainable drainage pond, wildlife corridor and on-site play space.
15. There is a dispute between the main parties concerning the density of the proposed development, and various figures have been presented. The Council has provided densities for a select group of houses, which are of limited relevance in the absence of a more detailed assessment of housing density across the whole village. The applicant has referred to the densities of the Manchester Road and Ingrams Farm development sites, which would remain lower than that proposed. I saw, however, that typical housing densities throughout the village appeared to be much lower than that proposed. In my view it is reasonable to have appropriate regard to the prevailing level of density, which is particularly important in terms of marking a comfortable change in character around the rural fringe of the settlement.
16. The elevated western and southern sides of the appeal site would allow parts of the proposed development to be seen in views from open countryside and

³ The National Planning Policy Framework (2021)

Catsfield Road, east and north-east of the appeal site. Approaching Ninfield from the east, there would be a substantial change from the existing rural character and appearance of the area, as some of the proposed dwellings at elevated levels would inevitably be seen above hedges and trees, and the vehicular and pedestrian accesses would remove a large extent of the existing planting.

17. Although I acknowledge that the proposal is in outline, given the topography of the site, the proposed quantum of dwellings would create views of a cramped suburban estate which would relate poorly to the surrounding countryside and sparse built form of the village. I note the findings of the appellant's Landscape and Visual Impact Assessment⁴, but that assessment confirms it was based on limited information regarding the works on both the vehicular and pedestrian accesses, 'particularly in regard to their design, and the amount of vegetation to be removed to accommodate them'⁵. Determining effects on character, and their bearing in an overall decision on the merits of a scheme, are inherently matters of planning judgement.
18. The proposed pedestrian access point would have to traverse a steep bank of earth and the proposed footpath would line one side of the highway leading to the Roundabout. Limited details have been provided as to how this would be achieved without excavation works to create a safe slope, but the Arboricultural Impact Assessment⁶ (AIA) suggests it would be a 'lightweight no-dig path', avoiding harm to nearby trees. That would appear to contradict the Preliminary Site Access Plan⁷, which indicates a recessed footpath would be proposed, which would appear to necessitate the extensive removal of planting.
19. The Hedgerow Survey and Assessment Report⁸ and the AIA suggest approximately 15m of hedgerow would need to be removed from the appeal site's northern boundary, along with trees T39, T41, T42 and G36, to facilitate access. New native hedgerow planting and 60 new trees would be proposed within the appeal site, but this would not visually mitigate the loss of established planting along the northern boundary. The proposed vehicular and pedestrian accesses, and the views into the appeal site they would offer, in addition to the proposed footpath leading to the Roundabout would significantly urbanise the rural approach to Ninfield from the east.
20. Shading patterns for larger trees are shown in the Arboricultural Plan⁹. Existing trees within the appeal site are mainly Category C trees, but there are a significant number of Category B trees and at least 1 Category A tree located along the southern and western boundaries which would likely have cramped relationships with proposed dwellings on account of those shading patterns. These trees lining field boundaries are typical of the appeal site's countryside setting and make a positive contribution to the character and appearance of the area.
21. Based on the amended illustrative site plan, there would be at least 12 proposed dwellings overshadowed for a significant proportion of the time. That

⁴ Landscape and Visual Impact Assessment for Residential Development by WH Landscape Consultancy Ltd, Ref: 19.982 (February 2020)

⁵ Paragraph 1.3

⁶ BS:5837(2012) Arboricultural Impact Assessment, Ref: SCD 05312 / 2020 R1 by Duckworths Arboriculture (February 2020)

⁷ Drawing No: 21435-01, Revision B, dated 10/12/19

⁸ Hedgerow Survey and Assessment Report, Reference 2020-032 by Smart Ecology Ltd dated 13/11/2020

⁹ Ref: Ninfield Tree Plan 05312/2020 by Duckworths Arboriculture (February 2020)

may result in pressure for trees to be regularly pruned or felled, thereby further exacerbating the effect of the proposal, or sub-optimal living conditions for future residents were they to be maintained. The illustrative site plan and that of a former draft layout¹⁰ show there is little room to rearrange the proposed quantum of dwellings and the necessary infrastructure within the appeal site to avoid such constraints. Insufficient information has been presented to convince me the quantum of development proposed could be accommodated within the appeal site while protecting existing trees shown to be retained within the AIA.

22. The proposal would therefore constitute a cramped form of development outside of the established built form of the village, which would transform the rural character of the eastern approach to the village from Catsfield Road on account of the substantial loss of trees and hedgerow across the northern boundary and the construction of a footpath to the Roundabout. The relatively high density of the proposal in comparison to that of existing houses within the village, arranged across the sloping site would form a dense and harsh new urban boundary to the village. It would be unsympathetic and harmful to its rural setting and the character and appearance of the countryside from where it would be experienced along Catsfield Road.
23. The proposed development would therefore cause significant harm to the rural character and appearance of the area, contrary to Policies EN1, EN8, EN12, EN14, and EN27 of the LP, Policy WCS13 of the CS and the guidance of the Framework. These require, amongst other things, the scale, form, site coverage and density of development to respect the character of its surroundings, and the retention and enhancement of trees and hedges which make a valuable contribution to the character of settlements and their settings.
24. The Framework encourages development which would enhance the natural and local environment, and although I note the appellant's claims that the proposal would be capable of achieving a biodiversity net gain, there would be no visual enhancement of the local environment which recognises the intrinsic character of the countryside outside the settlement boundary.

Other Matters

25. The amended illustrative site plan shows space for a children's play area and the UU makes provisions for the payment of financial contributions towards the provision and maintenance of youth and adult open space, equipped play space and casual informal play space. The Council has suggested these spaces should be provided within the appeal site, which would not appear to be possible without condensing the arrangement of dwellings shown in the amended illustrative site plan. Appropriate spaces have not been identified off-site, and no evidence has been presented to show that these financial contributions are capable of contributing towards the provision or maintenance of any spaces within reasonable distances of the appeal site. In the absence of such information, I am not convinced these financial contributions would satisfy the tests referred to by Paragraph 57 of the Framework.
26. In the absence of evidence to demonstrate there would be sufficient space to provide appropriate youth and adult open space, equipped play space and casual informal play space within the appeal site or at any alternative sites

¹⁰ Page 20 of the appellant's Design and Access Statement (V7, February 2020)

within reasonable distances of the appeal site, I am unable to conclude the proposal would be capable of complying with Policies LR1, LR3 and LR5 of the Council's LP. These policies seek the provision of appropriately designed children's play space and informal amenity space in all large housing developments.

27. The Council has referred to Policies EN2, AFH1 and HG6 of the LP and Policies WCS9 and WCS12 of the CS, but I do not consider sufficient evidence has been presented to demonstrate the proposal, which is in outline, would conflict with these policies. With regard to Policies EN2 and AFH1, the Council has not raised an objection in respect of the travel movements associated with the proposal, and the necessary quantum of on-site affordable housing has been proposed. I note the Council's concerns in respect of crime prevention, parking and biodiversity, but based on the appellant's submissions, I am satisfied that further information to be provided at the Reserved Matters stage could likely address those concerns.

Planning Balance

28. The Council is unable to demonstrate a five year housing land supply. Where this is the case, Paragraph 11 of the Framework advises that the development plan policies which are most important for determining the application should be considered out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.
29. I have found harm resulting from the failure of the proposal to accord with the development plan, in terms of location. The proposal would also cause significant long-lasting harm to the character and appearance of the area on account of the loss of planting along Catsfield Road, the visual impact of the proposed vehicular and pedestrian access and the footpath along part of Catsfield Road, and the visual impact of the proposed density of development over a sloping site outside the edge of a rural village. I attach substantial weight to that harm.
30. The main benefits of the proposal would be the provision of up to 40 dwellings, 14 of which would be affordable, in a District which, on the evidence before me, has a housing land supply of around 3.28 years, or 65.6%, as of 1 April 2020 including the addition of a 20% buffer, and a social housing waiting list of 473 persons. There would be economic benefits through the temporary employment opportunities created throughout the construction process, and the long-term increase in customers for local services. There would be environmental benefits through opportunities created for ecological enhancement to achieve a biodiversity net gain, although limited information has been presented to clarify the magnitude of any such gain.
31. The benefits resulting from the provision of additional dwellings, including affordable dwellings, need to be considered alongside the ongoing development of 135 net additional dwellings elsewhere within the village when assigning weight to those benefits. The Council's submissions explain how Census data suggests the village comprises 499 households, demonstrating the limited size of the village in comparison to the District as a whole, to which the five-year housing land supply is applicable.

32. I accept the appellant's comments in respect of the substantial demand for affordable housing across the wider District, and I attach significant weight to the benefits associated with the provision of 14 affordable dwellings, despite a lack of identified need for such housing from within Ninfield itself. However, the shortfall in the Council's five year housing land supply is less acute, and for that reason I apply less, but still significant, weight to the benefits associated with the provision of up to 26 market dwellings in addition to those 14 affordable homes. I assign modest weight to the economic and environmental benefits of the proposal.
33. The Framework supports the Government's objective of significantly boosting the supply of homes, which includes supporting residential development on windfall sites, and where they are well located and designed, where they would enhance or maintain the vitality of rural communities, and where they are visually attractive and sympathetic to local character. The proposal would help maintain the vitality of rural communities but considering the size of other housing developments undergoing completion within Ninfield, the effect of the proposal in this regard would appear to be limited.
34. I have found, however, the proposal would undermine the Council's plan-led approach to the delivery of housing and that the proposed accesses, footpath and quantum of housing across the sloping appeal site would cause significant harm to the character and appearance of the area which would fail to recognise the intrinsic character of the countryside. I apply substantial weight to that harm. Taking all of the above into account, it is clear that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Neither the support in the Framework, nor in the development plan, for the delivery of new housing is unconditional. In that context, the proposal would not constitute sustainable development for which the presumption in favour applies.
35. The amount of weight to be assigned to the development plan policies is a matter of planning judgement for the decision maker. Paragraph 219 of the Framework confirms that development plan policies should not be considered out of date simply because they pre-date the Framework, and that due weight should be given to them according to their degree of consistency with the Framework. Policies GD2 and DC17 are, on the face of it, more restrictive than the Framework but refer to the development plan's other policies. The other policies I have found the proposal to conflict with are broadly consistent with the Framework's aims in respect of seeking to protect the character and appearance of the countryside and encourage sustainable development.

Conclusion

36. For the reasons given above I conclude that the proposal would fail to accord with the development plan and that there are no material considerations, including the Framework, that would indicate planning permission should otherwise be granted. The appeal should therefore be dismissed.

L Douglas

INSPECTOR