The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

Appeal Ref: APP/U1430/W/23/3314485

Old Manor House, Udimore Road, Broad Oak, East Sussex TN31 6DG

- 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 Paul Hunt (Redwood Land Investments Ltd) against the decision of Rother District Council.
- The application Ref RR/2022/963/P, dated 9 April 2022, was refused by notice dated 12 July 2022.
- The development proposed is erection of 20 dwellings and associated parking, on land to the south of Old Manor House. The provision of affordable housing totals 8 dwellings (to include 2 First Homes).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 22 November 2023 all designated Areas of Outstanding Beauty (AONBs) in England and Wales became 'National Landscapes' (NLs). Thus, the High Weald AONB is now the High Weald National Landscape (HWNL). Its legal designation and policy status remain the same.

3. The proposal seeks outline planning permission, with landscaping being the only reserved matter. I have considered the appeal on this basis and have treated any details in relation to landscaping as illustrative.

4. Following the submission of the appeal, the Council has questioned the adequacy of the unilateral undertaking (UU). The appellant has provided an updated UU in an attempt to address the Council's comments, but the Council question the adequacy of the amended UU. In forming the main issues of the appeal, I have considered the decision notice, delegated report and correspondence between the main parties.

Main Issues

5. The main issues are:

- the effect of the proposal on the character and appearance of the HWNL,
- whether the site is a suitable location for a residential development having regard to the development strategy,
- whether an appropriate mechanism has been provided to secure the provision of affordable housing, and
- whether the proposed houses would be safe from flooding.

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Reasons

Character and appearance

6. The appeal site is located within the HWNL, an area designated for its landscape and scenic beauty. It is located near to Broad Oak which is a settlement entirely within the HWNL. The pattern of development in Broad Oak is primarily linear along the crossroad between the A28 and B2089; however, there is some backland development largely to the north of the settlement. The appeal site is to the south of the settlement.

7. The area surrounding the appeal site is characterised by a patchwork of fields, most of which are enclosed by dense vegetation. These fields are largely undeveloped, with the odd agricultural structure or dwelling interspersed by scattered agricultural buildings and individual properties. It serves as a transition between Broad Oak and the open countryside and is verdant and semi-rural in character. The appeal site is also characteristic of one of the five defining components of character of the HWNL, identified within the High Weald Housing Design Guide[1] (Design Guide), as it is an irregular shaped field bounded by hedgerows.

8. The density of the proposal and design of the proposed dwelling is reflective of other areas within Broad Oak. It would also provide a mixture of dwellings and would be tenure blind. Moreover, the provision of 20 dwellings could ensure it is viable to provide affordable dwellings. Nonetheless, the scale and mass of the proposed development would be at odds with the semi-rural nature of this part of Broad Oak. Whilst landscaping is a reserved matter, the layout of the properties and access road leads to insufficient space for a comprehensive landscaping scheme. There is little, to no space in front and between the proposed dwellings for planting, which would soften the appearance of the development. Furthermore, some of the rear gardens are very small compared to the size of the proposed dwellings and do not comply with the standard set out within policy DHG7 of the Development and Site Allocations Local Plan (DASA), December 2019.

9. The scale and mass of the proposed development, alongside an inability to implement a comprehensive landscaping scheme, would have an urbanising effect. This would be at odds with the verdant and semi-rural character of the appeal site and would extend the settlement further southward into the largely undeveloped area of the HWNL.

10. As the site is enclosed by dense vegetation, the proposal would be partially screened from wider views. Nonetheless, the proposal would be out of character with the area, and therefore a harmful intrusion into the countryside and the HWNL.

11. The retention of the mature trees surrounding the appeal site and the relocation of the fruit trees from the middle of the site to elsewhere would help maintain the verdant boundary to the site. Notwithstanding this, it would not fully mitigate the urbanising effect of the proposal.

12. Not all development in Broad Oak is in accordance with the Design Guide. Nonetheless, some of the development would predate its production and it is

[1] The High Weald AONB, An outstandingly beautiful Medieval landscape, High Weald Housing Design Guide, Building better, building beautiful in the AONB, November 2019.

only a material consideration in planning decisions. Regardless, the appeal proposal is assessed on its own merit.

13. In forming this assessment, I note two of the appeal decisions[2] put before me. However, the appeal proposal is materially different to those proposals as it is located within the HWNL and possesses special qualities which are characteristic of the wider HWNL.

14. I conclude that the proposal would have a harmful effect on the character and appearance of the HWNL. It would be contrary to DASA policy DHG7 and policies OSS4, EN1 and EN3 of the Rother Local Plan, Core Strategy (CS), September 2014, and the National Planning Policy Framework (the Framework). The Framework and these policies indicate that great weight should be given to conserving and enhancing the landscape and scenic beauty in NLs, the creation of high quality, beautiful places is fundamental to what the planning process should achieve, the density of residential development shall be appropriate to its context and new development will be of high design quality, tailored to be empathetic to the site and its context. The proposal would also not be in accordance with the Design Guide and the Management Plan[3] which sets out the five defining components of the character of the HWNL and advise that the response to the existing built context is important.

Appropriate location

15. CS policy OSS2 indicates that development boundaries around settlements will differentiate between areas where most forms of new development would be acceptable and where they would not be acceptable. The appeal site is outside of the development boundary and is therefore in the countryside for the purposes of the development plan. CS policy RA3 has been referred to within the delegated report and a copy of the policy has been provided. It supports the creation of new dwellings in extremely limited circumstances and sets out some examples where dwellings in the countryside would be acceptable. The proposal does not conform with any of the specified circumstances. The appeal proposal is therefore contrary to the strategical locational objectives of the development plan.

16. The Framework outlines that applications for major development in HWNLs should be refused, other than in exceptional circumstances and where it can be demonstrated it is in the public interest. The Framework sets out a criteria against which proposals should be considered when making this assessment.

17. There is a general need for housing in Rother and the proposal would provide 20 houses which would be a windfall gain. I also note that the vast majority of Rother is covered by a restrictive designation, whether this be the HWNL, a strategic gap or a biodiversity green space. As such, there is little scope for residential development outside of these restrictive designations. Nonetheless, within the DASA there are two allocations for residential development within Broad Oak which is a relatively small settlement. These allocations suggest a total of 60 dwellings could be accommodated across both sites, which would significantly increase the amount of housing in Broad Oak. Furthermore, the appeal proposal would have a detrimental effect on the landscape, as described

[2] APP/W1850/W/20/3244410 and APP/Q3115/W/20/325861
[3] The High Weald AONB, An outstandingly beautiful Medieval landscape, Management Plan 2019-2024, A statutory plan setting out local authority policies for the management of the High Weald Area of Outstanding Natural Beauty (AONB)

above. For the above reasons, I do not consider that exceptional circumstances exist that would lead me to conclude that this major development should be permitted in the HWNL.

18. Four appeal decisions[4] have been put before me which permitted residential developments outside of the development boundary and on three occasions amounted to major development in the HWNL. All these decisions are materially different to the appeal proposal as they concern a much larger scale of development and provided substantial benefits, also the effect of those developments on the HWNL varies based upon their location. Therefore, these appeal decisions do not set a precedent for the appeal proposal.

19. The appeal site is near to the centre of Broad Oak, which accommodates some services including a primary school, GP surgery and a convenience store, alongside a limited provision of public transport. There is a footpath leading from the site to the centre of Broad Oak, which is largely separated from the road. I therefore consider that the site is an accessible location close to facilities and services which could be readily accessed by walking or cycling. If future residents need to travel further to nearby settlements this would be achievable by using public transport, albeit in that instance the use of private motor vehicles is likely to be preferable due to the limited service. This would accord with paragraph 79 of the Framework. Nonetheless, the proposal would still be at odds with the development strategy which seeks to concentrate development within defined settlements to protect against intrusive development beyond substantially built-up areas.

20. I conclude that the site is not a suitable location for a residential development having regard to the development strategy. It would be contrary to CS policy OSS2 for the reasons set out and DASA policies BRO1 and BRO2 which outline the residential development allocations in Broad Oak.

Affordable housing

21. Clause 4.2 of the UU dated 31 October 2023, specifies that the owner covenants to provide the 'Affordable Housing Provider' 8 dwellings and sets out the tenure of those dwellings. The quantity of affordable houses complies with CS policies LHN1 and LHN2. However, the tenure split of the houses does not meet the expectation detailed within CS policy LHN1 and no evidence has been provided to demonstrate how the proposed tenure mix would meet an identified need. Moreover, the clause is not an appropriate mechanism for securing affordable housing as it does not specify when the affordable houses should be provided, including whether this would be prior to the occupation of the market housing.

22. The UU defines the term "First Homes" as "means market housing discounted by a minimum of 30% against the market value …". The UU does not provide a definition for market value and therefore it is not clear whether the proposed First Homes would meet the definition provided by the Government[5].

23. Similarly, the UU references several terms including "Approval" and "open market value" which are not clear and not defined within the UU. Without

[4] APP/U1430/W/19/3234340, APP/M2270/W/21/3282908, APP/E2205/W/21/3284479, and APP/F1610/A/11/2165778
[5] First Homes – Section 106 Provisions, December 2021

further clarity on these terms, I cannot be certain that eight affordable houses would be delivered.

24. I conclude that an appropriate mechanism has not been provided to secure the provision of affordable housing. The proposal would therefore be contrary to CS policies LHN1 and LHN2 which set out the proportion of houses that should be affordable and support the creation of balanced communities.

Flood risk

25. Following the submission of further evidence, both parties accept that an appropriate surface water drainage scheme could be secured via condition. There is no substantive evidence before me to suggest otherwise, I therefore consider this to be an acceptable approach.

26. Therefore, the proposed houses would be safe from flooding. The appeal proposal would comply with CS policy EN7 and DASA policy DEN5 which indicate that flood risk will be taken into account at all stages in the planning process, with sustainable drainage systems utilised unless demonstrated to be inappropriate.

Other Matters

27. The main parties agree that there would be no adverse effect on the setting of the nearby Grade II listed buildings, Old Manor House, Highlands and The Twitten. Based on the evidence before me and my observations on site, I have no reason to come to a different view.

28. The appeal proposal complies with LP policies EN2, EN5, TR3 and TR4. Nonetheless, this does not mitigate the harm I have identified.

29. The conduct of the Council during the determination of the planning application and their approach to pre-application discussions are not matters which would alter my assessment of the overall acceptability of the appeal scheme.

Planning Balance

30. Benefits of the proposal include the provision of 20 dwellings; the maximisation of solar renewable energy due to the site's orientation and topography; each dwelling including an electric vehicle charging point and secure cycle storage; multiplier effects associated with construction and an increased population; the collection of additional annual council tax receipts; and the provision of a 10 percent biodiversity net gain. The provision of an appropriate number of parking spaces and access arrangement; payment of CIL; the site being in flood zone 1 and the retention of mature trees are all neutral factors.

31. The CS dates from 2014 but the weight to be attached to this document does not hinge on its age. Paragraph 219 of the Framework advises that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the latest iteration of the Framework. Rather, due weight should be given to them according to their degree of consistency with the Framework.

32. The Framework gives great weight to conserving and enhancing the landscape and scenic beauty of the NL. Moreover, the NPPF advises that applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. Therefore, the conflict between the

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proposal and CS policies OSS4, EN1 and EN3 shall be given weight in this appeal.

33. As the DASA dates from 2019 its policies are not considered to be out-of-date. Weight should therefore be given to the conflict with DASA policies BRO1, BRO2, DHG7 and DEN5.

34. As there are no policies in the CS or DASA which positively favour development of this kind in this location and as the proposal would be contrary to the policies referred to above, there would be conflict with the development plan as a whole.

35. The Council can only demonstrate 2.79 years supply of deliverable housing land and has underperformed in relation to the Housing Delivery Test. However, the harm to the HWNL provides a clear reason for refusing the development, as per footnote 7 of the Framework. There is therefore no need to refer to the test in paragraph 11 d) ii) of the Framework. The presumption in favour of sustainable development, as reflected within CS policy PC1, does not apply.

36. Given the shortage of housing supply, the provision of new dwellings would be a benefit. However, the location in the countryside would not only harm the HWNL but would also be contrary to the strategic locational objectives of the development plan. The benefits of the proposal would not outweigh these collective harms.

Conclusion

37. The proposal conflicts with the development plan and there are no other considerations, including the shortfall in housing land supply, which indicate that the appeal should be determined other than in accordance with the development plan.

38. Therefore, for this reason, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR

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