
Appeal Decision

Hearing held and site visit made on 21 November 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/C1435/W/23/3325718

Land at Maynard's Green Road, Maynard's Green, East Sussex TN21 0DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Trinity Homes Ltd against the decision of Wealden District Council (WDC).
 - The application Ref WD/2022/1575/MAJ, dated 14 June 2022, was refused by notice dated 28 March 2023.
 - The development proposed is erection of 15 dwellings (including 35% affordable), access, landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This detailed scheme for 15 dwellings follows an earlier outline application for 26 dwellings¹. The Council's refusal of planning permission for this earlier proposal had been the subject of an appeal, dismissed on 10 February 2020².
3. The development plan remains the same as when the last appeal was determined. The relevant parts comprise the Wealden Core Strategy adopted on 19 February 2013 (CS), the saved policies of Wealden Local Plan adopted in December 1998 (LP) and the Affordable Housing Delivery Local Plan of May 2016 (AHDLP). In addition to the relevant development plan policies, those of the National Planning Policy Framework (NPPF) remain an important consideration.
4. Just prior to opening the Hearing, I was provided a certified copy of a planning obligation made between the Council and appellant under Section 106 of the Town and Country Planning Act 1990. This secures 35% affordable housing and reptile translocation. The mechanism to secure the affordable housing package satisfies AHDLP Policy AFH1, CS policies SP03 and WCS14, and NPPF paragraphs 60, 61, 62, 63 and 65. Consequently, the Council's related reason for refusal falls away and the main issues in the appeal pertain to those that remain.
5. The site, and Maynard's Green village, fall within the High Weald Area of Outstanding Natural Beauty (AONB). Since the Hearing I have become aware that AONBs have been re-named National Landscapes (NL), although their legal designation and policy status are not altered. Given that this change is very recent and yet to be announced by Government, to avoid confusion I have continued to make reference to AONBs, noting this applies to their new title as NL.

¹ Council reference WD/2017/1132/MAO, refused 26 March 2019.

² Appeal reference APP/C1435/W/19/3227196.

Main Issues

6. I have identified the main issues in the appeal to be as follows:

- The effect of the proposal on the character and appearance of the area, including whether this would conserve and enhance the landscape and scenic beauty in the High Weald AONB and preserve the settings of the grade II listed Funnell's Farmhouse and West Street Farmhouse;
- Whether the surface water drainage arrangements proposed adequately address on and off site flood risk;
- Whether the proposal would have an adverse impact on a protected species, namely great crested newts (GCN).

Reasons

Character and appearance

7. Maynard's Green is a predominantly linear settlement, with most development running alongside the B2203. It falls within the AONB and is of a form generally reflective of the historic built pattern within the High Weald, whereby villages tend to run through the countryside along ridge lines. That countryside is one of a rolling landscape containing a well-preserved medieval pattern of woodlands and small fields surrounded by thickly wooded hedges.
8. The appeal site is a parcel of land of some 0.83 hectares contained between the main road frontage and a former railway line to the rear, now the Cuckoo Trail, with existing homes at either side. The land comprises one of a number of small fields which intersperse housing along the western side of the road, contrasting with the more continuous ribbon development to the other. I therefore do not concur with the appellant's view of the appeal site being something of an anomalous gap in the otherwise consistently developed street scene. The gaps to this side provide for a more sporadic pattern of development, which contributes positively to the rural character of Maynard's Green.
9. The appeal site frontage comprises a steep and well wooded bank. This provides a verdant break within the street scene of substantial length. The thickly vegetated raised boundary is characteristic of the historic High Weald landscape and reflects the countryside setting of Maynard's Green. Much of this vegetated roadside bank would be retained. With the scope for further landscaping, this would preserve much of the greenery within the street scene, as well as screening views of the housing.
10. The former railway line's thickly wooded embankment, along with a layout with public open space at the rear, means the housing would not be readily visible from the Cuckoo Trail, or from any publicly accessible views other than the main road. The scheme is a detailed one, reducing the quantum of housing substantially from that in the proposals before the previous Inspector. Given this, the impact relates mainly to views towards and through the site entrance. Unlike the junctions to narrow historic lanes, the estate road entrance serving the housing would need to be engineered to a width and specifications that meet current highway standards.

11. It would be within the gift of the Council, in discharging a suggested condition over agreement of final entrance details, to reduce as far as was feasible the amount of hard engineering required. However, the need to provide a safe access to serve the development would inevitably result in a significant breach of this historic banked boundary and the removal of the mature tree growth this gap contains. Therefore, the details now provided do not reduce appreciably a limited level of visual harm arising from the proposal, similar to that found by the previous Inspector.
12. This detailed scheme for 15 dwellings is substantially reduced from the indicative 26 units in the previous proposal. The detailed scheme is more spacious and the footprint of the housing layout offers a large area of open space. However, the layout remains that of an estate, with development arranged at depth, contrasting adversely with the historic linear settlement. Such a suburban form would encroach discordantly within part of an historic landscape of thickly hedged fields and linear ridge top villages. Within this context, the proposal would remain an incongruous feature. As such, the degree of landscape harm, compared to the previous outline scheme, would remain moderate.
13. The visual and landscape impacts of this proposal would harm the character and appearance of part of an AONB. It would not conserve or enhance the natural beauty and character of the landscape and thus be in conflict with LP Policy EN6. There would be further conflict with the general design criteria of LP Policy EN27, in respect of the scale and form not respecting the character of adjoining development and not promoting local distinctiveness. The failure of the scheme to enhance the distinct landscape of this part of the District, particularly as this is within a nationally designated AONB, gives rise to conflict with CS Policy SPO1.
14. There are two designated heritage assets in close proximity to the appeal site - Funnell's Farmhouse and West Street Farmhouse – both of which are Grade II listed buildings. In considering this appeal, I have a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting.
15. Although not a reason in the previous proposal, the Council's refusal in this case includes the failure to describe the significance of any heritage assets affected by the proposal, including any contribution made by their setting. Both the heritage assets are farmhouses, each with relationships to the wider rural settings that this suburbanising form of development would serve to erode. Due to the degree of physical and visual separation between these listed buildings and the proposed housing, the harm to their significance as designated heritage assets through the changes to their wider settings would clearly be less than substantial. I agree with the Council that this less than substantial harm would sit at the lower end of such a range. To the extent there is such harm brings about some conflict with CS Policy SPO2, in respect of not protecting the intrinsic quality of the historic environment.
16. The proposal would have an adverse effect upon the character and appearance of the area, failing to conserve and enhance the landscape and scenic beauty in the High Weald AONB or to preserve the settings of the grade II listed Funnell's Farmhouse and West Street Farmhouse.

Surface water drainage

17. The Council's reasons for refusal include a lack of information to show the surface water management measures proposed would not lead to an unacceptable risk of flooding in and around the site, in conflict with LP Policy CS2, CS Policy SPO9 and NPPF paragraphs 167 and 169.
18. This reason is based on an objection from the Lead Local Flood Authority. In short, this is over the lack of full infiltration testing and groundwater monitoring to show surface water run-off from the scheme would be accommodated within the proposed arrangement of soakaways. The appellant considers the preferred sustainable drainage system would work. However, the possibility that it would not, thus giving rise to potential flood risk, would be suitably addressed through a pre-commencement condition. In the event that soakaways were shown to be incapable of taking the surface water from the proposal, such a condition would avoid the risk of flooding by preventing the development proceeding without an alternative means of taking this run-off. Assuming this to be the case, and in the light of my overall conclusion, I attach no adverse weight to this issue in the balancing exercise carried out below.

Effect on GCN

19. As with surface water drainage and flood risk, the Council's reason for refusal over GCN is precautionary. It is predicated upon the lack of sufficient information to demonstrate the proposal would not result in adverse impacts on this protected species, contrary to CS Policy WCS12 and NPPF paragraphs 174 and 180.
20. As with the preceding main issue, and in the light of the overall conclusions in the later balancing exercise, reaching a conclusion on this issue is not decisive in the outcome of this appeal. Therefore, I am assuming the veracity of the appellant's ecological evidence over the low risk of GCN presence on the appeal site and the adequacy of a suggested condition in addressing any residual harm.

Planning balance

21. The appeal site does not fall within the development boundaries defined in the plan. Here development is resisted by LP Policy DC17 and housing is not to be allowed under Policy GD2. This is unless specifically supported by other policies, none of which apply to this proposal. CS Policy WCS6 directs housing to the Service Centres, Local Service Centres and Neighbourhood Centres rather than other unclassified settlements such as Maynard's Green. On the basis of these policies, the principle of the proposed housing would therefore conflict with the adopted spatial strategy. This strategy serves to protect the countryside from development, where I have already found conflict with LP policies EN6 and EN27, particularly in respect of the site falling within the AONB, and with CS Policy SPO2 in respect of the historic environment.
22. These policies, which in combination resist housing growth in the countryside and protect the historic landscape within the AONB, provide a fundamental underpinning to the development plan with which I find there to be conflict when taken as a whole.

23. The fact the Council cannot demonstrate a five year supply of deliverable housing sites engages NPPF paragraph 11 d through its footnote 8. This would mean allowing the appeal unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
24. Footnote 7 to NPPF paragraph 11 d i confirms these protective Framework policies include those applying both to AONB and designated heritage assets. Applying NPPF paragraph 202, the less than substantial harm to Funnell's Farmhouse and West Street Farmhouse would be at the lower end of such a scale, and outweighed by the public benefits of the proposed housing. The heritage harm would not provide a clear reason to dismiss the appeal.
25. Turning to the AONB, the 15 dwellings proposed would not amount to major development under the terms of NPPF paragraph 177, whereby permission should be refused. The detailed scheme for 15 dwellings causes a lesser degree of harm than that potentially caused by the earlier outline scheme for 26. Nevertheless, I have still found the landscape harm to fall within the spectrum of moderate, and the visual harm within that of limited.
26. Such harm would mean this proposal clearly failing to conserve and enhance the landscape and scenic beauty of the AONB which, along with National Parks and the Broads, have the highest status of protection in relation to these issues. This is a matter to which great weight should be given under NPPF paragraph 176. This also states that the scale and extent of development within all these designated areas should be limited which, as a matter of judgment, I do not consider a scheme of 15 homes to be. Therefore, the application of Framework policies that protect the High Weald AONB provide a clear reason for refusing the development proposed. NPPF paragraph 11 d i applies and the appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise.
27. A main consideration is the Council's sustained failure to demonstrate an identified five year supply of specific deliverable sites to meet its assessed housing need, as required through the NPPF. The Council calculates it has a 3.8-year housing land supply as at October 2023, some 1,749 homes less than required. The appellant calculates a lower 3.1-year supply, amounting to a shortfall of 2,732 homes. It is not necessary to arrive at a finding on these figures, as in either case the shortfall is substantial.
28. There is no short-term prospect of a plan-led solution to this shortfall. This is given the Examination failure and withdrawal in February 2022 of a previous submission Local Plan, and the currently very early stage of its emerging replacement. The CS is out-of-date in meeting Wealden's objectively-assessed housing needs. Assessed under the Government's standard methodology, this housing need is not provided for within the development plan boundaries as currently defined. This means that limited weight is given to the proposal's conflict with LP policies DC17 and GD2, and reduced weight to CS Policy WCS6.

29. Until the issue of plan-led provision is resolved, the provision of market and affordable housing will depend mainly upon speculative proposals on land beyond settlement boundaries. The scheme of this scale would provide the benefit of a readily-deliverable contribution to the enduring undersupply of homes. The acute need to deliver affordable dwellings in this District means the six provided would be particularly beneficial. In all, the benefits the 15 dwellings would make towards the need for market and affordable housing attract substantial weight.
30. The dwellings would help maintain the vitality of the village and the future of its primary school. There would be short and long term economic benefits, from the construction and future consumer spend of new residents respectively, to which moderate weight is given. Biodiversity net gain adds a further modest benefit.
31. However, these combined benefits would not outweigh the great weight given to the harm arising from a failure to conserve and enhance the landscape and scenic beauty of the AONB. The less than substantial harm to the significance of Funnell's Farmhouse and West Street Farmhouse, through effects on their settings, is a lesser harm. Nevertheless, NPPF paragraph 199 requires great weight should be given to the conservation of these designated heritage asset's when considering the impact of a proposed development on their significance.
32. The benefits provided would not outweigh the harm identified from this proposal. Therefore, material considerations do not indicate this appeal be determined otherwise than in accordance with the development plan, with which the proposal would be in conflict with.

Conclusion

33. For the reasons given, having taken all matters raised into account, I conclude that the appeal be dismissed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Best – Parker Dann Planning Consultants
Lauren Parsons - Parker Dann Planning Consultants
Marcus Cory – Trinity Homes

FOR THE LOCAL PLANNING AUTHORITY:

Caitlin Boddy – Planning Team Leader, WDC
Joanna Tucker – Senior Heritage Officer, WDC
Luke Barrett – Sustainable Drainage Advisor, East Sussex County Council

INTERESTED PARTIES:

Councillor Cornelia Usborne – WDC
Sue Lane, Chair of Horam Neighbourhood Plan
John Stanbridge – local resident
Sylvia Standridge – local resident
Michael Woodhouse – local resident
Jenny Woodhouse – local resident
Barry Blewitt – local resident
Michelle Lee – local resident

DOCUMENTS

Printed copy of statement made by Sue Lane, Chair of Horam Neighbourhood Plan