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## Appeal Decision

Site visit made on 17 October 2017

**by David Cliff BA Hons MSc MRTPI**

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

**Decision date: 20<sup>th</sup> February 2018**

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**Appeal Ref: APP/C1435/W/17/3179061**

**Windmill Feeds and Saddlery, Lewes Road, Cross in Hand, Heathfield, TN21 0TA**

- 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 (Paul Hunt Investments Ltd) against the decision of Wealden District Council.
  - The application Ref WD/2016/2918/O, dated 2 December 2016, was refused by notice dated 10 April 2017.
  - The development proposed is 'convert the existing building known as the "The Saddlery" into 3 apartments and the demolition of the warehouse to provide two detached dwellings'.
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### Decision

1. The appeal is allowed and planning permission is granted to convert the existing building known as "The Saddlery" into 3 apartments and the demolition of the warehouse to provide two detached dwellings at Windmill Feeds and Saddlery, Lewes Road, Cross in Hand, Heathfield TN21 0TA in accordance with the terms of the application Ref WD/2016/2918/O, dated 2 December 2016 and subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. The application is in outline with access to be considered as part of the application and with matters concerning appearance, landscaping, layout and scale reserved for future consideration. Plans indicating layout have been submitted which I have treated as being indicative or illustrative given that layout is a reserved matter.
3. Following the submission of the appeal and related correspondence with the main parties regarding the avoidance and mitigation of impacts on the Ashdown Forest, the appellant has submitted a S106 undertaking which includes a contribution towards management measures of the Ashdown Forest Special Protection Area. I consider this further under Other Matters later in this decision.

### Main Issues

4. The first main issue is the effect of the loss of the existing commercial use upon the local economy, with particular regard to employment and the effect upon other businesses. Secondly, would any harm be outweighed by the

benefits of the scheme including the provision of housing taking account of the National Planning Policy Framework?

## **Reasons**

### *Policy background and housing land supply*

5. Policy CPO6 of the Wealden District Core Strategy Local Plan 2013 ('CSLP') states that in order to improve economic prosperity the growth of the Wealden economy will be supported by helping existing businesses to expand and develop. It seeks to provide for additional employment floor space and increase the opportunity for people to work close to where they live.
6. Paragraph 51 of the National Planning Policy Framework ('the Framework') states that planning applications for change to residential use from commercial buildings should normally be approved where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate. Paragraph 28 of the Framework supports economic growth in rural areas in order to create jobs and prosperity.
7. Policy DC8 of the Wealden Local Plan 1998 (the Local Plan) supports the conversion of existing rural buildings, such as the Saddlery building. However the provision of new housing would not be within a settlement boundary contrary to saved policies GD2 and DC17 of the Local Plan. The Council states that the allocation of housing for Cross in Hand has already been provided for.
8. Although policy CPO6 of the CSLP seeks to improve economic prosperity, there is no specific development plan policy which explicitly seeks to protect existing employment sites in rural areas. The Council's Statement acknowledges that the development plan is silent on this matter.
9. It is common ground between the parties that the Council is unable to demonstrate a five year supply of housing land. According to the Council, the housing land supply is currently 2.61 years. This represents a very significant shortfall. The proposal would provide for five new residential units. Therefore, in accordance with paragraph 49 of the National Planning Policy Framework ('the Framework') relevant policies for the supply of housing should not be considered up to date. The weight to be given to conflict with policies GD2 and DC17 of the Local Plan is substantially reduced due to the Council's significant shortfall in housing land supply. I go on to consider the proposal in the context of paragraph 14 of the Framework in the Planning Balance later in this decision.
10. The Council argues that Cross in Hand has already met its allocation for new housing (set out in policy WCS6 of the CSLP) although the weight I give to this is limited in the context of the substantial housing shortfall in the District. I also note the published Issues, Options and Recommendations Consultation document suggested 30 dwellings in Cross in Hand, although this also carries limited weight due to its early stage of preparation and the housing land shortfall.
11. The proposal would represent brownfield redevelopment. The site is located within convenient reach of the village facilities and public transport provision. Whilst such services are fairly limited, I consider the location to accord with the aims of paragraph 55 of the Framework.

12. Whilst acknowledging that it only represents a small proportion of the shortfall, the provision of five dwellings would nonetheless be important in the context of the shortfall. I have therefore given it considerable weight, mindful of the Framework's aim to boost significantly the supply of housing. It seems appropriate that a modest amount of new housing in smaller settlements such as this could cumulatively make an important contribution towards seeking to address the overall housing shortfall.

*Effects on the local economy*

13. In the absence of relevant development plan policies protecting existing commercial uses, I turn to the Framework. As noted above, section 3 of the Framework supports a prosperous rural economy including supporting the sustainable growth and expansion of all types of business and enterprise in rural areas and promoting the development and diversification of rural businesses.
14. The proposal would have no bearing on other commercial developments being proposed or brought forward under policy CPO6 of the CSLP. It seems to me that this policy seeks to promote proposed commercial developments though it does not specifically prevent the change of use of existing commercial sites. This limits its relevance in the context of this appeal.
15. The Framework also promotes the retention and development of local services and community facilities including local shops. In this regard, whilst the site does not provide a local shop selling day to day convenience groceries and goods, there is a retail element to the commercial operations on the site.
16. It seems clear from the evidence that the existing rural businesses operated at the site are reasonably well used and contribute to local employment and the local economy in general. However, I understand the current occupier of the site will be moving to another premises allowing the business to continue, although I do not have details of such a location.
17. Whilst the current occupier is leaving the premises, this does not change the use of the site. It is possible that the site could still be utilised by another businesses or businesses. Indeed from my observations of the site, it is not unreasonable to consider that another commercial operator could utilise the site providing continued support for the local economy.
18. A large number of representations have been received in this regard including comments on both the employment value of the site and the support provided for other rural enterprises. Nevertheless, the level of employment (stated to be 15 employees) in connection with the commercial uses does not appear to be so high that its loss from this site would result in any significantly detrimental impacts on the local economy. Similarly, whilst the businesses provide services to other businesses in the rural economy, the extent of such services does not appear to be so high to lead me to consider that there are strong economic reasons which suggest that the proposal would be inappropriate. The appellant also states that two other sites are operated by Windmill Feeds at Uckfield and Crowborough which would continue to provide economic benefits to the wider economy, including that within Wealden District.
19. In the context of paragraph 51 of the Framework, whilst the site clearly makes some economic contribution to the local area, there is no clear evidence before

me that leads me to find that there are strong economic reasons why the proposed residential development would be inappropriate.

20. I also note the appellant's submission that the operators of Windmill Feeds are to relocate their operations and are now in support of the proposal. A letter of representation has been submitted to that effect stating that the business has located a suitable site in the vicinity. Whilst I have no further details of this, it appears likely that the business would continue to operate, albeit from a different site. As such any adverse economic impacts would be likely to be reduced.
21. Although the site has been in commercial use for a long period of time, this does not alter my views on the proposed loss of employment use and its replacement with residential development in the context of the development plan and the Framework.
22. The Council also argues that delivering new commercial premises can be difficult due to potential impacts from trip generation on nitrogen deposition on the Ashdown Forest. Nevertheless, there is no detailed evidence before me that demonstrates that the development of other commercial uses would be so severely constrained that uses of sites such as the appeal site should be retained. Furthermore, as already noted there is also no development plan policy that specifically restricts the change of use of existing employment sites.
23. In conclusion on this issue, from the evidence before me I find it likely that only limited harm would arise to the local economy from the proposed residential redevelopment and conversion of the site. Whilst policy CPO6 of the CSLP seeks to support the growth of the local economy there is no compelling evidence to suggest that this would be significantly impeded by the proposal. There are no development plan policies which specifically seek to prevent the change of use of rural business premises.

### **Other Matters**

24. There is no evidence to suggest that the increase in residential dwellings arising from this development would put any harmful pressure on local services and facilities in the village, even in combination with other developments in the area. Indeed, the additional residents could help to support the vitality and viability of such existing services and facilities. There is also no detailed evidence provided to suggest that there would be any significant water supply issues. I note that Southern Water Services has raised no objection to the development.
25. Matters of layout, scale and appearance are reserved for future consideration. However, taking account of the likely separation distances and relationship of the proposed development to neighbouring properties, it seems possible to me that the detailed design of the proposals would be able to reasonably safeguard the living conditions of the occupiers of such neighbouring properties with regard to privacy, outlook and day/sunlight. It is also likely that overall levels of noise from the site, including traffic noise, would be reduced in comparison to the existing situation.
26. Matters of sewerage and surface water drainage are able to be resolved through the imposition of conditions requiring such details to be approved by the local planning authority.

27. Taking account of the likely reduction in traffic in comparison to the existing use, the proposed access arrangements seem to me to be satisfactory for the amount of residential development proposed.
28. I am satisfied that the proposed development would be capable of being designed so as to safeguard the setting of the Grade II Listed Cross in Hand Wind Mill and Mill House buildings. The existing saddlery building appears to be capable of a sensitive conversion without harming its setting or that of the listed buildings. The matter of the scale and height of the proposed new build dwellinghouses would be subject to reserved matters though I am satisfied that an appropriate design would be capable of being implemented to safeguard the setting of these heritage assets. I am also satisfied that the scheme would be capable of being designed so as not to result in any harm to the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty.
29. There is no development plan requirement for affordable housing provision to be provided in this case. The Council has not raised objection in principle to the proposed mix of housing and I see no reason to disagree, noting also that it would contribute to the current shortfall in the supply of housing within the District.

#### *Ashdown Forest*

30. The proposal, through increased activity and disruption arising from the new residents, has the potential to have an adverse impact upon the integrity of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). It is located within 10km of these areas. The main parties agreed, as set out in the Statement of Common Ground, that the adverse impacts upon the SPA and SAC could be avoided by the use of a planning condition to provide contributions towards Strategic Access Management and Monitoring (SAMM). Alternatively, the Council states that if the scheme is CIL liable, then the appropriate CIL contribution would include Ashdown Forest Mitigation.
31. During the course of the appeal, I wrote to the parties regarding the proposed mitigation. Taking account of the Planning Practice Guidance (PPG), I have concerns that the mitigation is not able to be properly secured through the use of a planning condition. Furthermore, the use of CIL leaves open a possibility that the mitigation might not be provided in the event of the scheme being exempt from CIL in the absence of a suitable condition which accords with the PPG. Therefore, adopting the *precautionary principle* I do not consider that these methods provide the certainty or transparency required.
32. However, these concerns have been alleviated following the submission of a s106 undertaking by the appellant to provide for the necessary mitigation through a financial contribution towards the Council's Strategic Access Management and Monitoring Strategy for Ashdown Forest. I am satisfied that this provides for an appropriate way of providing the necessary mitigation, complying with the relevant Planning Practice Guidance. I conclude that, following the submission of the obligation, the proposal would not be likely to result in any adverse impacts, from increased recreational activity and disturbance from residents, upon the integrity of the SPA and SAC.
33. Taking account of the existing traffic generation from the current commercial use, I also do not consider that any harm would be likely to result from nitrogen deposits upon the Ashdown Forest SAC.

## **Planning Balance and Conclusion**

34. The provision of new housing would not be within a defined settlement boundary contrary to saved policies GD2 and DC17 of the Local Plan. However, the weight to be given to conflict with the relevant policies in this regard is substantially reduced due to the Council's very significant shortfall in housing land supply. I have also found that some limited harm would result to the local economy.
35. Set against the harm are the substantial social and economic benefits of addressing the under supply of housing in the District. I attach considerable weight to the provision of five residential units in the context of the very significant current housing land shortfall. There would also be a modest benefit to the local economy during the construction phase and in the longer term new residents would help to support shops and services in the village through an increase in local household spending.
36. Paragraph 55 of the Framework includes support for new housing where it would enhance or maintain the viability of rural communities. Whilst services and public transport provision are fairly limited in the village, they are sufficient to support and provide for some of the day to day needs of the future occupiers of the proposed residential development, taking account of the context of the site within the rural area. Furthermore, I consider that the additional residents resulting from the proposed development would help the viability of existing services within the village and their future retention. Even in the context of recent planning permissions and developments, I am not persuaded that the village is unable to accommodate the further residential development now proposed.
37. Overall, I consider that the adverse impacts do not significantly and demonstrably outweigh the benefits. Consequently the proposal would represent sustainable development as defined in the Framework, and material considerations indicate that planning permission should be granted for the proposed development.
38. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

## **Conditions**

39. I have considered the conditions suggested by the Council and have taken account of the Planning Practice Guidance. I have attached conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with the relevant legislation. I have imposed a condition specifying the approved plans as this provides certainty.
40. An archaeological condition is necessary in order to enable the recording of any items of archaeological or historical interest. A visibility splays condition is required in the interests of highway safety. I have left the matter of the specifications of the splays to be agreed between the parties rather than including them in the condition. A condition requiring a footway link is necessary in order to provide safe pedestrian access to services and facilities within the village. This link appears to be reasonably capable of being provided. Surveys and any necessary mitigation measures are needed in

order to safeguard bats as a protected species. Biodiversity enhancement measures are necessary in order to promote local ecology and biodiversity.

41. Conditions requiring foul and surface water drainage provisions are necessary in order to serve the needs of the residential development and in the case of surface water drainage to reduce the risk of flooding. A condition requiring details of any external lighting is required in order to safeguard local wildlife and in the interests of amenity in the vicinity of the site.
42. I have not imposed the Council's suggested condition regarding Ashdown Forest mitigation. As set out earlier, I have concerns regarding the acceptability of this condition in the light of the Planning Practice Guidance (PPG). A s106 agreement has been submitted which would more securely and transparently provide the required mitigation.
43. Some conditions require details to be approved before any development takes place. This is necessary in the case of conditions 5 and 8 as these conditions address potential impacts from construction. It is necessary in the case of conditions 9, 10 and 11 because these conditions may affect the design of the scheme.

*David Cliff*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: CIH: 323/100A, CIH: 323/101 (access only), CIH: 323/102A (access only) and CIH: 323/103.
- 5) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the local planning authority within three months of the completion of any archaeological investigation unless an alternative timescale for submission of the report has been first agreed in writing with the local planning authority.
- 6) No part of the development shall be occupied until visibility splays have been provided at the access to the B2102 in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 600mm.
- 7) Prior to the occupation of any part of the development hereby permitted, a footway link between the site entrance and Dad's Hill on the north side of the B2102 shall be constructed in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority.
- 8) Prior to the demolition of, or conversion works to, any of the existing buildings on the site, bat surveys of any internal roof space together with details of any necessary mitigation and contingency measures, including a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority. The mitigation and contingency measures shall be carried out in accordance with the approved details.
- 9) Prior to any construction works, a scheme for the enhancement of the site for biodiversity purposes, in accordance with section 5 of the submitted Ecological Report, to include timetables for implementation and future management, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details and thereafter retained.
- 10) The development hereby permitted shall not be commenced until a scheme for foul drainage disposal has been submitted to and approved in

writing by the local planning authority. The approved foul drainage disposal works shall be carried out prior to the first occupation of any part of the development and thereafter retained.

- 11) The development hereby permitted shall not be commenced until a scheme for surface water drainage works, which shall follow the principles of sustainable drainage as far as practicable, has been submitted to and approved in writing by the local planning authority. The approved surface water drainage works shall be carried out prior to the first occupation of any part of the development and thereafter retained.
- 12) Details of any external means of illumination shall be submitted to and approved in writing by the local planning authority before any part of the development is first occupied. The development shall be carried out in accordance with the approved details.