



Appeal Decision

Hearing Held on 1 November 2018

Site visit made on 1 November 2018

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 November 2018

Appeal Ref: APP/X2220/W/18/3206321

Walleys Court, Dover Road, West Cliffe CT15 6EW

- 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 Mr & Mrs Christopher and Lea Oakley against the decision of Dover District Council.
 - The application Ref DOV/17/01434, dated 28 November 2017, was refused by notice dated 30 January 2018.
 - The development proposed is erection of a detached dwelling, detached outbuilding, garden terrace and steps, formation of new vehicular access, driveway and parking, installation of a ground source heat pump and landscaping.
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Decision

1. I allow the appeal and grant planning permission for erection of a detached dwelling, detached outbuilding, garden terrace and steps, formation of new vehicular access, driveway and parking, installation of a ground source heat pump and landscaping at Walleys Court, Dover Road, West Cliffe CT15 6EW in accordance with the terms of the application, Ref DOV/17/01434, dated 28 November 2017, subject to conditions 1) to 19) on the attached schedule.

Main Issues

2. These are;
 - The effect of the proposals on the character and appearance of the Kent Downs Area of Outstanding Natural Beauty and the significance of designated heritage assets.
 - The effect of the proposals on Protected Habitats.

Reasons

Statement of Common Ground and Preliminary Findings

3. The parties had agreed and signed a Statement of Common Ground and this contained 3 important considerations;
4. Firstly and following the judgement of the European Court of Justice in the case of *People over Wind, Peter Sweetman v Coillte Teoranta*, the presumption in favour of sustainable development stated at paragraph 11 of the 2018 National Planning Policy Framework does not apply as the development should now be regarded as one requiring appropriate assessment because of the potential impact on a habitats site, as set out in paragraph 177. The Council confirmed

- however that mitigation is in place on a District-wide basis and no specific requirement would be placed on this proposal for a single dwelling.
5. Further to that, the appellants pointed to the more recent '*Technical Consultation on Updates to National Planning Policy and Guidance*' where an amendment is proposed to paragraph 177, '*to make clear that the presumption is dis-applied only where an appropriate assessment has concluded that there is no suitable mitigation strategy in place*'. A revised form of words for that paragraph was included in the document. However it was agreed that this is a consultation exercise only, and whilst a material consideration, the effect of the judgement and the present wording of paragraph 177 stand.
 6. Secondly, it is agreed that following the case of *Braintree District Council v SSCLG & Others*, the site is not isolated in the sense used in paragraph 79 of the Framework due to the presence of nearby dwellings. The provisions for a design of exceptional quality stated in paragraph 79e) do not therefore apply. However, being instead within a definite group of buildings at West Cliffe does not prevent consideration of a single dwelling outside the defined settlement boundaries and paragraph 131 on achieving well-designed places states that when determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.
 7. Thirdly, at the Hearing the Council updated the Statement of Common Ground to the effect that they are not able to identify a 5 year supply of housing land as required by paragraph 67 of the Framework. Notwithstanding the fact of the dis-application of the presumption in favour of sustainable development referred to above, this is a material consideration.
 8. The use of the 2 words 'West Cliffe' in this Decision, as opposed to the single word used in some of the appellants' documents, derives from the Council's Refusal Notice and Ordnance Survey usage, but nothing turns on this.

Policy

9. The settlement hierarchy is set out in Core Strategy Policy CP1 with Dover to the west being a major focus for development and St Margaret's to the east being a 'village' and a tertiary focus for development in the rural area suitable for a scale of development that would reinforce its role as a provider of services to essentially its home community. Policy DM1 states that development will not be permitted on land outside the urban boundaries and rural settlement confines shown on the proposals map unless specifically justified by other Development Plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses. The supporting text states that any other development would be a departure from this policy and would require unusual and compelling justification for permission to be given.
10. The protection of the countryside is the subject of Policy DM15 which states that development which would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is in accordance with allocations made in Development Plan Documents, or justified by other listed exceptions. Policy DM16 on landscape character provides for development that would harm the character of the landscape, as identified through the process of landscape character assessment, to only be permitted if

it is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures, or it can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.

11. Policy SD1 of the Kent Downs Area of Outstanding Natural Beauty Management Plan 2014-2019 states that the need to conserve and enhance the natural beauty is recognised as the primary purpose of the designation. Policy SD3 states that new development will be opposed where it disregards or runs counter to the primary purpose. The protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Area will be supported and pursued as set out in Policy LLC1.
12. In addition to the paragraphs previously mentioned, the 2018 Framework includes paragraph 124 on the need for good design and paragraph 172 on the great weight that should be given to conserving and enhancing landscape and scenic beauty in, among others places, Areas of Outstanding Natural Beauty. The site is adjacent to the Grade II* listed Walleys Court and the Grade II* listed St Peter's Church is nearby on the north side of the road and paragraph 193 states that when considering the impact of a proposed development on the significance of such designated heritage assets, great weight should be given to the assets' conservation, and the more important the assets, the greater the weight should be.
13. Whilst the Council takes no issue on the effect on the listed buildings, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. It is also the fact that the consultation response from Historic England identified positive effects and not just a lack of harm.

The Effect of the Proposals on the Area of Outstanding Natural Beauty and Designated Heritage Assets

14. The features that result in the site not being regarded as 'isolated' in the meaning to be given to paragraph 79 of the Framework as a result of the 'Braintree' judgement are the other buildings making up the hamlet of West Cliffe. There is a definite cluster around the listed former hotel of Walleys Court and the church, with some slightly more dispersed dwellings to the east and west. It is readily apparent on approaching from both main road directions, and from viewpoints on Pond Lane to the north and the path to the south that there is a close-knit and attractive group of buildings and spaces.
15. The wider landscape appears relatively flat, but includes dry valleys on the underlying chalk geology and the site and its neighbours sits on or near to a ridge and hence is visible from the south, at some distance from the War Memorial site, but particularly at close quarters from the footpath. The site does not however appear as part of the open agricultural landscape, due to its visual association with the former hotel amenity grounds, and to the boundary treatment between it and the fields to the south and west.
16. There has been some significant re-profiling of the natural ground levels on the appeal site, stated to have dated from some military use or the former farm buildings, and the overall effect of this and the boundary vegetation is of a site

that, whilst attractive, displays limited unaltered natural beauty, and far less than that shown by the surrounding agricultural land, which despite some removal of hedgerows, or maybe even because of that, retains a chalk down-land character and appearance.

17. The proposal is for a modest house within a designed landscape of orchard and drive to the front and then behind a wall that is placed as an extension of the house front, a private series of garden 'rooms'. The result would be an informal area addressing the road-side, with a storage building for bins and garden machinery within it, reminiscent of the forward placement of the Staddle Barn on the adjoining site; whilst the more formal areas would address the open countryside and footpath due to the slope of the land. The proposed enhancement of the intervening boundary would further soften the inward view from the undeveloped part of the Area of Outstanding Natural Beauty, reducing the extent to which the garden would be seen as a managed feature.
18. The house would draw on features of the listed Walleys Court but not as a copy. The interpretation of those features and their altered disposition on the site and about the building would avoid pastiche and yet would tie the new building firmly to the architectural treatment of the historic structure. The 'cat-slide' roof to the road elevation, with its large dormer, entrance reveal and chimney, would appear as a modern re-working of vernacular or 'Arts & Crafts' features, but one that would never be mistaken for a historic building, and the side elevations turning round through flush brick 'quoins' of a differing colour to the rear would present a low-key, dark face to the adjoining open land and grounds of the former hotel.
19. A particular feature is the proposed rear elevation facing south, as this would make use of a self-coloured white brick, taking its cue from the white painted north façade of Walleys Court, and would make use of pilasters which would acknowledge those on that older wall. The design, with its disposition of materials and architectural features, has clearly been the subject of a rigorous and scholarly process, and in itself is of a high standard that is fully in line with the paragraph 131 aim; being both outstanding *and* innovative, and due to its visibility, being capable of helping to raise the standard of design more generally in the area.
20. The further aim of the paragraph is to fit in with the overall form and layout of the building's surroundings. The white façade in particular would be readily visible from the footpath, although somewhat filtered through the boundary vegetation, and seen against the background tree canopy. The roof and chimney may protrude onto the skyline over a short length, but this would be seen together with other built form including the tower and high roof of the church. The dwelling would sit within its immediate designed landscape and the overall effect would be of a limited but high-quality extension of the hamlet. Whilst imposing on a site that has no built form or designed landscape at present, this imposition would not cause harm to the form of the hamlet or its setting, rather it would introduce an attractive further element.
21. For similar reasons, the proposal would not cause harm to the setting of either of the listed buildings. That of the church is over the hamlet as a whole, as befits its position in the historic life and development of the community, to which the addition of another dwelling of this quality should be readily accepted; and the setting of the former hotel is more in relation to the curtilage

structures, some dating from a previous agricultural use, or that of the more recent hotel use. The consultation response from Historic England attributes enhancement, which goes beyond the statutory test in section 66(1), although in replacement for a vacant site such a finding appears noteworthy. Be that as it may, the landscape would certainly enhance the setting of the listed building, and the smaller, but well-detailed new dwelling would sit comfortably alongside, and not vie for attention with, Walleys Court.

22. The proposal of building and landscape together would fit in with the overall form and layout of its immediate surroundings of the hamlet and would not cause harm to the wider landscape of the Kent Downs Area of Outstanding Natural Beauty or designated heritage assets. As a result, great weight is given to this finding in the planning balance which follows the next main issue.

The Effect of the Proposals on Protected Habitats

23. The position prior to the 'People over Wind' judgement would have been that the need for an Assessment under the Habitats Regulations would have been screened-out due to the District-wide mitigation that has been agreed. However, there are identified pathways by which harm might be caused to the Thanet Coast and Sandwich Bay Special Protection Area through the introduction of additional residents. The Inspector is the Competent Authority at appeal stage and an Assessment is now required.
24. There are 7 steps to the Assessment and once one of the steps has been met there is no requirement to go on to consider the remaining steps;
- *Step 1, is the proposal directly connected with or necessary to the management of a protected site?* No, that is not the case.
 - *Steps 2 and 3, is the proposal likely to have a significant effect on the interest features of the site, alone or in combination? If it is or such a risk cannot be excluded on the basis of objective information, then an Appropriate Assessment must be undertaken to determine whether or not the development will have an adverse effect on the integrity of the site.* The Council's view that this is the case was not challenged and it is necessary therefore to consider the next step.
 - *Step 4, if any adverse effects are identified, can they be mitigated or overcome by conditions or other restrictions such as a section 106 agreement or undertaking?* The Council explained that measures are in place to mitigate the effects, and that is why, previous to the judgement, the need for an Assessment was screened-out. Whilst not requiring a condition or other restriction on this proposal, there is no need to continue further with the Assessment.
25. It is concluded that the proximity to and accessibility of the Thanet Coast and Sandwich Bay Special Protection Area is not a reason to withhold permission.

Planning Balance

26. The proposal is outside the urban boundaries and rural settlement confines shown on the proposals map, and does not satisfy the exception in Policy DM1. The conclusion with regard to the effect on the character and appearance of the surrounding hamlet and the Area of Outstanding Natural Beauty is such that Policies DM15 and DM16 are satisfied, since the development would not result

in the loss of, or adversely affect the character or appearance of the countryside or its landscape character. Similarly the proposal would not run counter to the primary purpose of the designation of the Area of Outstanding Natural Beauty, and Policies SD1, SD3 and LLC3 would be met.

27. Policy DM1 is a most important policy for determining the appeal, since it directs the location of housing, and is the particular policy that has been found to be contravened as a matter of principle. As set out in Framework paragraph 11 and footnote 7, this should be regarded as being out-of-date due to the accepted lack of a 5 year supply of deliverable housing sites. Whilst the 'tilted balance' within paragraph 11 and the presumption in favour of sustainable development is not engaged due to the need to carry out an Appropriate Assessment, this is a material consideration of significant weight.
28. That weight might be tempered by fact that only a single dwelling is to be provided, but unlike many 'paragraph 79' proposals, the house would be modest in size and has been designed to cater for the retirement needs of the appellants. Whilst that need has a finite timescale compared with the expected lifetime of a permanent dwelling, the need is not particular to the appellants and the house would be eminently suitable to other future occupiers as this unassuming and well-mannered addition to the hamlet has not been designed only to address the whims or fancies of a particular client.
29. With regard to the aim of achieving sustainable development, there is an hourly bus service passing the site and additional school-time services were noted. There are facilities and shops at St Margaret's and the dwelling would help to support services there.
30. In the planning balance, the proposal would satisfy important policies and statute at national, local and Area of Outstanding Natural Beauty level that aim to protect the natural and historic environment, and the quality of the design of both built form and landscape together provides unusual and compelling justification for permission to be given as a departure from Policy DM1, a situation that is allowed for in section 38(6) of the Planning and Compulsory Purchase Act 2004.

Conditions

31. The Council had put forward a suite of conditions, and these were fully discussed at the Hearing. Of particular note are the conditions controlling the landscape provision, and it is essential in order to arrive at a holistic design that these be pre-commencement conditions; the Council's initial suggestion of linking the provision of details to the occupation of the dwelling would not provide this essential level of control. It was agreed at the Hearing that a number of other conditions should be amalgamated into the need for a landscape and maintenance scheme, and the parties were given time after the close of the Hearing to discuss this and put forward an agreed form of wording as a revised Statement of Common Ground. The 20 year maintenance period suggested by the appellants is unusual but rightly reflects the intention of long term quality.
32. Provisions in the Neighbourhood Planning Act 2017 inserted section 100ZA into the Town and Country Planning Act 1990 to prohibit the grant of planning permission subject to a pre-commencement condition without the written

- agreement of the applicant to the terms of the condition. The signed revised Statement of Common Ground provides that written agreement in this case.
33. Conditions are reasonable and necessary in order to ensure that the quality of the development as proposed, and on which this Decision relies, is actually delivered, such as on materials including sample panels, joinery, rainwater goods, roof detailing, refuse and recycling facilities, parking for vehicles and cycles, drainage, and provision of the ground source heat pump.
34. The Council had requested that the windows be set back 100mm from the face of the masonry. Apart from the appellants' concern over covering the cavity, it was noted at the site inspection that the front elevation windows to Wallets Court have the sash boxes fully exposed at or near the building façade, and not set back behind a masonry overlap, an arrangement introduced by the London Building Acts in the 1700s, as a precaution against the spread of fire, but later adopted more widely. There does not appear to be a justification for requiring a 100mm set-back, it being sufficient to leave the detail to be submitted pursuant to the joinery condition.
35. It is reasonable to remove permitted development rights to enlarge or alter, for roof additions, buildings incidental to the use, and for hard surfaces and chimneys, in order to allow any future proposals to be fully considered. External lighting is to be prevented other than as submitted for approval in order to protect the countryside and designated landscape.
36. The requirements of the suggested conditions on the highway entry were checked on site; the land falls away from the highway so that the requirement not to discharge surface water there can be readily met, and the required visibility splays are available already, notwithstanding doubt over the precise location of the highway boundary. To avoid harmful lopping to trees that overhang the splay, the dimensions suggested to be kept clear are altered.
37. A condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.

Conclusions

38. Due to the quality of the design, being the dwelling and landscape together, there would be no harm to the character and appearance of the countryside and the special characteristics and qualities, natural beauty and landscape character of the Kent Downs Area of Outstanding Natural Beauty would be protected and conserved, providing an element of enhancement to the designated area and the setting of designated heritage assets.
39. These positive considerations, resulting from the exceptional quality of the proposal, provide unusual and compelling justification for permission to be given contrary to the aims of the settlement hierarchy policies. The lack of a 5 year supply of housing land adds weight to this conclusion. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

including their protection during the construction phases of the development, and any proposed works to them, and the retention of the existing hedges shown on the approved drawings.

The maintenance of the landscape scheme shall include arrangements for replacement planting, in the event that a tree dies, is removed or becomes diseased, and garden husbandry across each season.

The approved landscape scheme shall be carried out in accordance with the approved timetable, and the scheme's on-going management and maintenance. The approved means of enclosure shall be erected or provided before the first occupation of the dwelling hereby permitted and retained as such, thereafter.

- 4) No development shall take place until details of site drainage works for the disposal of the site surface water, which shall be designed to avoid discharging water onto the highway and designed in accordance with the principles of sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full before the dwelling is first occupied and shall thereafter be maintained in accordance with the details approved.
- 5) No development shall take place until details of the existing and proposed levels of the site, and the finished floor levels of the house and outbuilding hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented and retained as such thereafter.
- 6) No development shall take place until the details of the proposed ground source heat pump, including dimensions, elevations, necessary connections – pipework, electrical etc., any above ground units to house any part of the associated equipment, and details of noise emissions, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details and retained as such thereafter.
- 7) No development shall take place until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. The said plan shall include details of:
 - Loading and unloading of plant and materials.
 - On site parking for construction workers.
 - Temporary access arrangements.
 - Measures to prevent dirt or other debris from being deposited upon the public highway.
 - Hours of construction working.
 - Machine operated plant to be used.
 - Temporary lighting.
 - Measures to control the emission of dust and dirt during construction.
 - Temporary hoarding/fencing.

The approved construction management plan shall be fully complied with throughout the construction period. There shall be no burning on site at any time during the development period.

- 8) No development above ground level shall take place until samples of materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 9) No development above ground shall take place until full details of all external joinery including that to all new windows and doors (which shall be of timber construction only) in the form of half or full size cross sectional drawings to include depth of reveal, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 10) No development above ground shall take place until sample panels of (brickwork/flintwork/stonework) measuring not less than 1m by 1m have been constructed to show the brick bond, details of mortar mix and type and style of pointing (for the proposed dwelling, terrace, garage and kitchen garden walls) and have been approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 11) No development above ground shall take place until colour and finish details and profiles of rainwater goods (which shall be cast iron or aluminium) and other external pipework have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out only in accordance with the approved details.
- 12) No development above ground shall take place until 1:10 cross sectional details of the eaves of the proposed dwelling and outbuilding have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 13) No development shall take place above ground until a scheme for the enhancement of biodiversity on the site, in accordance with the recommendations made at paragraph 4.7 of the submitted Ecological Scoping Survey (received 29 November 2017) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with the approved timetable and retained as such thereafter.
- 14) Before the access is first used a strip of land 2m in depth measured from the vehicular carriageway edge and running along the entire frontage of the site shall be cleared of all obstruction between 0.6m and 2m above carriageway level and thereafter the strip shall be so maintained at all times.
- 15) Refuse and recycling storage shall be provided in accordance with the approved drawing WC-PL-102 (received 4 December 2017). The approved storage shall be provided before the dwelling hereby permitted is first occupied and shall thereafter be kept available for its approved purpose at all times.
- 16) The area shown on the approved drawings as vehicle parking space, garages and turning space shall be provided and surfaced with permeable

drainage measures installed before the dwelling hereby approved is first occupied, and shall be retained for that use thereafter.

- 17) Bicycle storage facilities shall be provided in accordance with the approved drawing WC-PL-102 (received 4 December 2017). The approved storage shall be provided before the dwelling hereby permitted is first occupied and shall thereafter be kept available for its approved purpose at all times.
- 18) No external lighting shall be installed on the site other than has been first submitted to and approved in writing by the Local Planning Authority. The said details shall include heights of columns, light fittings and levels of luminance. The development shall be carried out only in accordance with the approved details and prior to the first occupation of the dwelling.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within the following Classes of Part 1 of Schedule 2 of that Order;
 - Class A – enlargement, improvement or other alteration of a dwellinghouse.
 - Class B – additions etc. to the roof of a dwellinghouse.
 - Class C – other alterations to the roof of a dwellinghouse.
 - Class E – buildings etc. incidental to the use of a dwellinghouse.
 - Class F – hard surfaces incidental to the use of a dwellinghouse.
 - Class G – chimneys, flues etc. on a dwellinghouse.