
Appeal Decisions

Hearing Held on 25 September 2018

Site visits made on 25 September 2018 & 8 October 2018

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2018

Appeal A - Ref: APP/U1430/W/18/3196157 **Udimore Road, Rye, TN31 6AA**

- 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 BP Oil UK Limited against the decision of Rother District Council.
 - The application Ref RR/2017/1231/P, dated 26 May 2017, was refused by notice dated 16 October 2017.
 - The development proposed is construction of petrol filling station, canopy, sales building, ATM, AC/Refrigeration units, refuse compound, parking and associated works.
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Appeal B - Ref: APP/U1430/W/18/3205029 **Udimore Road, Rye, TN31 6AA**

- 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 BP Oil UK Limited against the decision of Rother District Council.
 - The application Ref RR/2018/545/P, dated 13 February 2018, was refused by notice dated 30 May 2018.
 - The development proposed is construction of petrol filling station, canopy, sales building, ATM, AC/Refrigeration units, refuse compound, parking and associated works.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters – Appeal A & Appeal B

3. The Revised National Planning Policy Framework (the Framework) was published on 24 July 2018. I have assessed these appeals in light of the revised Framework.
4. I undertook an unaccompanied site inspection over two days. This included visiting the view points from the submitted Landscape and Visual Impact Assessment and viewpoints suggested by the Council and interested parties at the event. In addition I also visited the site in the dark.

Main Issues – Appeal A & Appeal B

5. The main issues are:

- The effect of the construction of a petrol filling station on (a) the character and appearance of the area, having regard to the setting of the High Weald AONB; and (b) the living conditions of the occupiers of nearby dwellings, with particular regard to the impact of the scheme of illumination.

Reasons

Character and appearance

6. The site is adjacent to the built up area boundary on the fringe of Rye. As such for the application of planning policy it is located within the countryside. Policy RA2 of the Rother Local Plan Core Strategy (CS) seeks to encourage schemes that would reinforce landscape character and local distinctiveness. Furthermore it seeks to strictly limit new development to '*...that which supports local agricultural, economic or tourism needs and maintains or improves rural character...*'
7. There is no dispute that the site itself is not located within the High Weald AONB. The AONB designation wraps around the site on three sides. Both parties referred me to the Rother District Council Local Development Framework, Rye and Rye Harbour Study. This document considers the interface between the built up area and the AONB. I have also been referred to the Rother District Council Market Towns and Villages Landscape Assessment which considers the capacity of the landscape around existing settlements to accommodate housing and business development.
8. In support of the schemes the appellants have undertaken a Landscape and Visual Impact Assessment (LVIA). This includes a number of view points. At the hearing the Council and local residents referred me to two additional view points. I visited all of these as part of my site inspection. The appellant's LVIA also identifies relevant landscape character assessments and character areas. Overall key characteristics are identified as a mixture of fields, woodlands and farmsteads connected by tracks and paths. Fields are enclosed by hedgerows with scattered mature trees. The site sits within this and is in an edge of settlement location.
9. Udimore Road itself represents a ribbon of housing that extends out from the town. There has been a recent addition in the form of a scheme for about 135 dwellings¹ that has been built and is accessed from the mini roundabout close to the site. Leaving the town the land gradually rises with the site being positioned at a relatively high point on Udimore Road. Furthermore, when leaving Rye along Udimore Road there is a clear change from a suburban form along the road frontage into the open countryside beyond where built form is more sporadic.
10. Rye itself is nestled within the lower area of the river valley. From the surrounding ridges and other locations, such as the cemetery, there are wide ranging views across the landscape. In particular from the Council's suggested view point along Leasom Lane the town and its roof scape sit within the valley. Beyond to the south and east the undulating open countryside is appreciated, providing setting to the town.
11. Within these views business or commercial premises are not evident. The impression is of a settlement within its landscape setting. The schemes would introduce a petrol filling station onto the site. This would include a sales

¹ APP/U1430/A/07/2060029

- building, canopy and associated parking and access points. In both cases the scheme would introduce a utilitarian building, canopy and associated boundary treatments onto the site. Even if appropriate materials were secured this would represent a stark contrast to the existing built form in the locality.
12. The LVIA includes view points where there is no dispute that the development would not be visible. For sites where it would be visible it concludes that where there would be an adverse effect that it would over time (construction to year 1 to year 15) become negligible. I appreciate that from some locations closer to the site that the scheme would not be visible. Further I note that from the cemetery that the distance and some additional planting would serve to reduce the impact of the scheme. Nevertheless, from the ridge on Leasam Lane and nearby footpath (Council's photos 2 & 3), I consider that the scheme would be visible. In particular that the construction of a petrol filling station would appear as noticeably isolated urban intrusion into the open countryside that encases this part of Rye. This is something that the landscape buffer strip would not change given its limited scope.
 13. The appellants have submitted details of landscaping in both appeals. I acknowledge that additional areas are shown for Appeal B and that conditions have been proposed to secure an appropriate scheme should either scheme go ahead. However, in both cases the appeal site is long and narrow. This and the position of the building, forecourt and parking areas serve to limit the width of landscaping strips to either side. I note that either end of the site would allow for the provision of larger areas. However, as the plans demonstrate, even with the bund and planting shown, the level change across the site would result in large parts of the building and canopy remaining visible.
 14. The appellants have referred me to the appeal decision² for the development of 135 units and the associated LVIA. However, by contrast to these schemes, the inspector found that '*...the new development would be tucked into and would not intrude into the landscape of the AONB; they would be tucked into the on-site valley and seen against the back drop of existing buildings...*' For the reasons set out above I do not consider that these circumstances apply to the schemes before me.
 15. The appellants also refer to a recently approved scheme for a new nursing care home³. This scheme is within the AONB and described in the Council's report as being '*...an infill development between existing healthcare facilities in Kiln Drive to the north-east and residential development in Hilltop Drive & Old School Place to the south-east*'. I appreciate that the appellants do not consider the Council's approach to the LVIA in that case and these ones is considered. However, for the reason set out the care home scheme is, in my view distinct, from the appeal schemes which I have in any event judged on their individual merits.
 16. In considering landscape character the Council have also raised the contribution that the 'dark night skies' make to the intrinsic character of the area. At the hearing the illumination within the schemes was clarified. In particular that the lighting sought within these schemes would be down lights to illuminate under the canopy, an edge of canopy advert, car park low lighting within the air and water bays, lighting through the shop front, ATM to be lit,

² APP/U1430/A/07/2060029

³ LPA ref RR/2017/2097/P

gantry sign lights to illuminate the company logo and pricing and timed lights for disabled car parking spaces. In addition I understand that the lighting details submitted with the applications specifically seek to minimise spill. In particular through the lighting design and specification report and associated plan that the amount and level of light spill is identified. The scheme demonstrates how an upward light component would be avoided. The commentary does identify that there is the potential for light to be reflected. Furthermore, it does not suggest that this approach would prevent impact from a distance.

17. The appellants have also provided information from the CPRE light mapping which shows that the site would not be located in the area categorized as darkest. Nonetheless the categorization of the site is at the darker end of the spectrum provided. In addition it is not clear how the scheme would impact on the categorization. The site is at a transitional point when leaving Rye and entering the open countryside. This is also true when experiencing the site in the dark. I was able to see the existing lighting referred to by the appellants. Nevertheless, even taking into account the lighting at the roundabout, when leaving the main built up area it very quickly becomes much darker with no street or other significant sources of light.
18. It has been suggested by the appellants that the use of conditions could in fact control and mitigate the effect of illumination on the site, including reducing luminance when not in use and limiting hours of operation. Further I note that the scheme has sought to keep sources of lighting to a minimum. In this regard I agree in part with the appellants that the schemes would not necessarily create a 'wall' of light as the Council submitted. However, the reality is that for the petrol filling station to be operational both schemes would still contain a number of sources of illumination. In particular the canopy edge lighting and downlights would be at a high level. It would be possible to limit the hours of use and manage the site to limit some of the impacts. However there would inevitably still be periods within the suggested hours of operation when some illumination would be required. This would be experienced against the back drop of the dark rural area within which the site is located. Overall I consider that the lighting would be unduly prominent and visible over distance due to level changes and would draw attention to the site. This would compound the harmful effects on the character of the area.
19. I therefore conclude that the proposals would have a harmful effect on the character and appearance of the area, having regard to the setting of the High Weald AONB. In this regard they would be in conflict with policies RA2, RA3, EN1 and OSS4 of the Rother Core Strategy (CS).

Living Conditions of the occupiers of nearby dwellings

20. The Council's reason for refusal raises the effect of the scheme on No 174 Udimore Road, Cadborough Oast and Oast House Drive. At the hearing concerns were also put to me by residents within the 'farm' complex, in particular Orchard House and Brandys Cottage. I have therefore considered all these together under living conditions.
21. The Council clarified that it considered that the impact on existing occupiers would be from the sources of illumination associated with the scheme. In particular from the canopy.
22. No 174 is positioned at an angle to the road. Its front elevation contains openings that would face the site and there are also openings in the gable end

- that would face part of the site. This dwelling would be in close proximity to the site access and also the areas where the canopy and shop building would be located.
23. The provision of the petrol filling station would change the character of the site and consequently the relationship of the site to this dwelling. The fundamental issue is whether the scheme would have an adverse effect on the living conditions of the occupiers of the property. The Council suggests that the amount of illumination within the scheme would be intrusive for residents. In particular reference is made to a 'wall of light' being created by the illumination of the canopy and associated down lights. However, I do not have any evidence to substantiate the Council's assertion that this would be the case.
24. The appellants' submit that the lighting could be controlled to minimise spill and limit the impact, in particular the use of LED technology and design and limiting hours of use and operation. Nevertheless, the higher level development and consequently its lighting would represent a marked change from the undeveloped nature of the site. Furthermore there would inevitably still be periods of the hours of operation when the illumination would be required. This would be experienced against the back drop of the dark rural area within which the site is located. Therefore, even with the landscape mitigation in place it would be highly prominent and visible from the home and garden areas of No 174. As such, due to its close proximity it would result in substantial harm to the enjoyment of and therefore living conditions of the occupiers of No 174.
25. The dwellings Cadborough Oast and in Oast House Drive would be further from the site. I note that Cadborough Oast has windows that would face the site. However, it would be some distance away and the field in front of it would intervene. The dwellings in Oast House Drive are orientated such that their primary aspect is also across the field. Therefore any views of the appeal schemes would be oblique. As such the impact of the scheme on these properties would not be as heightened as for No 174.
26. The other dwellings referred to are located within what was described to me as the 'farm complex' on Cadborough Farm. These dwellings are positioned further from the site than No 174. However, there is a change in levels between their location and Udimore Road. As a result the appeal schemes if viewed from the areas in and around these dwellings would appear above the road level. However, overall, these views would be limited and alone would not be sufficient to resist the scheme.
27. Car movements were also raised at the hearing and the light pollution that residents consider would be experienced in nearby dwellings from this. A boundary treatment would be in place that would limit the impact of this. Therefore I agree with the appellants that this issue would not have a harmful impact.
28. I therefore conclude that proposals would have a harmful effect on the living conditions of No 174 with particular regard to outlook. They would be in conflict with CS policy OSS4 in so far as it requires new development to be compatible with the existing and use of adjacent land.

Other matters

29. Since the application was determined the building known as Cadborough Oast has been listed Grade II. Section 66 of the Planning (Listed Building and

Conservation Areas) Act 1990 requires decision makers to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

30. Cadborough Oast is located on the opposite side of Udimore Road from the site. This property is described as being listed for its architectural and historic interest. In particular that it is the only complete surviving structure from the Cadborough Farmstead. There is no dispute that the scheme would not impact on the fabric of the Oast. The concern relates to effect of the scheme on the setting of the building. The setting is identified by the Council as being derived from the relationship of the Oast, as a former agricultural building, with its countryside setting.
31. There is a large field area located to the front of Cadborough Oast. This and the road intervene between it and the site. At present there is some visibility of the Oast across this area when entering and existing Rye along Udimore Road. The appeal site would be on the periphery of these views. As such I do not consider that the appeal schemes would affect these views and consequently how the Oast is viewed from Udimore Road.
32. The Neighbourhood Plan (NP) identifies the need for an additional petrol filling station in Rye. This is not disputed by the Council. The appellants have undertaken a sequential test exercise. This has considered other sites where a petrol filling station could be accommodated. In particular that the appeal site is the most suitable site that is not located within Flood Zone 3. I appreciate that there is an identified need for a petrol filling station and that petrol fuel storage is a further constraint on site selection. Nevertheless, the NP is emerging and has not been basis for this provision has not been examined and found sound. As such I attached only limited weight to this as a benefit of the scheme.

Planning Balance

33. The Framework reiterates that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal schemes would harm the character and appearance of the area and the living conditions of the occupiers of the existing dwelling No 174 and would be in conflict with the development plan in this regard to which I attach significant weight. I note that there would not be harm to the setting of the nearby listed building, no flood risk issues, no objection from the Local Highway Authority and that there would be some limited social and economic benefits derived from the reuse of the site and provision of a shop and filling station and from the construction period. However I attach only limited weight to these benefits as some would be of limited duration. I also attach only limited weight to the NP as set out above. Therefore the totality of these considerations does not outweigh the primacy of the development plan in this case.

Conclusion

34. Accordingly for the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

D J Board
INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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|-------------|--------------------|
| Nigel Ozier | Aitchison Rafferty |
| Andrew Gray | Aitchison Rafferty |

FOR THE LOCAL PLANNING AUTHORITY:

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|-----------------|----------------------------|
| John McSweeney | Rother District Council |
| Virginia Pullan | East Sussex County Council |

INTERESTED PERSONS:

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|--------------------|------------------|
| Veryan Pollard | |
| Ernest Pollard | |
| Jane Apperly | |
| Yvonne Metcalf | |
| Morris Metcalf | |
| Ellen Rison | |
| Russell Rison | |
| Meredith Wilkinson | |
| Graham Turner | |
| Patricia Hughes | Rye Town Council |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's Supplementary Statement
- 2 The Setting of Heritage Assets
- 3 List Entry for Cadborough Oast
- 4 Policies OSS3, TR3, TR4, EN2
- 5 Plan showing view points referred to by the Council and interested parties