
Appeal Decisions

Site visit made on 20 August 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal A Ref : APP/D3830/C/18/3215335

Appeal B Ref : APP/D3830/C/18/3215336

Fir Tree Cottage, Warninglid Lane, Warninglid, Haywards Heath, West Sussex, RH17 5TQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Els and Appeal B is made by Mrs Els against an enforcement notice issued by Mid Sussex District Council.
- The notice was issued on 10 October 2018.
- The breach of planning control as alleged in the notice is failure to comply with conditions 10 and 11 of planning permission reference 14/02766/FUL (the Planning Permission). Condition 10 states 'within three months of the substantial completion of the new dwelling the existing dwelling (shown dotted on drawing 339/10F – proposed site plan) shall have been demolished and the debris removed from the site where necessary'. Condition 11 states 'the building hereby permitted shall not be occupied until the existing access to the site other than that hereby approved has been stopped up permanently and obliterated'. The conditions are not being complied with because the original dwelling has not been demolished and the access to the site has not been stopped up.
- The requirements of the notice are 1) comply with condition 10 of the Planning Permission by demolishing and removing from the land the Original Dwelling in its entirety; 2) comply with condition 11 of the Planning Permission by stopping up permanently and obliterating the Original Access on the land; 3) remove from the land all waste and debris resulting from steps 1) and 2) above.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Act.

Summary of Decision: the appeals are dismissed and the enforcement notice is upheld

Appeal C Ref : APP/D3830/W/18/3210197

Fir Tree Cottage, Warninglid Lane, Warninglid, Haywards Heath, West Sussex, RH17 5TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the 1990 Act for the development of land without compliance with a condition subject to which a previous planning permission was granted;

- The appeal is made by Mr & Mrs Els against the decision of Mid Sussex District Council;
- The application ref DM/18/1706 was refused by notice dated 2 July 2018;
- The application sought planning permission to retain the original dwelling for use as a home office and ancillary accommodation to the main house without compliance with a condition attached to planning permission 14/02766/FUL.
- The condition in dispute is condition 10 which states that 'within three months of the substantial completion of the new dwelling the existing dwelling (shown dotted on drawing 339/10F – proposed site plan) shall have been demolished and the debris removed from the site where necessary'.
- The reason given for imposition of the condition is to prevent overdevelopment of the site, to accord with countryside policies and in the interests of the visual amenity of the locality.

Summary of Decision: the appeal is dismissed

Application for costs

1. The Council has made an application for costs against the Appellants. This is the subject of a separate decision.

Background

2. Planning permission reference 14/02766/FUL (the Permission) has been granted for the demolition of existing dwelling (the original dwelling) and erection of replacement dwelling with improved access arrangements at the appeal site. The Permission includes a condition (Condition 10) which states that 'within three months of the substantial completion of the new dwelling the existing dwelling (shown dotted on drawing 339/10F – proposed site plan) shall have been demolished and the debris removed from the site where necessary'. The reason given for imposition of the condition is to prevent overdevelopment of the site, to accord with countryside policies and in the interests of the visual amenity of the locality. The Permission includes a condition (Condition 11) which states 'the building hereby permitted shall not be occupied until the existing access to the site other than that hereby approved has been stopped up permanently and obliterated'. The reason given for imposition of the condition is in the interests of road safety.
3. The replacement dwelling and new access have been completed and the original dwelling and access remain. The enforcement notice the subject of Appeals A and B concerns non-compliance with Condition 10 and Condition 11 of the Permission.
4. Planning application reference DM/18/1706 has been refused. The application is to remove Condition 10 of the Permission to retain the original dwelling for use as a home office and ancillary accommodation to the main house. This refusal is the subject of Appeal C.

Appeal A Ground (a) appeal and deemed application and Appeal C

Main Issues

5. The main issues in Appeal A are the effect of the grant of permission without compliance with Conditions 10 and 11 on (i) whether the appeal site is a sustainable location for the retention of the original dwelling, (ii) the character and appearance of the surrounding area with particular regard to its location in

a rural Area of Outstanding Natural Beauty, (iii) the living conditions of occupiers of the original dwelling and replacement dwelling with regard to privacy and overlooking and (iv) highway safety. The main issues in Appeal C are the effect of a grant of permission without compliance with Condition 10 on issues (i) – (iii) above.

Location

6. The appeal site is a large rural plot lying about 1 km to the west of the small village of Warninglid. The replacement dwelling permitted by the Permission sits at the front of the site. The new approved access provides access to Warninglid Lane a Class B Road subject to a 60 mph speed limit. The northern boundary along Warninglid Lane is demarcated by an established hedge. The original dwelling is located to the north west of the replacement dwelling close to a series of outbuildings and barns. The site is located within the High Weald Area of Outstanding Natural Beauty (the AONB).
7. The original dwelling remains in situ together with its original access. It is a two storey detached building with a single storey extension and conservatory. It is being used as a home office and has bedrooms and a bathroom on the first floor. There is no dispute that the time periods for demolition of the original dwelling pursuant to Condition 10 of the Permission and construction of the new access pursuant to Condition 11 have expired.
8. The development plan (including the Mid Sussex District Plan (the District Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking to prevent inappropriate new dwellings in the countryside, ensuring that development respects its setting and placing great weight on conserving the landscape and scenic beauty of nationally designated AONBs. Policy DP15 of the District Plan provides that new homes in the countryside will only be permitted where special justification exists. Policy DP16 of the District Plan seeks to conserve and enhance the natural beauty of the AONB and provides that development will only be permitted where it does not detract from the visual qualities and essential characteristics of the AONB and in particular should not adversely affect views into and out of the AONB by virtue of its location or design. Policy DP21 of the District Plan provides that development be sustainably located to increase the use of alternative means of transport and protect the safety of road users and pedestrians. The Slaugham Neighbourhood Plan (the Neighbourhood Plan) is currently the subject of consultation and this reduces the weight that I attach to it as a material planning consideration.
9. The Framework is a significant material consideration to be taken into account in these appeals. It provides that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It also sets out a presumption in favour of sustainable development and encourages the effective use of land.
10. The parties do not agree as to whether the retention of the original dwelling would comprise a new home in the countryside. The Appellants argue that as the intention is to use the original dwelling as a home office ancillary to the residential use of the replacement dwelling that it does not comprise a new home. The Council draws attention to Policy DP15 which states that 'new granny annexes that are physically separate to the dwelling are defined as a new home'. I have considered carefully the Appellants' argument that unlike a

granny annexe this case does not involve an independent unit dwelling but I consider that it is reasonable to interpret the expression 'granny annexe' in this context as including an ancillary residential use of a detached building. I also note that the original dwelling is capable of being used as an independent unit. I shall therefore apply Policy DP15 in assessing these appeals.

11. I find that none of the special justifications set out in Policy DP15 are satisfied on the facts of this case. Accommodation is not essential for the purposes of agriculture or supported by policy. I conclude that the proposal is contrary to policy DP15 and comprises a new home in the countryside for which there is no special justification.
12. The site is beyond a settlement boundary. There are few community, retail or education facilities close at hand and there is no easy access to public transport. Occupiers of the site need to travel to Warninglid to access essential services and facilities. I consider on the facts the distance between the site and Warninglid to be within the limits of reasonable walking distance. However, the journey involves negotiating a busy main road and is unlikely to be suitable for older persons or persons with young children or buggies. The development is unlikely to increase the use of alternative means of transport contrary to policy DP21.
13. For the reasons given, I find the location of the site to be unsustainable for the retention of the original dwelling. There is no special justification for allowing its retention. The fact that the Appellants intend an ancillary residential use does not alter my conclusions.
14. I conclude as a matter of fact and degree that if Condition 10 was removed it would permit an unsustainable form of development contrary to the relevant policies in the development plan (including policies DP21 and DP15) and the Framework.

Character and appearance

15. The site sits within open countryside within the AONB in a rural location. The area is characterised by low density residential development and clusters of housing are not characteristic of the area.
16. The Permission was approved subject to a condition that the original dwelling be demolished. Whilst it is correct that the original dwelling has been in existence for many years it has not been juxtaposed next to another dwelling.
17. In considering the application for the replacement dwelling the Council determined that retention of the original dwelling together with the new dwelling would cause harm to the character and appearance of the area. Both buildings are not part of an established cluster of properties. The retention of the original dwelling fails to maintain or enhance the landscape by introducing a proliferation of buildings which erodes the special landscape character in this rural location. Both buildings were permitted only for a temporary period during the construction of the new building and therefore this is not a case of reuse of existing resources. The consequence of permitting the retention of the original dwelling is to create a cluster of buildings in close proximity to each other out of keeping with the character and appearance of the surrounding area. I do not accept the Appellant's argument that retaining the original building would maintain a historical perspective to the area and this was not

the Appellants' argument in submitting the application for the Permission. I consider that the original dwelling makes only a limited contribution to the character of the area and this does not justify its retention.

18. I find that the retention of the original dwelling by removal of Condition 10 would cause unacceptable harm to the character and appearance of the area and fail to conserve the landscape and natural beauty of the AONB having regard to its qualities and local distinctiveness contrary to relevant policies in the development plan (including Policy DP16 of the District Plan) and the Framework. Whilst I recognise potential modest benefits in making use of an existing rural building for ancillary uses this does not outweigh the identified harm.
19. The Council argues that the retention of the access causes harm to the character and appearance of the rural streetscene but I do not consider that its retention together with the new access adversely affects the visual appearance of the area

Living conditions

20. Policy DP26 of the District Plan requires that development satisfy certain specified criteria including that it does not cause significant harm to the amenities of nearby residents.
21. The Council has concerns about the living conditions of occupiers particularly overlooking and lack of privacy in relation to the proximity of the first floor west facing bedroom window of the replacement dwelling with the conservatory of the original dwelling.
22. But I find as a matter of fact and degree that the separation distance and orientation of the properties do not create significant harm by reason of overlooking and privacy. There is no direct overlooking and no undue harm to the living conditions of occupiers and it accords with Policy DP26 of the District Plan.
23. I find that the removal of Condition 10 would not cause undue harm to the living conditions of occupiers with regard to overlooking and privacy.

Appeal A Ground (a) appeal and deemed applicaton

Highway safety

24. Policy DP21 of the District Plan requires development to be sustainably located to promote the increased use of alternative means of transport and protect the safety of road users and pedestrians.
25. The former access is a short distance from a bend in the road. In considering the application for the replacement dwelling the Council determined that retention of the original access would cause harm to highway safety. Condition 11 of the Permission requires the stopping up of the former access to the original dwelling.
26. The location of the access reduces visibility to the west when exiting the site and does not protect the safety of road users and pedestrians. This was recognised by the Appellants in their original planning statement and in my view nothing material has changed. The absence of any requirement by the Highways Authority does not alter my conclusions.

27. As a matter of fact and degree I conclude that the removal of condition 11 of the Permission would cause harm to highway safety contrary to policy DP21 of the District Plan.

Appeal A Ground (a) appeal and Appeal C

Conclusions

28. I have considered whether there is an overriding need or benefit that outweighs the identified harm. I note the Appellants' need for office space but I am not satisfied that alternative measures could not address this without the identified harm. I have taken into account the Appellants' comments about the problems in using the existing outbuildings but I am not satisfied on the evidence before me that a viable alternative does not exist. The Appellants refer to a potential economic benefit in that future occupiers would contribute to the rural economy but the proposed use would be ancillary and even if there were any benefit it would be small and would not outweigh the identified harm. I find no overriding social, environmental or economic need or benefit that warrants an exception to development plan policy. Any contribution to the housing market is small and this does not outweigh the identified harm.
29. For the reasons given above I find that retention of the original dwelling in breach of Condition 10 of the Permission would cause undue harm to the character and appearance of the area and have an adverse affect on the landscape and scenic beauty of the AONB. Removal of the conditions would permit an unsustainable form of development in the open countryside contrary to the development plan and the Framework. Whilst I have found no undue harm to the living conditions of occupiers of the replacement and original dwellings with regard to overlooking and privacy this does not outweigh my conclusions as to the identified harm by reason of character and appearance, location and highway safety. Retention of the former access in breach of Condition 11 would cause harm to highway safety.
30. I have considered whether additional conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the suggestions proposed by the Council (and broadly agreed by the Appellants) in the event that the appeals are allowed. But I do not find that conditions could overcome the identified harm. A condition restricting the use of the original dwelling to use ancillary to the residential use of the replacement dwelling would not overcome the identified harm to the character and appearance of the surrounding area. I find that conditions would not overcome the identified harm and planning permission should not be granted.
31. I find Conditions 10 and 11 to be reasonable and to satisfy the tests in the Planning Practice Guidance. Non compliance with the Condition 10 would result in harm to the character and appearance of the area and fail to conserve the landscape and scenic beauty of the AONB permitting an unsustainable form of development in the countryside contrary to relevant policies in the development plan and the Framework. Non compliance with Condition 11 would result in harm to highway safety. For the reasons given planning permission should not be granted on the deemed application the subject of Appeal A nor on the application the subject of Appeal C.

32. I have no reason to disagree with the parties that the proposal would create no likelihood of significant effect alone or in combination with other growth on the Ashford Forest Special Area of Conservation.

Appeals A and B Ground (f)

33. This ground of appeal is that the steps required by the notice are excessive. There are two purposes that an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice provides for compliance with conditions 10 and 11 of the Permission and removal of waste and debris resulting from compliance. It therefore seeks to remedy the breach of planning control and no lesser steps would achieve that purpose.
34. The Appellants argue that a lesser step would be to impose a condition to secure the use of the original dwelling as ancillary to the primary residential use of the planning unit. I have addressed this in considering the deemed application and concluded that it would not remedy the identified harm.
35. The Appellant questions the use of the word 'demolition'. I find the common sense meaning of the word to be unambiguous and do not consider it necessary to vary the notice. The Council has provided a reasonable response to the queries concerning foundation and drainage works.
36. The Appellants wish to retain some elements of the building for hardstanding. But limited detail is provided and on the information before me I cannot be certain that such a lesser step would be appropriate.
37. The Appellants argue that the retention of the former access would provide a much easier and appropriate access if demolition of the original dwelling is required. But removal of Condition 11 would not be for such a temporary purpose and is not justified.
38. For the reasons given above, the ground (f) appeals do not succeed.

Appeals A and B Ground (g) appeal

39. This ground of appeal is that the time for compliance with the notice is unreasonably short. The notice provides for a three month compliance period. The Appellant says that six months would be reasonable to enable relocation of the office use.
40. I consider that three months is a reasonable period in which to make alternative arrangements for a home office. It is consistent with the time period in the Permission for demolition of the original dwelling. There is nothing before me to suggest that three months is not a practical timescale for delivery of the requirements of the notice and it strikes an appropriate balance between competing private and public interests and is proportionate so as not to violate individual rights.
41. For the reasons given above, the ground (g) appeals do not succeed.

Formal Decisions

Appeal A

42. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

43. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

44. The appeal is dismissed.

S. Prail

Inspector