



Appeal Decision

Site visit made on 20 August 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2019

Appeal Ref: APP/U2235/W/19/3228474

Tutsham Farm, Hunt Street, West Farleigh, ME15 0NE

- 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 M Finch against the decision of Maidstone Borough Council.
 - The application Ref: 19/500452/FULL dated 29 January 2019, was refused by notice dated 29 March 2019.
 - The development proposed is described as retrospective application for the re-erection of a barn to form a single dwelling, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address on the original planning application form is set out in the banner heading above. However, on the appellant's appeal form it is described as 'River Barn, Tutsham Farm, West Farleigh, Maidstone, ME15 0NE'. A differing address has been used by the Council on its decision notice. As the appellant's appeal questionnaire address is registered by Royal Mail, I have considered the appeal on this basis.
3. The original planning application form described the development as set out in the banner heading above. The appellant's appeal form, correspondence and the Council's decision notice confirm the description of the development was amended to 'Erection of dwelling and associated works with parking and landscaping as shown on drawing references: DHA/10757/11; 15; 16; 18; and 19; and unreferenced existing elevations received 26/02/19'. Therefore, I am considering the appeal on this basis.
4. Plan/drawing Ref: DHA/10757/23 titled 'Proposed Layout Plan' dated May 2019 was submitted subsequent to the Council's decision as part of the appeal documentation. However, the plan shows the southern patio area enclosed by a hedgerow and omits the rear garden area from the scheme. In my judgement this would materially alter the nature of the proposal and potentially prejudice the interests of the interested parties. I have therefore dealt with the appeal on the basis of the plans upon which the Council reached its decision.
5. I observed that the development described above has already been carried out and I have dealt with the appeal on this basis. There is disagreement between the parties as to the full extent of the development, for example, regarding land to the north of the appeal site and the use of land beyond the walled

garden. For the avoidance of doubt, I have determined this appeal based upon the development within the redline and based on the submitted plans only.

6. The appellant has submitted a Statement of Common Ground (SoCG) as the appellant expected that the appeal would have been determined under the Hearings procedure. As it is being determined under the Written Representations procedure and the Council has not agreed to the SoCG, whilst I have noted its contents, I have not treated this as common ground between the parties.

Main Issues

7. The main issues are:

- the effect of the development upon the character and appearance of the area and the local landscape; and,
- whether the development is in a suitable location having regard to the accessibility of services and facilities.

Reasons

Site history

8. Both parties have provided considerable commentary on the site history which I shall summarise. Prior to the erection of the dwelling, the appeal site was occupied by a hay barn. In May 2015 the appellant was granted a prior approval (Ref: 15/502255/PNBCM) under Class Q, Part 3 of Schedule 2 to the General Permitted Development Order 2015 (as amended) (GPDO) by the Council 'for the change of use of agricultural building to house'. Part Q of the GPDO permits such a conversion subject to the limits in paragraph Q.1.
9. Work commenced on the conversion in late 2015, which included adding some new steel frame elements to the original reinforced concrete frame structure. However, part of the way through the works severe weather is understood to have led to the failure of the exposed frame. Whilst it would have been possible to repair and re-erect the reinforced concrete structure, as the cost would far exceed the cost of replacing the frame, the appellant erected a replacement steel frame in the belief it would be acceptable. These works mean the development falls outside the limits set out in Q.1 of the GPDO. Consequently, express planning permission is required and was refused by the Council, which has ultimately resulted in the current appeal.
10. Based upon the plans before me the previous barn measured around 23.2 metres (m) in length by 8.66m in width by 5m – 7.2m high (eaves and ridge respectively). The new building measures approximately 23.5m in length by 9m in width by 5.2m – 7.5m high (eaves and ridge respectively). Therefore, the new building is materially larger than the previous barn. The rear garden area has been excavated into the valley in which the appeal site sits, being enclosed by a wall of around 1.8m to the east and 1.5m to the south. The appellant acknowledges the garden land exceeds that which could have been created under the Class Q prior approval.

Character and appearance

11. The appeal site is accessed down a macadam road around 130m west of the nearest Tutsham Farm buildings, set within a generous plot with sizeable front

and rear garden areas, and a hard standing capable of accommodating several cars. Outside the appeal site to the north is a hard standing (referred to by the Council as a helipad), with grass/pasture and paddocks surrounding the remaining parts of the dwelling. A public right of way (Footpath KB16) runs across the north of the site.

12. The appeal site lies in the countryside under Policies SS1 and SP17 of the Maidstone Borough Local Plan (2017) (the Local Plan), where development will not be permitted unless it accords with other policies in the Plan and does not result in harm to the character and appearance of the area. Under Policy SP17 it is also partly located within the Medway Valley Landscape of Local Value (the MVLLV). Policy DM30 of the Local Plan seeks high quality design in the countryside and requires development to maintain and where possible enhance local distinctiveness.
13. The appeal site is split between the Farleigh Greensand Fruit Belt (Character Area No. 27) and Medway Valley (No. 52) in the Maidstone Landscape Character Assessment (2013) (the MLCA). The surroundings are characterised by the river valley with long verdant open views, large areas of grassland and pastureland, fruit production, paddocks, pockets and belts of trees, occasional groups of farm buildings, and settlements. The MLCA guidelines for these two areas are to 'conserve' the landscape. The Maidstone Landscape Capacity Study: Sensitivity Assessment – January 2015 assesses the two landscape areas as having a 'high' sensitivity, indicating a sensitivity to change.
14. The appeal site sits facing north across the Medway Valley partly set in a smaller almost perpendicular valley feature sloping towards the river, setting most of the appeal site at a lower level than land to the south, east and west. Notwithstanding this the open nature of the valley landscape means the development is prominently sited within the river valley and from public footpath KB16. The large detached dwelling, large rear stepped, walled and engineered garden area, and substantial macadam parking area, has a significant urbanising effect on the open countryside and this sensitive part of the MVLLV. This results in substantial harm to the character and appearance of the area and the landscape.
15. The appellant advocates the building is of a high-quality, utilising materials that are sympathetic to the locality. However, the design and materials has resulted in a domestic rather than agricultural appearance thereby exacerbating rather than mitigating the harm to the character and appearance of the area and the landscape. The appellant suggests the macadam area to the front is the minimum size necessary to perform its function for the parking and turning of vehicles (with six spaces indicated). The large rear garden is justified by the appellant with reference to the size of the dwelling and other curtilages at Tutsham Farm. These respective areas contribute to the harmful effects of the development and appear of a size, scale and appearance not justified by the rationale put forward.
16. For the reasons set out above the development is significantly harmful to the character and appearance of the area and the landscape. This is contrary to Policies DM1, DM30 and SP17 of the Local Plan. These, amongst other things, require development protects and enhances local and natural character and distinctiveness, particularly in the Medway Valley where the landscape is to be conserved and enhanced as a landscape of local value. Additionally, there is no

adequate mitigation advanced that would mitigate the harm as required by Policy DM30 of the Local Plan. The development is also contrary to paragraph 127 of National Planning Policy Framework (the Framework) which requires development is sympathetic to local character and the landscape setting.

17. I have noted concerns raised about the harmful effects of external lighting after dark, but I have neither seen or been provided with evidence demonstrating its magnitude. However, from what I have seen of the lighting, were the appeal to be allowed this could be adequately mitigated by a suitably worded planning condition.

Accessibility

18. Policy SS1 of the Local Plan sets out the principal focus for new residential development as being in the urban area, then Rural Service Centres and then larger villages, as an alternative to residential development in more remote countryside locations. The Framework (paragraphs 7 and 8) seeks sustainable development through (amongst other things) accessible services, using natural resources prudently and minimising pollution. At paragraphs 78 and 79 the Framework seeks to promote sustainable development in rural areas, by requiring housing be located where it will enhance or maintain the vitality of rural communities, avoiding the development of isolated homes except in specified circumstances.
19. Competing views have been advanced by the parties as to whether the development is 'isolated' having regard to the Court of Appeal judgement in *Braintree DC v SSCLG & Ors* [2017] EWHC 2741 (admin) and *Braintree DC v SSCLG & Ors* [2018] EWCA Civ 610. I also note the comments and references of both parties to appeal Ref: APP/U2235/C/18/3195078 in this regard, but I have not been supplied with and am not aware of the full circumstances surrounding this appeal decision. From the lack of contextual information, the appeal decision does not help reach a conclusion as to whether the current dwelling is isolated.
20. From the information provided there are a limited number of residential properties at Tutsham Farm (the appellant has suggested 18) as well as a sizeable agricultural and business premises. Based on the evidence before me, and on balance, the substantial collection of farm buildings can be classed as a settlement and the short walk along a lightly trafficked road, and footpath between the appeal site and farm buildings, means the appeal dwelling is not 'isolated'. However, whilst I note the terms used in the Council's reason for refusal, the main issue and perceived harm does not result from whether the building is technically defined as 'isolated' or not, but the whether the location is acceptable having regard to the accessibility of services and facilities.
21. I have not been offered any evidence of goods and services available at Tutsham Farm, of which it appears there is little or none. The nearest settlements offering goods or services are Teston or Watlington, being around 1.5 kilometres (km) away if public rights of way are suitable for use at a given time of year, or around 3km by road. Services and facilities appear somewhat limited in both (e.g. including newsagents, small convenience stores, a post office, village hall, primary school, public houses, a tearoom). Watlington also offers a train station to Maidenhead, Tunbridge Wells and London, although I am not aware of the service frequency. Coxheath is a

- larger service centre located over 4 km away by road offering a wider range of services.
22. The public highway to begin the road journey to other settlements (Hunt Lane) is a narrow winding national speed limit road with no street lighting or verges sufficient for safe refuge from traffic, with the B2010 being similar. Based on the evidence before me, whether by road or right of way, walking and cycling are not likely to be an attractive or convenient regular mode of transport, particularly in the colder and wetter months. Furthermore, the nearest bus stops are in excess of 1km away and would similarly not be attractive or convenient pedestrian or cyclist journeys. Therefore, current and future residents of the dwelling would be heavily reliant upon the private car, generating considerable amounts of transport miles to access the requisite facilities and services for normal life. Consequently, the appeal site is not well placed in terms of accessibility to services and facilities.
23. I do not accept the appellant's view that the dwellings and commercial units already present at Tutsham Farm imply the reliance upon private motor vehicles, is not unacceptable or unsustainable. Due to the accessibility of facilities and services set out above, I do not agree that the Council's act of refusing permission on accessibility grounds undermines the operation of paragraph 78 of the Framework.
24. For the reasons set out above, the current and future occupants of the appeal site would have a heavy dependence upon the private motor vehicle, such that the site is not considered to be in a sustainable or accessible location. Therefore, the development is not supported by the Framework which seeks sustainable development through (amongst other things) accessible services, using natural resources prudently and minimising pollution. The development is not supported by Policy SS1 of the Local Plan which seeks to ensure the majority of new housing development is located within Maidstone, the rural service centres and larger villages.

Other Matters

25. Both parties have drawn my attention to the judgements in respect of *Mansell v Tonbridge and Malling BC* [2018] JPL 176 (cited by the Council) and *Mansell v Tonbridge and Malling Borough Council*, Court of Appeal - Civil Division, September 08, 2017, [2017] EWCA Civ 1314 (cited by the appellant). Both parties advance this case for differing purposes. It sets out consideration of Part Q permitted development rights as the fall-back position as a material consideration of some weight in considering a replacement barn (cited by the appellant). It also affirms that the fall-back position is defined as what could happen on the land if the planning application was not approved (cited by the Council). In the circumstances of the current appeal, Part Q rights are not available to the appellant and therefore do not represent the fall-back position.
26. The appellant is of the view that if the Part Q rights had been available, then it follows that a replacement building would have been acceptable under the provisions of Policy DM32 of the Local Plan. The appellant references both Policies DM31 (Conversion of rural buildings) and Policy DM32 (Rebuilding and extended dwellings in the countryside) as relevant policies. However, given the fall-back position, Policies DM31 and DM32 do not apply.

27. The appellant considers that the approach of the Council in dealing with the initial enforcement investigation and the determination of the planning application is a breach of natural justice. It is asserted that if the Council had made its position clearer much earlier the appellant could have stopped work and avoided the investment that has taken place. Both parties have given accounts and provided evidence on this matter (i.e. the initial written warning by the Council in April 2016 and follow-up in November 2018). Whilst I note the length of time between the initial breach notification, the correspondence, and the application, the appellant was aware of the planning position in 2016, and the delay between these is not indicative of a lack of harm.
28. The appellant has cited the events and the decision to continue with the development as pre-dating the *Hibbitt* case, as a matter of significant weight when considering natural justice. However, the appellant has not qualified this further. Having considered this matter, it does not alter my consideration on the main issues in this appeal.
29. The appellant has included references and the decision letters to two appeal decisions appearing to involve the partial collapse of structures being converted (appeal Ref: APP/M1710/C/15/3141181 and three linked appeals APP/A3010/C/17/3177396, 3177397 and 3177393). I have not been provided with and am not aware of the full circumstances surrounding these cases. It appears a considerable amount of background information was considered in each.
30. None of the appeals are within the Council area thereby being subject of different development plan policies. The decisions also pre-date the current iteration of the Framework. It appears that in ref. 3141181 the Inspector gave weight to a previous planning permission and opined that in allowing that development, it would have some beneficial effect on the Countryside through removing or replacing some existing agricultural buildings. This is not the case in the current appeal. In appeal refs: 3177396, 3177397 and 3177393 the Council concerned could not demonstrate a 5-year housing land supply, so the titled balance applied. This is not the situation for the current appeal. Therefore, the appeals are not directly comparable to the circumstances of the appeal before me.
31. In the absence of substantive evidence, I am unable to conclude that the site constitutes previously developed land due to the amount of building works that had taken place towards the part Q prior approval.
32. I have been made aware that two grade II Listed Buildings are located around 210m and 250m to the west of the site (Tutsham Hall (list entry no. 1344439) and its Former Stables (list entry no. 1060652)). I am satisfied that the topography of the land, intervening buildings and vegetation means that the development does not affect the setting of the two listed buildings.

Planning Balance

33. The appellant suggests the investment in the development has been in the region of £500,000 and that removing the development would be a substantial waste of resources that are currently supplying housing within the Borough. Furthermore, its removal would conflict with the sustainability agenda promoted by the government. I have seen no evidence to verify the investment, but the economic benefit of the development attracts a small

amount of weight, albeit the benefit has occurred. Notwithstanding the use of resources to build the dwelling, there is on-going significant environmental harm to the character and appearance of the area and landscape, and through the poor accessibility to goods and services.

34. There is a small social benefit through supporting strong, vibrant and healthy communities through the supply of a single dwelling. The relevant development plan policies are up-to-date and compliant with the Framework, and the Council can demonstrate a 5-year supply of deliverable housing land. Therefore paragraph 11 and therefore the tilted balance does not apply, and the primacy of the development plan prevails. On-balance, the small economic and social benefits advanced, do not outweigh the harmful impacts in respect of accessibility and character and appearance I have found above.

Conclusion

35. I have not been provided with any evidence as to whether this is the appellant's only or primary residence, but any future enforcement notice would put the occupation of the dwelling by the appellant (and any family) at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
36. Having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the countryside and landscape from harm, and ensuring that development is sustainably located, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant.
37. Moreover, the proposed development would be contrary to the development plan and the Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR