



Appeal Decision

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/L2250/W/19/3221367

Whitehill Farm, Romney Road, Lydd TN29 9LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ronnie Carpenter against Folkestone and Hythe District Council.
 - The application Ref Y18/0331/SH is dated 5 March 2018.
 - The development proposed is a bespoke motor home/caravan storage business and the retention of Little Owls for residential use.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. After the appeal was lodged the Council considered the application and determined that they would refuse it. The timing of the submission of the appeal and the Council's decision were close. However, the submission of the appeal was more than eight weeks after the date on which the Council validated the application and prior to the Council issuing a notification of their decision. I have therefore considered this appeal on the basis of the Council's failure to give notice of a decision within the prescribed period.
3. Following submission of the application Shepway District Council was renamed Folkestone and Hythe District Council. This was the name of the Council at the dates on which the application was validated and for a decision to be made and so Folkestone and Hythe District Council were the determining Authority when a decision was due to be made on the application and I have considered the appeal on this basis.
4. The Council set out two reasons for refusal in their notification of refusal encompassing their principal concerns regarding the impacts of the proposal. These relate to whether the site is a suitable location for a dwelling and the effect of the proposal on the character and appearance of the countryside. I have had regard to these in the determination of this appeal.
5. It has been brought to my attention that, subsequent to registering the application, the Council discovered that Certificate A had been incorrectly completed and that the appellant is not the sole owner of the land. The Council did, however, register the application, and from the discussion that took place at the Hearing, I am satisfied that the other party with an interest in the land,

- although not served formal notice, has been aware of the application and had the opportunity to comment. I therefore consider that the interests of that other party have not been prejudiced and I have considered the appeal before me on that basis.
6. Both of the main parties agreed that the development has already commenced and that the appellant is resident on the site.
 7. The appeal site has been the subject of three Enforcement Notices, one of which, for cessation of the use of the building for residential purposes, has been appealed, and the appeal dismissed. I have had regard to these in the determination of the appeal.
 8. An agreed Statement of Common Ground (SoCG) was at the hearing. It was agreed at the hearing that Policies CSD3, BE1 and CO19 of the Shepway District Local Plan Review – 2006- (the Local Plan) and policies SS1, SS3, and CSD3 of the Shepway Core Strategy Local Plan -2013- (the Core Strategy) are of relevance to the appeal.
 9. The Folkestone and Hythe Core Strategy Review – Submission Draft, Regulation 19 Version (the CSR), and the Folkestone and Hythe Places and Policies Local Plan (the PPLP) have been published but have yet to be examined and found sound. Therefore, I attribute them limited weight as a material consideration.
 10. I was provided with a copy of Policy RM8 of the PPLP during the hearing. As the comments made do not raise issues that have not already been raised by other interested parties I do not consider that the appellant would be prejudiced by my consideration of this document, having regard to the weight that I have placed upon the PPLP.
 11. The description of the development refers to the retention of Little Owls for residential purposes but links the dwelling to the proposed business. The appellant requests in their statement that, should I intend to dismiss the appeal as a whole, consideration be given to granting permission to the dwelling independently of the motor home/caravan storage business.
 12. In coming to a view I am mindful of the Procedural Guidance on Appeals (2020) Annex M which advises that: -

“the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought.”
 13. Furthermore, I must also consider the principle established by the Wheatcroft judgement¹ when deciding if the proposals can be formally amended. The separation of the dwelling from the overall development would substantially alter the proposal from that which was consulted upon by the Council. To separate the proposal into two at this stage would so change it that to grant permission would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

14. I therefore do not consider it appropriate to, in effect, consider a proposal for an independent dwelling on the site, and have considered the scheme only on the basis on which it was first advanced, as described in the description of development.

Main Issues

15. The main issues are: -

- The effect of the proposal on the character and appearance of the countryside, with particular reference to the Romney Marsh Local Landscape Area, and having regard to the Council's settlement strategy and: -
- Whether the development is in a suitable location having regard to local and national policy for the delivery of housing and accessibility to everyday local facilities and services by a range of modes of transport.

Reasons

Character and appearance of the countryside.

16. The site lies to the north-west of Romney Road in an area of increasingly sporadic development as the built-up area of Lydd peters out into the countryside.
17. The appeal site is a field containing areas of hardstanding and a modest building, known as Little Owls Barn. It is accessed by means of an unmade private road off Romney Road, which is shared with Whitehall Farm. On the south-west boundary lies a public footpath. The boundaries are relatively open towards Romney Road and to the public footpath and the site lies somewhat below the level of Romney Road. Within the site are various areas of hardstanding, formerly the bases of chicken sheds.
18. In the immediate vicinity of the site Romney Road is unlit and subject to a 60 MPH mandatory speed limit. However, in the vicinity of Tamarisk, a dwelling close to the southern corner of the site, this is reduced to 30 MPH as the road approaches Lydd and street lighting commences.
19. Whilst the site itself lies outside the Romney Marsh Local Landscape Area, the boundary of that area lies on the opposite side of Romney Road.
20. At the time of my site visit the hardstandings were occupied by a large number of caravans and motor homes, some of which were located off the hardstanding. The proposal would retain the building as a dwelling and allow the storage of motor homes and caravans on the hardstandings.
21. Policies SS1 and SS3 of the Core Strategy set out the Council's settlement strategy and are broadly consistent with the aims of the National Planning Policy Framework -2019- (the Framework) of promoting sustainable development in rural areas by requiring development to be located where it will enhance or maintain the vitality of rural communities as set out in Paragraphs 11 and 78 of the Framework.
22. Policies CSD3; and SD1 and CO1 of the Local Plan seek to locate development in sustainable locations and protect the countryside and are broadly consistent with the aims of the Framework of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the

- vitality of rural communities whilst conserving and enhancing the natural environment as set out in sections 2 and 15 of the Framework.
23. Policy CSD3 seeks to restrict development outside of the settlement hierarchy, except where a rural or coastal location is essential, and identifies various criteria whereby the location of development outside of identified settlements may be acceptable, such as sustainable rural diversification that is consistent with green infrastructure and coastal/water environment principles.
 24. The countryside around the appeal site has been the subject of a high-level landscape appraisal, with the site falling within the Dungeness Character Area. It is relatively flat and open, broken up by sporadic development, in the form of agricultural buildings and dwellings, and occasional planting, in the form of hedges and small groups of trees. The openness and topography afford long views of the site from Romney Road, the public footpath bordering the site, and the wider countryside.
 25. The existing building remains relatively unaltered by the proposal, notwithstanding the accumulation of residential paraphernalia associated with occupation as a dwelling. The building forms a part of a small group of buildings associated with Whitehall Farm and is likely to have had car parking and other paraphernalia associated with its use as an agricultural business, which would have been visible from the road, the footpath, and wider area. The effect of this element of the proposal upon the character and appearance of the area is, therefore, limited.
 26. However, the large group of caravans, which fills a substantial part the visual gap between Whitehill Farm and the development closer to Lydd, introduces an extensive, irregular form to the landscape. The group is largely white in colour and is visually prominent in the landscape when viewed from the public realm and wider area.
 27. The site lies just outside the Romney Marsh Local Landscape Area and would appear in views encompassing this. I therefore consider that it forms part of the setting of the Local Landscape Area.
 28. Whilst the area occupied by the storage was formerly occupied by large chicken sheds, and agricultural sheds and barns are located in the surrounding area, the form and colouring of the caravans is significantly different from the form of these buildings and from the form and colouring of structures that would be expected in a rural landscape such as this. In this case, that incongruity is of such a degree as to constitute significant harm to the character and appearance of the area.
 29. There is no dispute that the appeal site is situated outside of the settlement boundary for Lydd as it is described in policies within the Local Plan. It is therefore in the countryside for the purposes of development plan policies where development will only be permitted subject to the exceptions set out in CSD3 of the Core Strategy which identifies various criteria under which development in the countryside would be acceptable.
 30. Whilst the storage is likely to be used, to a degree, by local people who have nowhere on their own property to store a caravan or mobile home, or touring holidaymakers visiting the area frequently who do not wish to tow a caravan any great distance, the storage use is more in keeping with an industrial use,

and location, than a rural use. There is little evidence before me that there is a shortage of sites elsewhere in more built-up areas, and so I am not convinced that the storage use needs to be in this location or would represent appropriate rural diversification.

31. The appellant has proposed planting a new hedge, incorporating native species of tree, to provide a screen to the storage area and provide mitigation for the visual impact of the proposal. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm identified, as new planting would take time to establish itself and there is no substantive evidence before me that sufficient screening would be achieved to address the matter successfully, particularly as it would incorporate deciduous native species and its denseness would diminish during winter months.
32. My attention has been drawn to various developments nearby and further afield, however some of these lie at some distance from the site and so do not form a direct contextual comparison with it. Of those that lie closer, Peak UK and Forty Acre Farm, the development is contained within the group of buildings and the scale of development is not comparable. In any case, the visual impact that other sites have on the countryside does not, in itself, justify the proposal and I have determined this appeal on its own merits.
33. I therefore conclude that, taken as a whole, the use of the land for storage of motor homes and caravans would result in harm to the character and appearance of the countryside. This would be contrary to the aims of Policies SD1, CO1 and CO5 of the Local Plan and Policies DSD, SS1, SS3, CSD3 and CSD4 of the Core Strategy in as much as these seek to protect the countryside from inappropriate development and locate it in sustainable locations that will, amongst other things, protect or enhance the landscape character, including that of Local Landscape Areas. The proposal would also be contrary to paragraphs 8, 84, 127 and 170 of the Framework, which have similar aims.
34. Although, for the reasons set out above, attracting limited weight, the proposal would also be contrary to draft policies SS1, SS3, CSD3 and CSD4 of the CSR and policies HB1, E7 and NE3 of the PPLP which, again, have similar aims.

Suitable location for a dwelling

35. Policies CSD3 of the Core Strategy and CO19 of the Local Plan seek to locate development in sustainable locations and protect the countryside. These policies are broadly consistent with the aims of the Framework of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities as set out in sections 2 and 15 of the Framework.
36. Policy CO19 allows the re-use or adaptation of rural buildings to alternative uses, subject to satisfying certain criteria, including, amongst other things, that the building is of a permanent and substantial construction and is of a form, bulk and general design which is in keeping with its surroundings; and that the conversion is sympathetic to the building's intrinsic character, appearance and setting and is capable of being implemented without significant extensions or alterations.

37. The scheme is advanced on the basis that the dwelling is required as an essential rural worker's dwelling, in connexion with the change of use to a caravan storage facility. Although the Council's second reason for refusal refers only to the proposed dwelling, I have explained above why it is inappropriate to consider the dwelling as a separate element from the caravan storage within this appeal.
38. There is agreement between the main parties that the parcel of land is unlikely to provide a viable independent agricultural business due to its limited size. The conversion is generally sympathetic to the building's intrinsic character, appearance and setting and has been implemented without significant extensions or alterations. I am therefore of the view that provided the dwelling was required as a rural worker's dwelling there would be no conflict with CO19.
39. Although the proposal would conflict with SD1 and CO1 of the Local Plan and Policies SS1, SS3 and CSD3 of the Core Strategy in as much as the site lies outside any defined settlement boundary, to my mind, compliance with policy CO19, which deals specifically with the re-use and adaption of rural buildings, would, in this case, outweigh conflict with the other policies identified, due to the nature of the dwelling as a rural workers dwelling. Similarly, whilst I note the appellant's arguments in relation to its proximity to nearby dwellings, the relative transport accessibility of the site and the aims of the Framework in this regard, if a rural workers dwelling were justified in this location, these matters would not, to my mind, alter the acceptability of the proposal.
40. However, the fact remains that even if I were to accept the appellant's case in relation to the need for on site security, as I have already determined that the primary employment element of the proposal is unacceptable, there can be no justification for a rural workers dwelling to support it in this case. Furthermore, for the reasons outlined above, to consider an application for the independent use of the existing building as a dwelling would be to consider the scheme on a basis other than it was originally advanced.
41. I therefore conclude that of the policies put to me by the Council Policy CO19 is of most relevance. As the dwelling would only be required in association with the business use, which I consider to be unacceptable for the reasons outlined above, there is no essential need for the dwelling, and the proposed development would be contrary to the terms of that policy. Similarly, although carrying limited weight, the proposed development would be contrary to policy HB7 of the PPLP, in as much as the dwelling is not required to support a rural-based enterprise.

Other Matter

42. My attention has been drawn to the occupation of one or more of the caravans currently stored within the site. That is, however, not what has been applied for and so would be a matter for the Council.

Overall Planning Balance and Conclusion

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise.

44. The proposed development would provide a single dwelling in a location with access to transport and services and where it would enhance or maintain the vitality of the rural economy albeit that irrespective of any shortfall in supply, a single home would only have a limited benefit.
45. The storage use would provide support to the local rural economy, including the creation of up to two jobs, and support the appellant, and its customers would be likely to support local shops and businesses when visiting the area. The use of the land has resulted in an improvement in terms of its upkeep and maintenance, albeit that such improvement could occur without the development. Any new landscaping could provide habitat for wildlife. However, taken together, these benefits would be limited by the scale of the development.
46. I have found that the proposed development would result in harm to the character and appearance of the area and thus it would be in conflict with the relevant provisions of Policies SD1, CO1 and CO5 of the Local Plan and Policies DSD, SS1, SS3, CSD3 and CSD4 of the Core Strategy in as much as these seek to protect the countryside from inappropriate development. The proposal would also be contrary to paragraphs 8, 84, 127 and 170 of the Framework, which have similar aims. The proposed development would be contrary to Policy CO19 of the Local Plan as well. Taken together I attribute these matters significant weight.
47. In conclusion the benefits provided by the scheme would not outweigh the harm that I have identified and so, for the reasons given above, and having taken into account all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ronnie Carpenter

Resident

Judith Norris

The Rural Planning Practice

FOR THE LOCAL PLANNING AUTHORITY:

Lysette Patching

Folkestone and Hythe District Council

David Campbell

Folkestone and Hythe District Council

INTERESTED PERSONS

Mr Leonard Laws

Resident

Mr Graham Horner

Resident

Documents submitted at the hearing:

1. Council's Certificate of Posting of Notification Letter.
2. Policy RM8 of the Folkestone and Hythe District Council Places and Policies Local Plan, Submission Draft.