
Appeal Decision

Site visit made on 28 July 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 13 August 2020

Appeal Ref: APP/C1435/W/20/3249689

**Barn at Huggetts Farm, Stonehurst Lane, Five Ashes, Mayfield,
East Sussex TN20 6LL**

- 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 Clive & Gillian Billington against the decision of Wealden District Council.
 - The application Ref WD/2017/1171/F, dated 16 May 2017, was refused by notice dated 17 October 2019.
 - The development proposed is change of use from redundant farm building to create one single-storey, split level residence for the current owners.
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Decision

1. I allow the appeal and grant planning permission for change of use from redundant farm building to create one single-storey, split level residence at Barn at Huggett's Farm, Stonehurst Lane, Five Ashes, Mayfield East Sussex TN20 6LL, in accordance with the term of the application reference WD/2017/1171/F, dated 16 May 2017 and subject to conditions 1) to 13) on the attached schedule.

Main Issues

2. These are;
 - The principle of development in a countryside location within the High Weald Area of Outstanding Natural Beauty and with regard to policies on the conversion of rural buildings.
 - The effect of the proposal on the Ashdown Forest Special Protection Area and Special Area of Conservation.
 - The Planning Balance having regard to sustainable development and the five-year housing land supply situation.

Reasons

Policy

3. Core Strategy Policy WCS14 states the presumption in favour of sustainable development. Local Plan Policy GD2 resists development outside boundaries, and Policy DC17 says the same with regard to residential development, while Policy EN1 concerns sustainable development.

4. With regard to residential development in the countryside, Policy DC2 lists the limited circumstances for development for those employed there, and Policy DC7 concerns non-residential conversions of rural buildings, Policy DC6 having stated the priority given to that over residential uses. Policy DC8 does concern residential conversion, stated in the supporting text as being granted as an exception to normal restrictive policies on housing in the countryside, and the policy states that the conversion will not be permitted unless every reasonable attempt has been made to secure a suitable business use, or the residential conversion is a subordinate part of a scheme for business use. In all cases proposals should meet 4 criteria which will be considered later in this Decision, including that the building is of sound construction and capable of conversion without significant rebuilding, modification or extension.
5. The Wealden Design Guide contains at section 11, '*The Re-use and Conversion of Rural Buildings*'. The emphasis is on the re-use of buildings that are of interest or contribute to the landscape character of the area, whether listed or not.
6. On the matter of the Ashdown Forest Special Protection Area and Special Area of Conservation, Core Strategy WCS12 on biodiversity makes reference to the Ashdown Forest, and Local Plan Policies EN7 and EN15(1) set out requirements for that area.

Preliminary Findings

7. The background documents make various reference to Class Q rights under the Town and Country Planning (General Permitted Development) (England) Order 2015; the change of use of agricultural buildings to dwellinghouses and building operations reasonably necessary for that conversion. The order goes on to stipulate what is not permitted and what conditions are required to be met, with the web-based Planning Practice Guidance providing further advice at Paragraph: 105 Reference ID: 13-105-20180615, together with a reference to the Hibbitt case¹ that has also been mentioned in documents to this appeal.
8. However, the Class Q right is not available to this site within the High Weald Area of Outstanding Natural Beauty as set out at Q.1.(j) of the Order and there is a specific Development Plan policy to address the proposal which is not a consideration in a Class Q determination. Although the Hibbitt case refers to the difference between conversion and rebuilding, it only concerns Class Q and does not 'read across' to consideration of an application for express planning permission.
9. Reference has also been made to paragraph 79 of the National Planning Policy Framework which seeks to avoid the development of isolated homes in the countryside; one of the exceptions being that the development would re-use redundant or disused buildings and enhance its immediate setting.
10. The meaning of the word 'isolated' in that context was the subject of the 'Braintree' judgments² which the High Court Judge determined should be given

¹ Hibbit v SSCLG [2016] EWHC 2853 para 3 'The issue before the Court is a short point of construction of the relevant statutory material concerning permitted developments and in particular it focuses upon the meaning of the word "conversion".

² Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

its ordinary objective meaning of *'far away from other places, buildings or people; remote'*. The Appeal Court Judge stated that this *'simply connotes a dwelling that is physically separate or remote from a settlement'* and observed that there is no definition in the Framework of a 'settlement' and no specified minimum number of dwellings or population. Whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of a particular case.

11. The situation seen at the site inspection was a hamlet of 7 to 8 dwellings as described by the appellant, including that at the Huggetts Furnace complex. Whilst some distance from any development boundary and hence in the countryside in Development Plan terms, and the sustainability credentials will be weighed in the planning balance later in this Decision, the site cannot be considered 'isolated' as defined in 'Braintree'. However, Policy DC8 refers to the conversion of agricultural or other rural buildings in the countryside and does not differentiate further.
12. There is considerable background information and documents to this appeal, but the key matters and which have determined the Main Issues, are those identified in the Council's Reasons for Refusal. There is no mention of a highway failing and the references to the emerging Submission Wealden Local Plan can be ignored following the receipt of the Local Plan Inspector's notification in January 2020 that the Plan had been found to be unsound with a recommendation that it be withdrawn.
13. In connection with the withdrawal of the emerging Plan, the Council confirms that there is no objection with regard to the likely effects of nitrogen deposition on the Ashdown Forest Special Area of Conservation, but that the objections with regard to the recreational pressures on the Special Protection Area remain.
14. There is some correspondence over the need for and feasibility of providing passing places on the access drive. That driveway is long and narrow, but when leaving the site inspection by car, the tractor that was met on the track was able to reverse without difficulty and to allow the passing manoeuvre without blocking the highway. The situation may be characterised as possibly causing some inconvenience, but not to highway users, and in any event the traffic generation would be less than the established agricultural use. A second version of a s106 Agreement refers to passing places, but was never signed, and whilst the Council still refer to Policies TR3 and EN27 and passing places in the Appeal Statement, the subject and those policies do not feature in the Reasons for Refusal. The Council confirmed in a later e-mail only that it would seem preferable to have some enhancement to passing facilities, which is far from a statement that they are necessary in planning terms.

Principle of the Development

15. Notwithstanding the lengthy nature of the reasons set out in the Council's Refusal Notice, their Statement of Case has helpfully distilled the first reason into the view that the proposed dwelling would occupy an unsustainable rural location and could not be considered as an 'exception' to rural restraint planning policies balanced against the fact that the Council does not have a 5 year supply of housing land.

16. The site is some distance from the nearest facilities, although there is an infrequent bus service at Hadlow Down that is within the recommended walking distance while the better service on the A267 is just outside that specified distance. The appellant has also given in Appendix E full details of schools and other services and their approximate distance from the site. Whilst not found to be 'remote' in the post-Braintree sense of paragraph 79, the nature of the roads militate against ready and attractive use by cyclists. As may well be common with agricultural conversions, the location of the site scores poorly in its accessibility.
17. The preference stated in Policy DC6 of the Local Plan for the conversion of rural buildings is for a business or similar use over residential, although Policy DC7 on such uses still requires conversion without significant rebuilding or extension. Policy DC8 does provide for residential conversion subject to criteria but requires first every reasonable effort has been made to secure suitable business re-use. The Reason for Refusal does not allege a failing in that regard, rather a failing with regard to criterion (2) in Policy DC8 once residential use has been accepted which states *'the building is of sound construction and capable of conversion without significant rebuilding, modification or extension. The Council will normally require this to be demonstrated through the submission of a structural survey'*.
18. The building is a long open-fronted livestock barn with a hit-and-miss timber plank wall to the rear for cross-ventilation, and a solid timber lower part. The structure consists of a regular spacing of timber columns and rafters strengthened at the eaves and ridge junctions with plywood webs to form a portal-frame arrangement, with timber purlins to which a profiled metal sheet roof is fixed. The frame appears in good condition and the appeal drawings show this to be re-used without significant alteration, the headroom allows for the upper sleeping level and the necessary improvement to the thermal performance of the roof would be capable of being carried by the existing structure. There would be no extension, and the modifications would be no more than is reasonable to enclose the spaces, and do not indicate a failing with regard to the soundness of the construction. It is concluded that the proposal accords with criterion (2) of Policy DC8.
19. It is appropriate to consider the other Policy DC8 criteria now:
 - (1) *the building's form, bulk and general design are in keeping with its surroundings;* the present building is a typical low agricultural building and its siting between a bank of trees and a higher modern barn is unobtrusive yet appropriate to the rural surroundings.
 - (3) *any proposed alterations to the building (eg fenestration, doors, internal subdivision) would not harm its architectural integrity nor materially change its appearance as a rural building;* The proposed works would not alter the massing of the building and the addition of walls and windows would not cause harm. The building is not of real architectural interest but is not of the poor quality warned against conversion in the Wealden Design Guide.
 - (4) *the proposed use and its associated activities, including garaging, would not detract from the rural setting of the building through the formation of a domestic curtilage. The curtilage should not be intrusive in the landscape. Where appropriate, conditions will be imposed to exclude permitted development rights to extend or alter the building and erect other ancillary*

buildings, fencing etc; The rest of the building would remain available for open storage such as vehicle parking and this could be secured by condition. To the extent that the red-line site boundary shows the proposed curtilage, this would not be intrusive and again could be limited by condition.

(5) the proposal would not create an unacceptable impact on the local road network and there is a satisfactory means of vehicular access and parking arrangements. Much has been made of this, but in fact the entry off the highway on the outside of a corner has adequate sightlines and taking account of the reduction in traffic movements, there would be no unacceptable impact on the local road network, while parking can be secured on-site. As set out in the Preliminary Findings, there is no highway need for further Agreement or conditions on passing places, but the provision and retention of parking can be secured by condition.

20. It is concluded that the highly relevant Policy DC8 is met in full, as is the relevant part of the Design Guide and that the proposal does satisfy one of the exceptions to policies of restraint on residential development in the countryside.

Ashdown Forest

21. The remaining part of the objection following the withdrawal of the emerging Plan concerns recreational pressures and specifically the effect of dog-walking on the Special Protection Area. The Council have submitted an up-to-date Habitats Regulation Assessment based on evidence that residents living within 7km, which would include this site, are likely to visit the Forest, and that trampling and erosion can cause damage. Dog walking is stated to be particularly harmful but is clearly not the only threat to habitats from a new dwelling in this location.
22. The conclusion of the Council's Assessment is that mitigation would be required and that this could not be on-site and hence would need to be a financial contribution to Suitable Alternative Greenspace and Strategic Access Management and Monitoring. The Assessment refers to the mitigation helping to support an alternative recreational destination for residents of the appeal scheme.
23. Whilst it is the case that public rights of way converge at or near the site from 5 directions with opportunities for circular walks in pleasant countryside, and that the more utilitarian and regular reasons for exercising dogs would be local to the site, that argument could apply to many proposals for dwellings within the 7km zone, and the possibility of visits to the Forest for various reasons, including with a dog, cannot be discounted and is backed by the evidence referred to in the Council's Assessment.
24. The Inspector is the Competent Authority at appeal and a Habitats Regulation Assessment is required. The proposal is not directly connected with or necessary to the management of the protected site, and for the reasons set out above, the proposal is likely to have a significant effect on the interest features of the site, alone or in combination through recreational visits and use. In view of these findings, an Appropriate Assessment needs to be carried out. The risks could be satisfactorily mitigated through a mechanism to secure contributions towards Strategic Access Management and Monitoring and

Suitable Alternative Natural Greenspace and there is no need to continue with the Assessment.

25. Notwithstanding the footpath network nearby, contribution towards mitigation is necessary to make the development acceptable and would be fairly and reasonably related to the scale and nature of the proposed development. As a result, the proposal would not adversely affect the integrity of the Special Protection Area and would accord with Core Strategy WCS12 and Local Plan Policies EN7 and EN15(1).

Planning Balance

26. Whilst the conversion can be achieved in accordance with the relevant Policy DC8, and the site cannot be termed 'isolated' due to being within a residential hamlet, the location scores poorly in its accessibility to services and as a result, occupiers would likely rely on the use of private vehicles. The fact that the dwelling is said to be for the use of an existing resident of the hamlet is of limited weight, partly as it would be an addition to an existing dwelling in any event, and partly because the dwelling would be in place long after the personal circumstances have ceased. It would not be appropriate to restrict a permanent dwelling to a personal use.
27. The Council is unable to demonstrate a 5-year supply of housing land as required by the Framework and whilst Areas of Outstanding Natural Beauty are listed in footnote 6 to the presumption in favour of sustainable development in the Framework, the location within the High Weald is not a reason in this case for the Council withholding permission.
28. Turning to the three objectives of sustainable development set out in paragraph 8 of the Framework, the economic objective would be furthered by adding, albeit in a small way, to the supply of housing and the additional residents aiding the viability of local services; the social objective would be met by meeting the need for homes and supporting the community's wellbeing; and the environmental objective would not be jeopardised through the use of conditions, and by making use of an existing building rather than a green-field site.
29. To conclude, the proposal would represent sustainable development and the limited shortcomings in location would be outweighed by the benefits of the scheme as provided for in paragraph 11 of the Framework.

Conditions

30. The Council has supplied a list of suggested conditions as Appendix 9 to their Appeal Statement, but Officers had previously proposed conditions in the Committee recommendations to grant permission in November 2017 and again in February 2019. The 2017 conditions are different from the 2019 ones in significant respects, while those later Committee conditions include at 2) a condition on vehicular movements that is no longer suggested following the withdrawal of the emerging Local Plan.
31. The matter of the need for an Undertaking or Agreement under s106 has also been the subject of some correspondence and it is appropriate to deal with that first. The 2017 and 2019 recommendations to grant permission were conditional on an Agreement, in the first this was to tie the attached barn and that part of the adjacent barn which would remain agricultural, to the dwelling,

- to address concerns raised by the Pollution Control Officer over a risk of nuisance between the uses if in separate ownership. This requirement does not appear to have been carried over into the Council's current objections. In the second recommendation the need for passing bays to be secured was referred to as requiring an Agreement. In the event the lack of an Agreement on these subjects does not feature as a Reason for Refusal.
32. The Council's current case and reference to an Agreement concerns the Ashdown Forest Special Protection Area and their Appeal Statement notes that no signed Agreement or Undertaking has ever been submitted. No draft Agreement has been submitted to this Appeal and the appellant confirmed that no such document is intended.
33. To the extent that the Reasons above have concluded that a particular provision is warranted, conditions may be used to ensure compliance instead of an Agreement, although a positively worded condition cannot be used where a payment may be required. This approach is in line with the statement at paragraph 54 of the Framework that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
34. Looking then at the suggested conditions, it is essential that control is exercised over the proposed external materials in order to secure the quality of the development. The flood resistance measures should be formally approved, with floor levels to be constructed to suit in order to prevent harm through flooding and to protect the wellbeing of occupiers. For similar reasons of preventing flooding, surface water disposal and foul drainage is also to be approved. A scheme of hard and soft landscaping is to be submitted, and biodiversity enhancements secured, in order to protect the character and appearance of the site and control the effect on species and habitats.
35. It is necessary to prevent any external lighting except that which has been submitted and approved, and for that reason there is no need to insist that it be put in place or retained. The provision of car parking should be required, and it should be retained, but to refer to the satisfaction of the Local Planning Authority is not reasonable, provided the Council's approval is given. Two conditions removing certain permitted development rights where available in an Area of Outstanding Natural Beauty are reasonable and necessary to allow proper control of any proposed change that would otherwise be allowed.
36. For the reasons set out in the second main issue on the Ashdown Forest, it is necessary to seek mitigation, and in the absence of an Undertaking, a negatively worded condition would be appropriate, the trigger point being occupation, when the recreational pressure becomes real.
37. A condition naming the 'as proposed' drawings is required for the avoidance of doubt.
38. Document 60 shows that the requirements of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 have been met.

Conclusions

39. The proposal complies with the Development Plan policy specific to the re-use and conversion of rural buildings and to the requirements of the Design Guide in that respect. With conditions there would be no harm to the High Weald

Area of Outstanding Natural Beauty and the location of the building relative to services, whilst not a matter for Policy DC8 as rural buildings could well be in less accessible locations, is outweighed by the lack of a five-year supply of housing land. Conditions are able to address the likely impact on the Special Protection Area through mitigation and the floor levels would address the risk of flooding. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Side Elevation (Doc 4), Site and Block Plan (Doc 11), Site Plan (Doc 12), Cladding (Doc 13), Schedule of External Materials (Doc 15), Decking (Doc 65), General Plan (Doc 64).
- 3) Before use in the development hereby approved, samples of new materials to be used on the external surfaces of the development shall be made available for inspection on site and adequate notice given to the Local Planning Authority who will arrange inspection and thereafter approve in writing. Only the approved materials shall be used in the implementation of the development.
- 4) Prior to conversion works being undertaken in accordance with the plans hereby approved, details of the Flood Resistance and Resilience measures to be incorporated in the development as indicated in the Flood Risk Assessment date stamped 31 May 2017 including an Escape Evacuation Plan shall be submitted to and be agreed in writing by the Local Planning Authority. The mitigation measures shall be fully implemented in accordance with the approved details prior to first use/occupation of the dwelling and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, with the Local Planning Authority.
- 5) The finished floor levels of the accommodation within the dwelling hereby approved shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following mitigation measures detailed within the FRA:
 1. Ground floor Finished Floor Levels shall be set no lower than 800mm above existing external ground levels.
 2. Sleeping accommodation Finished Floor Levels shall be set no lower than 1.5m above existing external ground levels.There shall be no infilling or boarding up of the void between the floors of the dwelling and ground levels.

- 6) Notwithstanding the details submitted to date no development approved by this permission shall be commenced until a scheme, including design calculations and construction details, for the disposal of surface water and full details of the proposed means of foul drainage disposal have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be implemented to the satisfaction of the Local Planning Authority in accordance with the details and timetable agreed.
- 7) Prior to conversion works being undertaken in accordance with the plans hereby approved, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land, including those to be retained, together with measures for their protection where necessary which shall comply in full with BS5837:2012 Trees in Relation to Design, Demolition & Construction – Recommendations, during the construction of the development.

The hard landscape details shall include proposed boundary treatments and hard surface finishes and the approved scheme shall be fully implemented following the substantial completion of the development or first occupation of the dwelling, whichever is the sooner, and thereafter retained.

Soft landscape details shall include planting plans, written specifications, schedules of plants - noting species (which should be indigenous), planting sizes and proposed density. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following either the substantial completion of the development or the first occupation of the dwelling, whichever is the sooner.

Any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

- 8) Prior to any works being undertaken in accordance with the plans hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with sections 5.8 - 5.22 of the submitted Preliminary Ecological Assessment and sections 4.7 - 4.13 of the Bat Survey, both date stamped 28 September 2017, to include timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained.
- 9) The use hereby approved shall not commence until measures have been proposed and approved by the Local Planning Authority to bring about mitigation of the effects on the Ashdown Forest Special Protection Area, and those measures have been put in place.
- 10) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for

lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority.

- 11) Before first use/occupation of the dwelling hereby approved, the car parking spaces and turning areas shown on the site and block plan date stamped 31 May 2017, shall be provided, and thereafter shall be retained solely for such purposes.
- 12) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, classes A - E inclusive of that Order, shall be erected or undertaken on the site of the new dwelling.
- 13) Notwithstanding the provisions of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no gates, fences, walls or other means of enclosure including any bunding shall be erected at the site.