



Appeal Decision

Site Visit made on 28 August 2020

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal Ref: APP/P1425/W/18/3218686

The Flat, Berrymead, Spatham Lane, Westmeston, BN6 8XL

- 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 Stuart Bellwood against the decision of Lewes District Council.
 - The application Ref LW/18/0195, dated 28 February 2018, was refused by notice dated 19 June 2018.
 - The development proposed is a replacement dwelling through demolition of unit (The Flat) and erection of a new detached dwelling.
 - This decision supersedes that issued on 31 May 2019. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the appeal was made the Council has adopted the Lewes District Local Plan Part 2: Site Allocations and Development Management Policies (LPP2) on the relevant policies of which the appellant has had the opportunity to comment.

Main Issues

3. Following its issue of a certificate of lawful use or development (existing), the Council no longer contests its first reason for refusal. The main issues are therefore:
 - the effect of the proposed development on the character and appearance of the area;
 - whether it would meet the requirements for replacement dwellings in the countryside; and,
 - whether it would provide a suitable site for housing, having regard to its proximity to services and facilities.

Reasons

Character and appearance of the area

4. The replacement dwelling would stand in part of a large paddock which contains groups of mature trees offering shade and shelter to the sheep I saw grazing there at the time of my site visit. The paddock is broadly rectangular in shape. It is enclosed on three sides by mature hedges and trees.
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5. Its long, western boundary, which is largely unplanted, is shared by a larger, roughly square field, which is enclosed by mature trees and hedgerows on its other three sides. Though the boundary between the field and the paddock has a low post-and-wire fence running along it, the low and open nature of the boundary allows a strong visual connection between the paddock and the field, allowing views between both, and from the public footpath on the northern boundary, across both. The undeveloped, open character of the paddock and the field reinforce the distinctive landscape character of the surrounding countryside which here is a network of woods linked by relatively small agricultural fields divided by mature hedgerows and interspersed with farms or isolated clusters of buildings.
6. The public footpath along the northern boundary of the field and paddock allows clear views downwards and across the field and paddock, terminating in the dense woods behind the paddock. The enclosing effect of this tall, dark backdrop heightens the undeveloped character of the space in the paddock and the field. In this countryside context, the urbanising effect of the proposed building would be striking.
7. I appreciate that the development would be confined towards one edge of the paddock, and that the form of the building would reflect the local vernacular. Its eaves height would be lower and its roof pitch shallower than the existing dwelling. Nonetheless, its footprint would be larger and its floor space greater. It would be a substantial built form in an area of open paddock which has a direct bearing on the larger field and appears visually connected to it. It would result in significant harm to the distinctive spatial character of the countryside.
8. Furthermore, the trappings of domesticity which would accompany the dwelling, such as garden fences, car-parking, garden furniture and the like, would exacerbate the urbanising effect of the development on the paddock and the field, eroding the undeveloped, rural landscape character of the area. I understand that planning conditions can control the details of development, but they cannot contradict the permission. They would not be able to overcome the harm to the distinctive landscape character of the countryside caused by this proposal.
9. I acknowledge that the paddock is described as being in residential use. However, the dwellings at Berrymead are concentrated in the cluster of buildings on the already developed land beyond the paddock. I find that the character of the paddock is defined less by its relationship to the Berrymead side, but more by its undeveloped, tranquil nature, and its seamless coherence with the landscape setting it shares with the field to the west. It is a part of the distinctive landscape of the wider countryside, the encroachment into which this development would harm.
10. I have taken into account that the counterpart to the replacement dwelling would be the demolition of the existing dwelling. While its demolition would free-up some space, its location is within the cluster of buildings around

Berrymead. It is not a prominent building in views from Spatham Lane or from the public footpaths. It appears part of the developed section of the site, standing alongside larger and smaller buildings. Its materials, form and detailing are not incompatible with the other buildings on the site. It causes no visual or spatial harm. The additional space gained in the existing cluster of buildings would not mitigate the harmful spatial effect of a building with a larger footprint in an undeveloped paddock.

11. I conclude that the proposal would have a significantly harmful impact on the spatial and landscape character of the area which reflects the undeveloped, open character of the countryside. These harmful landscape and spatial effects would be visible in views from the public right of way beside the larger field.
12. The proposed development would therefore conflict with LPP1¹ policy CP11 which seeks to conserve and enhance the natural beauty of the area, and LPP2 policy DM1 where it protects the distinctive character and quality of the countryside outside the planning boundaries. It would also be at odds with LPP2 policy DM25 which requires development to contribute to local character and distinctiveness through high quality design, whose siting should respond sympathetically to the characteristics of the development site, its relationship with its immediate surroundings and, where appropriate, views into, over or out of the site.
13. It would run against policy DS1 of the Neighbourhood Plan² (NP) where it permits, exceptionally, development outside of the settlement boundary where it complies with relevant policies in the development plan. By failing to recognise the intrinsic character and beauty of the countryside, as advocated in the Framework³, the development would not contribute to and enhance the natural and local environment, but instead, cause it significant harm.

Replacement dwelling

14. Outside the planning boundaries, LPP2 policy DM1 permits development where it is consistent with a specific development plan policy. In this case, LP policy DM5 and NP policy DS1 which concern replacement dwellings in the countryside are relevant policies.
15. NP policy DS1 permits replacement dwellings outside the settlement boundary, provided the floorspace of the replacement does not increase by more than 30%. I appreciate that if the garage on the ground floor of the existing dwelling is excluded from the present measure of floorspace, then the increase would be greater than 30%. However, the policy does not preclude garages. Given its location below the living space, it is not unreasonable to include its floor area in the total floorspace. On this basis,

¹ Lewes District Local Plan Part 1: Joint Core Strategy 2010-2030 (LPP1)

² Ditchling, Streat and Westmeston Neighbourhood Development, made 2018

³ The National Planning Policy Framework, paragraph 170

there would be no conflict with the Neighbourhood Plan where it permits replacement dwellings outside the settlement boundary.

16. In the countryside, LPP2 policy DM5 allows the replacement of an existing dwelling by another within the same residential curtilage, so long as it satisfies two criteria. First, its scale, form, height and massing should be compatible with its rural location and the surrounding form of development. Second, the replacement should be located in the same or in a similar position as the existing dwelling, unless an alternative location would result in clear landscape, access or local amenity benefits.
17. The replacement dwelling would stand in a paddock separated from the parcel of land holding Berrymead and the cluster of buildings and gardens in that section by a hedge and a line of tall trees planted alongside a field ditch. While a bridge at each end of the ditch connects the paddock to the adjoining parcel of land, these are gated, which reinforces the enclosure of the paddock and the differentiation of the curtilage of the replacement dwelling from the adjoining parcel of land containing the existing dwelling. Mature trees stand in small groups in the paddock which appears undeveloped, giving this land a quite different character from the developed section on the other side of the field ditch where the existing dwelling stands between other buildings and beside hard standings.
18. The physical nature of the development would unequivocally separate the replacement dwelling from the existing cluster of buildings and the developed land. The replacement dwelling would not be in the same residential curtilage as the existing dwelling. This conclusion resonates with the appellant's intention that 'a suitable and separate residential curtilage must be created for the new dwelling'⁴, and his view that 'the proposed scheme will rationalise the layout of the site into two distinct plots'⁵.
19. The replacement dwelling would have its own back and front gardens and its own parking and turning area. While its occupiers may have to share the drive on the Berrymead parcel of land in order to reach the road, this is a common arrangement in the countryside where clustered houses with separate curtilages share a common access onto the highway. From what I have seen on the ground, and from looking at the proposed plans, the replacement dwelling would not be within the same residential curtilage as the existing dwelling. It therefore fails against the requirement of LPP2 policy DM5.
20. Notwithstanding this conclusion, even if it were considered that the replacement dwelling would be in the same residential curtilage as the existing dwelling, and acknowledging that its design would be sensitive to the scale, height and appearance of the local vernacular, it would be sited in the adjacent paddock, on the opposite side of a hedge and a ditch, and

⁴ Appeal Statement, May 2020, para 4.31

⁵ Planning Statement, February 2018, para 2.3

separated by a distance of around 22m from the existing dwelling. With such different spatial and locational determinants, it cannot be described as being in the same or similar position as the dwelling it would replace.

21. I have already found that the proposal would result in harm to the landscape and spatial character of the countryside. There is no substantive evidence of any highway safety problems identified with the existing access onto the highway which the replacement dwelling would share. It does not therefore meet the exceptions to being in a different position from the dwelling to be replaced by reason of clear landscape or access benefits.
22. The ground floor of the dwelling to be replaced is a garage, lit by windows with high cills. The living area is at first floor level. It is set back behind the line of Berrymead. The dwelling is sufficiently distant from surrounding buildings not to cause or suffer an unacceptable degree of overlooking. The site is sufficiently spacious to maintain good levels of light into and outlook from the dwelling without adversely affecting the light or outlook of surrounding occupiers.
23. The appellant claims that the existing dwelling has no outside amenity space of its own. However, it is surrounded by lawns, open areas, and partially enclosed spaces in what is described as a shared residential curtilage. Given the shared nature of this curtilage, and that none of these spaces appeared to me to present any conflicts in their residential use, I can see no shortage of outside amenity space for the occupiers of the existing dwelling. Moreover, the existing dwelling contains only a single habitable room which limits the number of occupiers and the demand for amenity space. In addition, the site is linked by public footpaths to the network of public routes across the countryside, including Ditchling Common Country Park which is within a few hundred metres of the site.
24. On the evidence before me, I can identify no clear landscape, access or amenity benefits which an alternative location would provide to justify its position not being in the same or in a similar position as the existing dwelling. Therefore, even if it were considered that the replacement dwelling would be in the same residential curtilage as the existing dwelling, it fails the second test in the policy.
25. Returning to the first part of the policy, which is the decisive section in this case, I conclude that the replacement dwelling, because it would not be in the same residential curtilage, would conflict with LPP2 policy DM5. Accordingly, being outside the planning boundaries, given the harm it would cause to the distinctive character and quality of the countryside, its lack of consistency with policy DM5, and in the absence of any demonstrated need for a countryside location, the development would conflict with LPP2 policy DM1.
26. While my conclusions against the replacement dwelling policies of the Local Plan and the Neighbourhood Plan are different, the Local Plan policy was adopted after the Neighbourhood Plan. In accordance with section 38(5) of

the Planning and Compulsory Purchase Act 2204 and paragraph 30 of the Framework, I give greater weight to the Local Plan policy.

Distance from services and facilities

27. One of the sustainable travel objectives of LPP1 policy CP13 is to reduce the need to travel and to promote a sustainable system of transport and land use. Because of the very limited bus services and the unsuitability of the lanes and field paths in the area for future occupiers who may include elderly or young children, access to services and facilities from the site would be largely dependent on the use of the private car.
28. Notwithstanding this, the occupation of the present dwelling is already affected by the same limitations of access. While the replacement dwelling would be larger than the existing, I am not convinced that the additional trips which may result would increase the need to travel to a material degree, or conflict with the promotion of a sustainable system of transport. Accordingly, I can identify no conflict from the development in this respect with LPP1 policy CP13 and NP policy DS1.

Other Matters

29. While I note the alternative siting options for the replacement rejected by the appellant before he pursued this proposal, I am not convinced that an alternative proposal for a replacement on the land containing the cluster of buildings would not provide similar benefits, but without the conflicts identified above.
30. I acknowledge the appeal decision⁶ and local planning permissions referred to by the appellant. However, the Council has issued a certificate of lawful use or development and it does not contest the use of the land or the planning unit; its argument is centred on the building of a house rather than use. The local permission also appears to relate to a replacement within the same plot, with despite its boundary shift, less impact on the character of the open countryside. The relevance of those materials to this case is therefore unclear.

Planning Balance

31. I have found that the proposed development would have a significantly harmful impact on the spatial and landscape character of the area. As well as conflicting with the development plan where it protects the distinctive character and quality of the countryside outside the planning boundaries, there is no development plan policy justification for the replacement dwelling in the location proposed. The development would therefore fail to fulfil the environmental objective of sustainable development within the Framework, which seeks to protect and enhance our natural environment. This weighs significantly against the development.

⁶ Appeal Ref: APP/Y3940/X/15/3033313 of 30 December 2015

32. In its favour, the development would bring the social benefits of a larger dwelling built to modern and energy efficient standards set in its own residential curtilage with views across the open countryside. The commissioning of services to build the replacement dwelling would also bring benefits to the local economy.

33. However, in light of the relatively modest scale of the development, these largely social and economic benefits would be restricted in extent and therefore, attract limited weight. They do not outweigh the environmental harm from the development and its conflict with the development plan and the Framework, when read as a whole.

Conclusion

34. For the reasons given above, the appeal is dismissed.

Patrick Whelan

INSPECTOR