



Appeal Decision

Site Visit made on 16 March 2021

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Appeal Ref: APP/M2270/W/20/3260396

Paygate Cottage, Horsmonden Road, Brenchley, Tonbridge TN12 7AB

- 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 and Mrs Potter against the decision of Tunbridge Wells Borough Council.
- The application Ref 20/01725/FULL, dated 17 June 2020, was refused by notice dated 9 September 2020.
- The development proposed is erection of three detached dwellings and construction of an outdoor swimming pool.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A plan which removed the dwelling on Plot B was submitted with the appeal. No other alterations to the layout, parking arrangement or Paygate Cottage were shown. As this scheme would only provide 2 additional dwellings it would be significantly different from that which was determined by the Council. The appeal process should not be used to evolve a scheme. Amendments which fundamentally change the scheme should be addressed through the submission of a fresh planning application. If I was to accept the amendment, it would deprive those who should have been consulted on the changed development an opportunity to comment. I have therefore determined the appeal on the basis of the description set out in the above header and the plans listed on the Council's decision notice.
3. An application to erect a replacement dwelling and retain a reduced Paygate Cottage as an annex was approved on appeal¹ in 2016. Subsequently, an alternative design for the new, larger dwelling was approved² but again subject to the existing dwelling being reduced and retained as an annex. An application to retain Paygate Cottage as a separate dwelling alongside the new dwelling was dismissed on appeal in 2020³.
4. The description of the current proposal made no reference to Paygate Cottage. The planning statement submitted with the application was contradictory insofar as it indicated that Paygate Cottage would be only partially retained, but elsewhere it suggested it would be occupied in addition to the 3 dwellings. By contrast, the appellant's appeal statement indicated that the modern

¹ Council Ref: 14/506723/FULL: APP/M2270/W/15/3134352

² Council Ref: 17/03527/FULL

³ Council Ref: 19/00785/FULL: APP/M2270/W/19/3236698

extensions would be removed, and the cottage would not be occupied as a separate dwelling. However, the proposed site plan, drawing number SP/001, showed an unamended footprint to Paygate Cottage. On the basis of plans and statement submitted by the appellant, the Council determined the application assuming that the cottage would be retained as a separate dwelling. Notwithstanding the appellant's appeal statement, I have done the same having taken into consideration the submitted plans and the absence of any precise details about what is proposed for Paygate Cottage.

Main Issues

5. Having regard to all the written evidence, I consider the main issues to be:
- a) the effects of the proposal on the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB);
 - b) whether or not the site is suitable for a residential development having regard to local and national policy for the location of housing;
 - c) the effect on highway and pedestrian safety;
 - d) whether or not the proposed layout would provide acceptable levels of privacy for the occupants of Paygate Cottage and the dwellings on Plots A and B.

Reasons

Character and appearance

6. The appeal site lies within the High Weald AONB, an area designated for its landscape and scenic beauty and characterised by dispersed buildings, historic farmsteads, ancient woodland and heaths. The site occupies an elevated position surrounded by attractive, open and undeveloped countryside. Although the site is enclosed by hedges, and what appear to be recently erected fences, that does not diminish its underlying contribution to the landscape which is a complex and intimate area characterised by ridges intersected by deep valleys and streams.
7. Paygate Cottage was originally a small, single-storey detached house set in the corner of a large plot. Its siting stems from its original purpose as a toll house so it is very close to the road. However, its diminutive height and the screening along the roadside boundaries means that it is not prominent within the street scene. At the time of my site visit the dwelling had been largely enclosed by fencing, separating it from the rest of the appeal site. A small area of external amenity space adjacent to Fairmans Lane has been retained for use by the current occupiers of Paygate Cottage.
8. The remainder of the site originally sloped steeply away towards the south, but the land levels have been altered to create a flatter area on which permission is sought to construct 3 dwellings. From the submitted drawings and images it is apparent that the roof of the house on Plot C would be visible above the roadside boundary fencing and hedge. The dwelling on Plot A would occupy a larger footprint than the timber garage it would replace. Being two-storey its upper section would be seen in views along Fairmans Lane. The house on Plot B would appear sandwiched between the two others and, together with them, would both intensify the use and urbanise the site to an unacceptable degree.

9. The three dwellings would be close to each other and to Paygate Cottage. This would be out of character with the scattered nature of development in the surrounding countryside. The intensity of use would be an alien and intrusive form of development at odds with the open and more tranquil character of the AONB. Furthermore, a significant portion of the site would be used for the access and parking spaces that would be required to serve each dwelling. Added to this there would be a swimming pool associated with Plot C and the usual collection of other domestic paraphernalia to enable future residents of all 3 properties to undertake activities outside. The proposal would therefore fundamentally change the character and appearance of the site.
10. There are trees on the western side of the site which contribute to the area's appearance and screen the site from Fairmans Lane. With the proposed layout the small garden of Plot A would be overshadowed by one of these trees. There is also a substantial tree that overshadows the residual garden of Paygate Cottage. If either of these trees was lost in future in order improve the living conditions of future occupants, it would expose the site to greater visibility from the street causing further harm to the character and appearance of the AONB.
11. Previous appeal decisions have recognised the importance of retaining the site's predominantly open character. The initial replacement dwelling was designed to be tucked into the landscape. It was only permitted subject to significant conditions including the removal of existing extensions to Paygate Cottage. Its original form would be retained solely as ancillary accommodation to the replacement dwelling. The enlarged dwelling which was subsequently approved followed this design approach to minimise effects on the landscape of the AONB. The more recent appeal decision dismissed the proposal to retain the cottage as a separate dwelling alongside the erection of the new one. In doing so the Inspector considered such a scheme would erode the openness of the land and have an urbanising effect on it which would cause significant harm to the AONB. I see no reason to disagree with these assessments. I consider the current proposal would be significantly more harmful, with 3 two-storey dwellings being squeezed onto the site alongside a retained Paygate Cottage.
12. At the moment there is one, small dwelling on the site. There is permission for another, albeit a larger one, with some retained ancillary accommodation. This cannot be compared with a scheme that would provide 3 new dwellings, whilst Paygate Cottage is retained as a separate dwelling. According to the Council the footprint of the new dwellings would be approximately 339sq.m; this is significantly more than the 226sq.m of the approved scheme. Although the appellants' statement suggested there would be amendments to Paygate Cottage, no information to support this assertion or the extent of any reduction in its floor area was provided. There would therefore be nothing to offset this increase in the built form.
13. I therefore conclude that the proposal would cause unacceptable harm to the character and appearance of the High Weald AONB. It would conflict with Policies EN1 and EN25 of the Tunbridge Wells Borough Local Plan 2006 (Local Plan) and Policies 4 and 14 of the Tunbridge Wells Borough Local Development Framework Core Strategy Development Plan Document 2010 (Core Strategy). These policies, amongst other things, require development to respect the context of the site and to conserve and enhance the rural landscape of the High Weald AONB.

Suitability of location

14. The appeal site lies outside the Limits to Built Development (LBD) of the village of Branchley and in the countryside for the purposes of planning policy. The Council's spatial strategy, as set out in Policy 1 of the Core Strategy and Policy LBD1 of the Local Plan seek to focus development within the LBDs. Sites immediately adjacent to the LBDs of the main urban area and small towns may be allocated for development. Elsewhere the policies seek to restrict encroachment of the built form into the countryside. Sites outside the LBDs of villages would only be released for development for affordable housing provision, employment and recreational uses. None of those exceptions apply in this case, so the proposal conflicts with the Council's spatial strategy.
15. The site is only 130m from the village boundary. However, to reach the centre of the village would require a walk along a public right of way (PROW) between the site and the churchyard before reaching a paved footway. This PROW is stepped at its lower end, steep, narrow, unlit, enclosed by hedges and crossed by numerous tree roots. Whilst it is acceptable for anyone undertaking a walk in the countryside with stout footwear, it would be much less suitable for everyday use, particularly by anyone with a pram or accompanied by small children. It would be potentially unsafe for vulnerable users in the hours of darkness and difficult to negotiate when slippery, if it was wet or icy. The alternative of walking along the road would be dangerous given its width, alignment and the banks on either side. Neither route provides a satisfactory pedestrian access to the village.
16. Once at the churchyard there is a paved footway, but many of the village's most important facilities, such as the school and recreation ground, are some distance away along Branchley Road. This makes it much more likely that residents wishing to reach them would use a car which would be safer and more convenient.
17. There is a bus service which runs through the village providing links to Maidstone, Paddock Wood and Tunbridge Wells. However, difficulties of accessing the bus stops to use this service would be a deterrent to choosing this mode of travel. The practical reality is that anyone living on the appeal site would not be able to meet all their needs within the village but would almost certainly have to travel further afield. To do so they would find it more practical and convenient to rely on a car for the majority their journeys.
18. Permission has been granted for several dwellings in the same locality and which involved the same issue of access to a footpath. However, these all related to conversion of existing agricultural buildings and so were assessed against different policies and are not directly comparable with the appeal proposal. They have therefore not influenced my assessment in respect of this issue, which I have determined on the site-specific circumstances of this case.
19. The appellant's offer to upgrade the footpath is noted. However, this would be a major undertaking which would require the approval of the highway and planning authorities and possibly other landowners. It would have significant implications, which would be disproportionate to the proposal and I have no evidence to suggest it would be supported. It is therefore not a matter that can be taken into account in my decision.

20. For all these reasons, I conclude that the site is not a suitable location for the provision of additional residential development. It would conflict with Policies 1, 4, 6 and 14 of the Core Strategy and Policies LBD1, EN1 and EN25 of the Local Plan which seek to focus development to sites within LBDs in order to protect the countryside. Although not cited in the Council's decision notice it would also be contrary to Policy 3 of the Core Strategy which seeks to reduce dependence on private car use.

Highway safety

21. The appeal site is located at the junction of Horsmonden Road and Fairmans Lane where there is a sharp bend in Horsmonden Road. The junction layout creates the potential for conflict as visibility is significantly restricted. I am advised that 4 accidents involving slight injuries have occurred in the last 18 years. The highway authority did not provide any more recent or specific crash information, although local residents provided anecdotal evidence of crashes in the vicinity. However, the highway authority was concerned about intensification of the use of the access particularly in view of its proximity to the junction. I share these concerns as even if there are other sites in the vicinity which have a poorer accident record, that is not a justification for increasing the potential for conflict between vehicles near or at the Horsmonden Road/ Fairmans Lane junction. The highway authority also objected to the proposal on account of the lack of a safe pedestrian access to local facilities, a matter which I have already addressed.
22. Only 6 parking spaces appear to be shown on the submitted layout plan. Only 1 is shown to serve plot A, which does not meet the required standards. It is not clear if one of the spaces near Plot C is to serve Paygate Cottage. In any event the layout is so tight that it is not likely to function effectively. The 3 spaces serving Plots A and B are in such close proximity to two trees that it would not provide any space for manoeuvring even if the area of hardstanding was enlarged. It has therefore not been demonstrated that 6 vehicles could be accommodated satisfactorily on the site. Furthermore, with the retention of Paygate Cottage at least 7, and possibly 8 spaces would be needed to comply with the required standards. As the site is unable to accommodate sufficient parking, there would be the risk of overspill parking on Fairmans Lane. Given the site's proximity to the junction with Horsmonden Road and the gradient of Fairmans Lane, this would increase the risk of conflict and crashes. I therefore consider that the amount of parking and its proposed layout would be inadequate and unsatisfactory to serve the proposed development.
23. For all these reasons, I conclude that the proposal would be prejudicial to highway safety in the vicinity by failing to provide adequate parking and safe access to the site for all users, including pedestrians. It therefore conflicts with Policies EN1, TP4 and TP5 of the Local Plan which require development not to compromise the safety of other road users and to provide appropriate on-site parking arrangements.

Living conditions

24. If, as the submitted plan shows, Paygate Cottage was retained as a separate dwelling, the windows of bedrooms 3 and 4 of Plot B would directly overlook its conservatory and amenity space. In view of the restricted separation distance between the two dwellings this would result in an unacceptable loss of privacy for the occupants.

25. Plots A and B would be orientated at right angles to one another and close to each other. As a consequence, there would be some overlooking of the garden of Plot B from the narrow window of bedroom 2 within Plot A. However, as this would not affect any habitable rooms within the house on Plot B, I am not persuaded that this would be a justification for rejecting the proposal.
26. Nevertheless, I conclude that the submitted layout would be harmful to the living conditions of occupants of Paygate Cottage arising from an unacceptable loss of privacy. This would be contrary to Policy EN1 of the Local Plan which, among other things, requires development not to cause significant harm to adjoining occupiers.

Other Matters

Biodiversity

27. No information relating to biodiversity or ecology on the existing site was submitted with the application or appeal. As significant earthmoving has already been undertaken on the site, it would be difficult to establish any baseline as habitats may already have been eroded or destroyed.
28. I accept that some biodiversity enhancements could be secured by planning condition. However, in the absence of any information to set out what would be appropriate for this site I am not satisfied that this would be a suitable mechanism to use in this case, even if the development had been acceptable in all other respects.

Self-build housing

29. The appellants are promoting the development as self-build homes. The supporting evidence indicates that the appellants would be the owners and occupants of the house on Plot C. No details of the other potential owners have been provided, although it was suggested that they had agreed the proposed layout. However, no specific information was presented to enable me to confirm that the initial owners of the houses on Plots A and B have had primary input into the final design and layout of these dwellings. This is a requirement of the Planning Practice Guidance for schemes to qualify as self-build housing.
30. Furthermore, there was no formal mechanism, such as a planning obligation, to secure all the homes as self-build. This potential benefit of the scheme therefore cannot be taken into account in my assessment of the scheme.

Planning Balance

31. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. In April 2020 it was 4.83 years, so the shortfall is not significant. Nevertheless, paragraph 11 d) of the National Planning Policy Framework is engaged.
32. Paragraph 11 d) i) states that permission should be granted unless the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development. Footnote 6 of paragraph 11 identifies an AONB as one such protected area. Paragraph 172 of the Framework advises that great weight should be given to conserving the landscape and scenic beauty of AONBs, which have the highest status of protection in relation to these issues.

33. I have concluded that the proposal would give rise to significant harm to the High Weald AONB. This harm alone provides a clear reason for dismissing the appeal. There is therefore no need for me to undertake the test set out in paragraph 11 d) ii). The presumption in favour of sustainable development does not apply.
34. The Framework also advises that rural housing should be located where it will maintain and enhance the vitality of local communities, paragraph 78. In the absence of a safe pedestrian route to the village, the proposal's contribution to this objective would be very limited. The scheme fails to meet the Framework's requirement of providing safe and suitable access for users set out in paragraph 108. Neither would it provide a good standard of amenity for existing users as required by paragraph 127. Therefore, the proposal would also conflict with these objectives of the Framework.
35. The proposal would result in harms arising from the site's location within the AONB, with poor pedestrian access, inadequate parking, additional risks to highway safety and loss of privacy for the occupants of Paygate Cottage. These cumulative harms clearly outweigh the benefits of providing 3 dwellings, regardless of whether or not they were secured as part of a self-build scheme.

Conclusion

36. The proposal conflicts with the development plan and there are no other considerations, including the advice of the Framework, that outweigh that conflict.
37. For this reason, the appeal is dismissed.

Sheila Holden

INSPECTOR