



Appeal Decision

Site visit made on 23 November 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/E2205/W/21/3270281

Cullen's Farm Buildings, Maytham Road, Wittersham, Kent

- 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 Dr A Lloyd-Smith against the decision of Ashford Borough Council.
 - The application Ref 20/01552/AS, dated 13 November 2020, was refused by notice dated 29 January 2021.
 - The development proposed is the demolition of existing buildings and erection of a detached three bedroom dwelling with associated parking and amenity.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised Framework¹ was published by the Government between the submission of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal. The substantive elements of it remain the same as the previous version with regard to the main issues.

Main Issues

3. The main issues are a) the principle of the proposed development with specific regard to access to facilities and services; b) the effect of the proposed development on the character and appearance of the area with specific regard to the Kent Downs and High Weald Area of Outstanding Natural Beauty (AONB); and c) the effect of the proposed development on ecology.

Reasons

Principle of Development

4. In the interests of encouraging sustainable patterns of new development and access to facilities and services, Policies SP1 and SP2 of the Local Plan² generally seek to avoid development, including new dwellings, in the open countryside. Such development is directed towards defined settlements. This approach is broadly reflective of the Framework. Policy HOU5 of the Local Plan does set out certain justified exceptions, including for example the re-use of existing buildings. Although the appellant suggests a close link between the thrust of this policy and the removal of redundant buildings and the visual

¹ National Planning Policy Framework (2021)

² Ashford Local Plan (2019)

improvement of a site, the appeal scheme would not comply with any of the expressed exceptions.

5. The appeal site is in the open countryside, outside of a defined settlement. There is agreement between the main parties that the site is some distance from any local facilities and services. Given the absence of segregated footpaths and street lighting in the area, it seems to me that whilst it may be possible to walk or cycle to the nearest village, it would be an unattractive proposition to many people, particularly during the winter months. There is no evidence before me to suggest that the site is currently served by public transport. Accordingly, if a resident at the appeal site needed to access local facilities and services, the most likely mode of transport would be by car. This is the least sustainable travel option.
6. However, the appellant points out that the site has planning permission for a very similar building, which can be used for holiday let accommodation. Such a use would have the potential to generate a number of car journeys in its own right. The appellant draws my attention to an appeal decision on a different site where vehicle movements associated with holiday use were considered to be comparable to that of a residential use. However, I do not have the details of that scheme before me and therefore cannot be sure that it represents a direct parallel. Accordingly, I must determine this appeal on its own merits.
7. There are many variables to consider when comparing such uses, but it seems reasonable to me to assume that generally holiday makers would be likely to leave their accommodation and be out for the greater part of the day, perhaps only returning later on in the day to eat or sleep. Multiple daily journeys from the site are less likely than say a permanent residential use, particularly for a dwelling that offers family sized accommodation, which could involve journeys to work, school, shopping and leisure activities. It also seems reasonable to assume that holiday accommodation would not be occupied for as much of the year as a dwellinghouse.
8. Whilst the extant planning permission is said to offer a fall-back position, the appellant also acknowledges that a viable funding mechanism for construction of the holiday accommodation has not been possible. Evidence of a decline in overnight stays is cited, and it is speculated that this may continue for some time to come. However, to my mind, this merely demonstrates an absence of support for holiday accommodation rather than it being a factor in support of a dwellinghouse being constructed.
9. The appellant indicates that implementing the permission and seeking a change of use may also be an option but does not clarify whether the building would actually be erected given the stated difficulties in financing the construction. Also, I cannot be sure that a planning application for such a change of use would necessarily meet with a positive outcome. I therefore give limited weight to the extant permission but acknowledge that in light of it there would be a reduced level of harm when the proposal is considered in the context of the prevailing development plan policies.
10. Therefore, having regard to all of the above, I find that the proposed building would not be in a sustainable location having regard to its accessibility to local facilities and services. As a result, the proposal conflicts with Policies SP1, SP2 and HOU5 of the Local Plan, which amongst other things, directs new housing development to sustainable locations and seeks to prevent development in the

open countryside. The proposal would also be contrary to the provisions of Paragraphs 69 and 120 of the Framework, which among other things, give weight to the benefit of using sustainable sites within existing settlements for new dwellings.

Character and Appearance

11. The appeal site comprises a small field with a group of former agricultural buildings arranged in an L-shape in one corner. A former pig sty, which has now become a bat roost is in another corner. The buildings are of different sizes and construction but are not overly large and are all single storey. The buildings are visible from Wittersham Road and the public right of way to the west of the site but are viewed against a backdrop of other nearby buildings and trees. As such, they are not overly intrusive on the character and appearance of the area.
12. The key characteristics of the AONB include expansive countryside that offers a variety of local landscapes which is unspoilt by large, intrusive development and offers tranquillity. The landscape in the vicinity of the appeal site consists largely of open countryside with wide panoramas across arable fields. The appeal site is located on open land which relates well to the undeveloped character of the area. Although there are some buildings on the site and some neighbouring built form, the site makes a positive contribution to the character and openness of the AONB.
13. In order to protect its intrinsic beauty and qualities, the Local Plan seeks to limit development in the countryside and the AONB in particular. This approach reflects Paragraph 176 of the Framework, which advises that great weight should be given to conserving and enhancing the landscape and scenic beauty of the AONB. Whilst the Local Plan acknowledges the need to have regard to the economic and social well being of the area, proposals must nevertheless accord with the overarching, protective policies which seek to ensure development respects the character of the countryside and the AONB.
14. The proposed building would be similar in appearance to the extant permission. The key difference with the current proposal is in the nature of the use and in turn, its effect on the curtilage and how this would appear within the AONB.
15. I agree with the appellants that it will be during the summer months when the holiday let, and its curtilage would be likely to be at its most active. Some activity, particularly outside dining, would be an attractive proposition to some guests. However, this is the time of year when permanent residents would also make most use of the garden. Boundary trees and hedgerows will be at their most effective in screening the site from wider views. In this respect there may be limited differences between the two uses.
16. During other times of the year, autumn and winter in particular, if holiday makers are staying at the site, they are less likely to be making use of the curtilage. Whilst permanent occupants will also make less use of any garden area during colder times of the year, they are more likely, especially at weekends, to be working in the garden and undertaking other domestic tasks such as car washing and DIY. At these times, screening is less effective but people will still be likely to be making use of the public rights of way. Wittersham Road, from where the appeal site can also be glimpsed, would continue to be used by vehicles throughout the year.

17. Permanent residents are also likely to have larger and/or more permanent garden paraphernalia. This would have a greater chance of being visible throughout the course of the year. Permanent residents are also likely to have a greater demand for additional outbuildings. I note that the proposed dwelling already includes a storage building to accommodate 3-4 bicycles. Whilst permitted development rights could be restricted with regard to further outbuildings or hard surfacing, I note that there is no provision to enable the storage of any domestic paraphernalia commonly associated with a dwelling nor is there somewhere to store gardening equipment. Even if the garden were to remain as lawn, there would be a need for some gardening equipment.
18. It seems likely that there would be pressure for storage structures or buildings if the site were to be permanently used in connection with a dwelling. Even if this pressure were resisted, the outcome would be the open storage of such equipment and accessories within the curtilage.
19. I therefore do not agree that the tourism use would necessarily result in similar levels of paraphernalia and domestication or that the proposed building and use would be indistinguishable from that of a tourism use. It seems to me that a dwellinghouse in this situation would change the nature of how the site were seen. Plus, as noted previously, a dwellinghouse is likely to be in use more regularly throughout the year than a holiday let. Accordingly, the proposal and the nature of the use would be likely to have a greater effect on the character and appearance of the wider area, including the AONB.
20. The appellant suggests that any perceived harm should be balanced against the public benefits to the rural economy that would be delivered by an occupied dwellinghouse. The boost to the local economy was said to be a positive factor in determining the extant permission. An appeal decision from elsewhere is cited in drawing a parallel between the support provided to the rural economy by holiday makers and permanent residents.
21. I do not have the previous officer report before me, so cannot be certain as to the weight attributed to the economic benefits of the holiday accommodation in relation to the AONB. However, it appears to have been weighed in favour of that scheme in relation to the setting of nearby listed buildings. However, there is a specific provision in the Framework to balance the public benefits against any less than substantial harm to heritage assets. There are no directly comparable provisions in relation to the AONB. Notwithstanding this, given the great weight given to the protection of the AONB by the Framework and in the Local Plan, the weight I could give to any boost to the rural economy by the proposal would not outweigh the harm I have identified to the AONB.
22. I acknowledge that there are other buildings in the vicinity and that it is possible to see the domestic use of their curtilages. However, their existence does not alter the adverse effects this development would have on the area both individually and cumulatively. Accordingly, the proposal would therefore cause harm to the character and appearance of the area, including that of the AONB.
23. As such, it would be contrary to Policies SP1, SP6 and ENV3b of the Local Plan, which amongst other things, seek to ensure that proposals respect the character of an area, conserve the natural environment and that the special qualities, and tranquillity of the AONB are protected. The proposal would also

be contrary to Paragraph 176 of the Framework, which amongst other things, seeks to ensure that adverse impacts on the AONB are minimised or avoided.

Ecology

24. It appears that the Council received advice from their ecological advisors that the submitted ecological details were insufficient to mitigate the harm caused to the existing bat roosts by the removal of the existing buildings. However, the appellants were subsequently advised by the same organisation that the details were acceptable. Having regard to the submitted ecological report and details together with all the comments from the Council's advisors, the proposal would now appear to adequately address the issue. Accordingly, it would provide sufficient ecological habitat to mitigate the removal of the existing buildings on site and loss of the existing bat roosts.
25. Were I minded to allow the appeal, I am satisfied that, subject to the imposition of appropriately-worded conditions, the proposal would not cause harm to protected species. Accordingly, I find that the proposal would comply with Policy ENV1 of the Local Plan, which amongst other things, requires proposals to ensure that where harm to biodiversity assets cannot be avoided, appropriate mitigation is delivered on site. The proposal would therefore accord with Paragraph 174 of the Framework, which amongst other things, seeks to minimise impacts on biodiversity.

Other Matters

26. The Council considers that any harm caused to nearby heritage assets is balanced by the public benefit of the removal of the existing buildings on site. As such, it is said that the overall effect is neutral. The appellant considers that the benefit to the rural economy of a permanent dwelling would be an additional public benefit to be considered in respect of any harm caused. If I were to find that the public benefits of the appeal scheme were enhanced by a boost to the local economy, and thus there were a positive balance regarding the effect on heritage assets, my overall conclusions would not change with regard to the sustainability of the site's location or the impact on the AONB. Thus, the outcome of the appeal would not be altered.
27. The appellant identifies a number of factors including design, highways/access, surface water drainage, which are said to not be in dispute. Similarly, it is noted that the property would not need to connect to the sewage treatment works and thus would not be affected by Natural England's advice on nutrient neutrality for new development in the Stour Catchment in relation to Stodmarsh Designated Sites. As a result, the development could be delivered without undue delay. However, these factors would represent a lack of harm which would accordingly be neutral in any balance.
28. The proposal is also said to provide a lower cost dwelling although it is acknowledged that it would not meet affordable housing needs. However, I have no evidence before me to demonstrate that there is a particular need for such housing in the area or that, notwithstanding its size, the dwelling would be particularly low cost. Accordingly, I give this matter limited weight.

Planning Balance and Conclusion

29. It is common ground between the main parties that the Council is currently only able to demonstrate a 4.8 year supply of deliverable housing sites.

Accordingly, I must have regard to paragraph 11 of the Framework, which indicates that in such circumstances the most important policies for determining the application are out of date and that permission may be granted.

30. However, the balance in favour of the grant of planning permission at paragraph 11 d), is conditional on satisfying the first limb of whether there are policies in the Framework that protect areas of particular importance which provide a clear reason for refusing the development proposed. AONB's are such a protected area and as I have identified, there would be harm to the character and appearance of the AONB such that there would be conflict with paragraph 176 of the Framework. This paragraph seeks to limit the extent of development in these nationally sensitive landscapes. As a result, I would not be taken to the second limb of paragraph 11 d).
31. That said, I am aware of the Government's objective to significantly boost the supply of housing, along with their broad support for windfall sites. A single dwelling would make a contribution towards those objectives albeit a very limited one. There may also be support for the local industry on a time limited basis. These factors would limit the weight I would give these considerations.
32. As explained above, the appeal site is not well located in terms of its accessibility to local facilities and services and would necessitate the use of a vehicle. Whilst this would be moderated to some extent by the extant permission, the development plan policies are consistent with the Framework's approach towards sustainable locations and transport. I have already noted that the proposal would have a harmful effect on the AONB and as required by the Framework, the conservation and enhancement of which I attach great weight to.
33. As a result, the proposal would conflict with the development plan as a whole and there are no other relevant, material considerations, including the approach of the Framework, worthy of such weight that they would outweigh this conflict and indicate the decision should be made other than in accordance with the development plan. The appeal should therefore be dismissed.

Stewart Glassar
INSPECTOR