



Appeal Decision

Site Visit made on 16 November 2021

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/U1430/D/21/3276038

Elm Cottage, George Hill, Salehurst and Robertsbridge, Robertsbridge TN32 5AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Ross Barnes against the decision of Rother District Council.
- The application Ref RR/2020/2388/P, dated 28 November 2020, was refused by notice dated 14 April 2021.
- The application sought planning permission for the erection of 5 dwellings together with access and parking arrangements without complying with conditions attached to planning permission Ref RR/2015/3106/P, dated 18 March 2016.
- The conditions in dispute are Nos. 2 and 11 which state that:
- "The development hereby permitted shall be carried out in accordance with the following approved plans:
Site location and block plans: drawing no. 001 revision A, dated December 2015;
1191-007: coloured street scene – 1:100 (render not approved)
proposed site layout plan: drawing no. 002 revision B, dated December 2015
Proposed floor plans: plots 1-4: drawing no. 003, dated December 2015;
Proposed plans: plots 1-4: drawing no. 004 Revision A, dated December 2015;
Proposed plans and elevations plot 5: drawing no. 005, dated December 2015;
Street scene and site section: drawing no. 006, Revision A, dated December 2015;
Preliminary drainage scheme: drawing no. AP/001."; and
"The development shall not be occupied until parking and turning areas have been provided in accordance with submitted plan (Drawing No. 002 Rev B) and the areas shall thereafter be retained for that use and shall not be used other than for the parking and turning of motor vehicles."
- The reasons given for the conditions are:
"for the avoidance of doubt and in the interests of proper planning, as advised in Planning Practice Guidance Paragraph: 022 Reference ID: 21a-022-201403306."; and
"In the interests of the safety of persons and vehicles entering and leaving the access and proceeding along the highway and to accord with Policy TR4 of the Rother Local Plan (2-014) – Core Strategy."

Decision

1. The appeal is allowed and planning permission is granted for the erection of 5 dwellings together with access and parking arrangements at the Former Countrycraft Site in accordance with application Ref RR/2020/2388/P made on the 28 November 2020 without complying with conditions Nos 2 and 11 set out in planning permission Ref RR/2015/3106/P granted on 18 March 2016 by Rother District Council, but otherwise subject to conditions in the attached schedule.

Preliminary Matters

2. A revised Framework¹ was published by the Government between the determination of the planning application and the appeal coming before me. However, the substantive elements of it remain the same as the previous version insofar as this appeal is concerned.

Background and Main Issues

3. The development the subject of the original planning permission RR/2015/3106/P has been built and the dwellings occupied. Condition 2 of that permission required the development to be undertaken in accordance with the approved plans. Condition 11 required the parking and turning areas to be provided prior to occupation of the dwellings and thereafter retained for those purposes.
4. The parking spaces originally proposed for Elm Cottage, which is the name given to Plot 5 of the original scheme², divided the property's rear garden into two separate parts. The parking spaces have since been removed and the land is now enclosed within the property's rear garden. The appellant is therefore seeking to vary conditions 2 and 11 to reflect the current situation for this property.
5. The main issues are therefore the effect of the proposal on a) traffic flow and highway safety; and b) the living conditions of future occupants of the property.

Reasons

Traffic Flow and Highway Safety

6. Policy TR4 of the Core Strategy³ requires developments to provide appropriate levels of off-street parking. It also seeks to ensure that approved parking provision is retained. However, this is subject to the caveat that the retention of such spaces would be necessary to prevent harm to safety or the free flow of the highway. Policy DHG7(ii) of the Local Plan⁴ requires developments to have regard to car parking provision at the outset of any proposal. Policy IN1 of the Neighbourhood Plan⁵ seeks to generally avoid the loss of parking but this is not an absolute restriction. Whether suitable parking provision is made is inherently a matter of judgement, rather than one which can be resolved with reference to exact metrics.
7. The Transport Technical Note from Reeves Transport Planning provides details of a parking survey undertaken on 4 and 5 November 2020. This survey indicates that within the 513.5m of unrestricted parking on George Hill, between Heathfield Gardens and Station Road, there were between 75 and 76 spaces available at the times the study was undertaken. This equates to a parking stress of 21.5%, which represents a fair level of availability (albeit that, inevitably, some available spaces may be some distance from the site.)

¹ National Planning Policy Framework (2021)

² The Former Countrycraft Site, as set out in paragraph 1 of this decision for accuracy

³ Rother Local Plan Core Strategy

⁴ Rother Development and Site Allocations Local Plan

⁵ Robertsbridge and Salehurst Neighbourhood Development Plan

8. The parking survey accords with my site visit observations. I undertook my visit on a weekday at around midday. I was able to observe that there were spaces available in the immediate vicinity of Elm Cottage. I also observed some turnover of parking along this part of George Hill. Further up George Hill, between Blenheim Court and Heathfield Gardens there was only one car parked during the course of my visit.
9. I am aware that at other times of the day the situation may be different. However, my observations suggest there is at least some capacity at certain times of the day. The on-street parking situation near the appeal site causes vehicles to slow, including buses, and give way to other road users but it did not appear to unduly impede the free flow of traffic or cause any highway safety issues. I accept that my observations are of a particular point in time but given the nature of the surrounding roads and area there is nothing to suggest they are atypical.
10. Although the Council are evidently of a different view, there is no robust countervailing evidence before me diverging from the study undertaken by the appellant and my site visit observations. In that context the implications of the proposal are relatively limited, such that the prevailing baseline is not so sensitive that parking provision for two vehicles could not be accommodated in reasonable proximity without undue effect.
11. Based on the substantive evidence before me and my own observations, I conclude that there is capacity to accommodate car parking in the vicinity of the site without causing harm to the free flow of traffic or highway safety issues. Accordingly, the proposal would comply with Policy TR4 of the Core Strategy, Policy DHG7(ii) of the Local Plan and Policy IN1 of the Neighbourhood Plan.

Living Conditions

12. The Council cites Policy OSS4(i) of the Local Plan in its reason for refusal. This policy seeks to ensure that developments meet the needs of future occupiers, including access for disabled users. Neither the works which have been undertaken nor the conditions which would authorise the amended layout, would prevent the parking spaces from subsequently being revived, and dedicated parking reintroduced to the property, should a future occupier so wish. As such, the development would not prevent future occupants from adapting the property to meet their needs, including the provision of disabled access.
13. In itself, the removal of two parking spaces and the inclusion of that area within the garden of Elm Cottage would not cause harm to the living conditions of future occupiers of the property or others. Accordingly, the proposal would comply with Policy OSS4(i) of the Local Plan, which seeks to protect the needs and living conditions of future occupants.

Other Matters

14. Concerns have been expressed as to the time of day the parking survey was undertaken. It is usual for such surveys to be undertaken at those times, as this is when people are most likely to be at home. I acknowledge that coronavirus implications may have led to less commuter parking in the area. Conversely it may have led to more people being at home in the area. The

longer-term implications are as yet unclear. As such, I consider the survey suitably robust.

15. Concerns have also been expressed by the Council and some neighbouring residents as to the parking demand when dropping off or collecting children from the nearby Salehurst Primary School, the Children's Centre and Youth Centre. Understandably, people may wish to park close to the property and if there is an increased demand this will make it more inconvenient for some people. However, I have not been presented with any substantive evidence to suggest that the situation would result in a risk to the free flow of the highway or highway safety. As reasoned above, the effect of the change proposed by this application would be fractional relative to existing conditions
16. The Council has raised concerns that if this appeal were to be allowed, it would be difficult for them to resist similar proposals. Each case must be considered on its own merits. The circumstances and evidence provided in this case has demonstrated that there is sufficient on street parking capacity to accord with development plan policy. Were any subsequent application to come forward on a different site, then it would be considered within the context of the circumstances prevailing at the time.

Conditions

17. I have amended the disputed conditions 2 and 11, which sought the retention of the parking/turning area, to reflect the current situation and supporting plans. The as-built plans submitted by the appellant show differences with the approved layout, which extend beyond Plot 5. I have therefore limited the extent to which the 'as built' drawings apply. Such conditions are therefore necessary for certainty.
18. Conditions 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15 and 16 of the original permission required the submission of details and their implementation prior to the development proceeding beyond a certain point. It is not necessary for me to reimpose these conditions, nor a time limit condition, as the development has been completed. However, it is necessary for me to impose an amended version of condition 5 to reflect the on-going requirement for the boundary treatment to be in accordance with the approved details and thereby protect the character and appearance of the area. Similarly, in respect of previous condition 12, a condition addressing the retention of cycle parking is necessary in order to meet sustainable transport requirements.
19. Condition 10 of the original planning permission required the visibility splays at the development site's vehicular access with George Hill to be clear of all obstructions over 600mm. This was required to be undertaken before the access could initially be used and to be kept clear thereafter. In the interests of highway safety, I have imposed an amended version of this condition to ensure the visibility splays remain clear at this junction.
20. Condition 7 of the previous permission required the replanting/replacement of any trees lost within 5 years of the approved landscaping scheme being implemented. I have no information regarding the implementation of the planting. Therefore, as the original permission was approved in March 2016, it is possible the 5 years is still applicable and so I have imposed a varied condition to ensure the approved planting scheme is protected for the full 5 years.

Conclusion

21. For the reasons given above, and subject to the conditions set out below, the appeal should be allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site location plan: drawing no. 001 Revision A, dated December 2015
 - 1191-007: Coloured Street Scene (render not approved)
 - Proposed Site Layout Plan: drawing no.002 Revision B dated December 2015 (except in respect of the plot of the southernmost dwelling, Elm Cottage, which shall be in accordance with drawing SK/100 dated 29 October 2020.)
 - Site layout plan SK100: dated 29 October 2020 (only in respect of the southernmost dwelling, Elm Cottage.)
 - Proposed floor plans: plots 1-4: drawing no. 003, dated December 2015
 - Proposed plans: plots 1-4; drawing no 004 Revision A, dated December 2015
 - Streetscene and site section: drawing no. 006 Revision A, dated December 2015
 - Preliminary drainage scheme: drawing AP/001
2. The boundary treatments as shown on the approved plans shall be retained as such in accordance with the approved plans.
3. If within a period of 5 years from the date of the planting of any tree in the approved landscaping plan, that tree, or any tree planted in replacement for it, dies, is removed or becomes seriously damaged or diseased it shall be replaced in the next planting season with another of similar size and species.
4. Turning and parking areas as shown on drawing No 002 Rev B, associated with planning permission Ref RR/2015/3106/P, shall be retained as such and used only for the parking and turning of motor vehicles, except in respect of the plot of the southernmost dwelling, Elm Cottage, where landscaping shall be maintained in accordance with plan SK/100 dated 29 October 2020.
5. The visibility splays as shown on drawing No. 002 Rev B, associated with planning permission Ref RR/2015/3106/P, shall be kept clear of all obstructions exceeding 600mm in height.
6. The cycle parking as shown on drawing No. 002 Rev B, associated with planning permission Ref RR/2015/3106/P, shall be retained as such and used only for the parking of cycles.