



Appeal Decision

Site visit made on 19 January 2022

by Cullum J A Parker BA(Hons) PgCert MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11th February 2022

Appeal Ref: APP/U1430/W/20/3263484

Church Field South West of St Mary Magdalen Church, Whatlington Road, Whatlington, (Easting 575931, Northing 118143)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs P Butcher against the decision of Rother District Council.
 - The application Ref RR/2019/2758/P, dated 6 December 2019, was refused by notice dated 26 June 2020.
 - The development proposed is described as '*Construction of a church car park and erection of a detached dwelling, land southwest of St Mary Magdalen Church, Whatlington*'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I note that the spelling of St Mary Magdalene on the application and appeal forms, and in other correspondence, has been without an 'e' at the end. For consistency I have adopted this spelling throughout this decision.

Preliminary Matters

3. The appeal scheme comprises two main elements; the provision of a car park to the southwest of the Church of St Mary Magdalen, and the erection of a detached dwelling. The outline application has been with all matters except access reserved. The submitted drawings indicate that they are 'illustrative'. I have proceeded on the basis that they show what could be possible on the site, with detailed matters on appearance, landscaping, layout, and scale reserved for future consideration.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the High Weald Area of Outstanding Natural Beauty (AONB); and
 - The effect of the proposal on the setting of the Grade II* listed building; St Mary Magdalen Church, and;
 - Whether the proposal represents a sustainable form of development with regard to settlement boundaries and accessibility to services.

Reasons

Character and appearance of the High Weald AONB

5. The appeal site comprises approximately 0.41 hectare of undeveloped agricultural land located to the southeast of Whatlington Road and southwest of the Grade II* Church of St Mary Magdalen (herein the church). The existing boundary with Whatlington Road is formed of hedges or trees. The appeal site itself has most recently been used for the grazing of livestock and is a fairly open grassed area of a larger field.
6. The boundary with the church and its grounds is formed by a post a rail fence with trees, and it is possible to see the area proposed for development from within the graveyard of the church (albeit the land cambers or slopes away adjacent to Whatlington Road as identified within the submitted LVIA). More generally, the built development in this part of Whatlington is characterised by small clusters of houses located in a linear fashion along Whatlington Road. With sparsely, small clusters of built development intertwined with gaps formed by open fields lined by hedges and trees, the area has a distinct rural character and appearance.
7. The proposal seeks the creation of a car parking area of around 30 spaces, a new pedestrian access into the church, and the erection of a self-build dwelling to fund the construction costs of the aforesaid car park and the creation of a new access off Whatlington Road into the car park and residential dwelling. This would introduce highly urbanising features into what is currently not previously developed land. The appearance of the agricultural field would change in two ways: Firstly from being open and un-developed to potentially having a 4+ bedroom dwelling¹ with associated domestic paraphernalia, and secondly the creation of an area of hardstanding in order to form 30 car parking spaces and associated turning or manoeuvring areas.
8. I note that the visibility of the appeal site and the development proposed from the nearby footpaths Whatlington 11 and 12 would 'generally be screened from view from a short distance' and long-term views interrupted by intervening vegetation². However, the proposal would nonetheless introduce built development would represent a new encroachment of built form into the countryside. This would be at odds with the intrinsic character and beauty of the field to the rural character of the area.
9. Whilst the proposal is made in outline, and therefore there are less details than a full application, it is clear that the proposed development would for similar reasons erode the scenic beauty of this Area of Outstanding Natural Beauty (AONB); albeit I recognise that this would be limited by the scale and relatively small coverage of the development proposed within the wider AONB. I am reinforced in this view that it is likely that, at the very least, the roof of the proposed dwelling and the car parking area and new footpath would be visible from the church and its grounds. This intrusion would not only be from the built form proposed, but also from the associated domestic paraphernalia and use of the car park by vehicles and associated light pollution. These would further detract from the rural character of the area.

¹ As per the application form.

² Appellant's Statement, Page 10 of 52, Paragraph 3.1.8

10. I acknowledge that landscaping is a reserved matter, and there may be ways in which schemes could be developed to potentially mitigate the effects on character and appearance. However, that is not the scheme before me, and the fundamental harm indicated above through visual intrusion into the countryside and the AONB would remain.
11. Accordingly, the proposed development would have an unacceptably adverse effect on the High Weald AONB. It is therefore contrary to Policies EN1, OSS4, RA2, RA3 of the *Rother Local Plan Core Strategy 2014* (CS) and Policies DEN1 and DEN2 of the *Development and Site Allocations Local Plan 2019* (DaSA), which, amongst other aims, seeks enhancement of the distinctive identified landscape character, ecological features and settlement pattern of the High Weald Area of Outstanding Natural Beauty, and all development within the High Weald AONB shall conserve and seek to enhance its landscape and scenic beauty.
12. The proposal would also conflict with Paragraphs 174 and 176 of the *National Planning Policy Framework* (the Framework) which, amongst other factors, sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural beauty.

Heritage assets

13. The nearby church of St Mary Magdalen is a Grade II* listed building dating from around the 13th Century, and subject to 19th Century restoration work and modern repair in 2010 following extensive fire damage. The surrounding churchyard is verdant and envelopes the building on all sides. As detailed elsewhere, the church benefits from a distinctly rural setting which contributes to its significance and how the heritage asset is experienced. The tranquil churchyard and the surrounding arable fields contribute positively to its significance and clearly assist in our understanding of the origins of the building as a rural parish church.
14. The proposal would introduce both a residential development and a 30-space carpark within this setting; even in the context of the contours of the site which would reduce the visibility of parts of the proposal. As considered within the previous section of this decision, this would erode the rural character and appearance of the area. The proposed urbanisation of part of the agricultural field would detract from the rural setting of the Grade II* listed church, and visitors being able to appreciate this.
15. The proposal would therefore have a negative impact on the setting of the listed building and fail to preserve the special interest of the listed building: the conservation of which should be given great weight. The main parties, and Historic England, agree that this constitutes no more than 'less than substantial harm' to the significance of the church as a designated heritage asset as set out in Paragraphs 200 and 202 of the Framework. For the reasons given above, I concur that the proposal would result in less than substantial harm.
16. Paragraph 202 of the Framework sets out that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The Appellant has put forward a number of public benefits including: the retention of a community facility within the village of Whatlington and increasing the scope of its use; the potential to

make the church accessible to users with mobility issues and obviate the need to use the existing village hall car park and walk on a unlit, winding country road; the provision of a new car park at the church at 'zero cost' to the church; the provision of a dwelling where there is constrained and unmet need; the provision of ecological enhancements; and the preservation of key landscape features.

17. However, many of the public benefits cited are not necessarily reliant on the delivery of the proposed scheme. For example, whilst the provision of ecological enhancements would be welcome in terms of improving biodiversity, this is something that could be achieved whether or not the proposal was allowed.
18. I also note that the proposal would provide a new carpark so that visitors to the church would not have to use the one located at the village hall around 300 metres away. In terms of accessibility, I saw that at present any visitors to the church with mobility issues or small children would either have to park in a muddy layby/passing point at the end of the path to the church off Whatlington Road or in this nearby car park. This road is subject to a 40mph speed limit and without any formal lighting.
19. In practical terms, this means that in winter months anyone visiting the church would either have to park at the village hall and traverse up a slightly bending narrow road sloping upwards in the direction of the church or use the layby. Neither would be an attractive proposition for those needing walking aids, wheelchairs, or with small children for example. Whilst it is clear that the facilities are used by existing visitors, such as a local choir group, they are not as convenient as a purpose-built car park located closer to the church. In this respect the car park element of the proposal would provide a modest public benefit.
20. The Appellant suggests that the proposed development could be considered as an 'enabling development' under Paragraph 202 of the Framework allowing the heritage asset to be conserved. Put another way, the building of the dwelling would provide funds for the creation of a carpark where the current provision is considered less than satisfactory. This would 'enable' the church to be used for a greater number of potential uses and/or increase attendance for existing uses – for example the local choir group and for worship and christenings. I agree that this is a public benefit weighing in favour of the proposal.
21. However, this is predicated on the self-build dwelling plot being sold and a house designed with reserved matters approved in order to provide the funds for the creation of the carpark and its landscaping. I acknowledge the Appellant's view that they consider a legal undertaking through an obligation secured under s106 of the TCPA is not necessary. However, I have no certainty that there exists an effective mechanism that would ensure that the funds raised for the carpark through the new build dwelling would be inextricably linked to the carpark, or that any future owners of the land would be compelled into such an arrangement.
22. Moreover, I note the Appellant's suggested condition requiring the removal of the carpark should the church ceased being used within 10 years of its creation. However, it is unclear as to how the resources for any such remedial works would be provided as there appears no effective mechanism to secure the funding for such works.

23. The absence of these mechanisms raises issues which in turn diminish the weight attributable to the proposal being an 'enabling development' to conserve a heritage asset in the first instance. It also raises some concerns as to the ability to remove the harm arising from the creation of the carpark and a new dwelling in the AONB and countryside should the proposal not result in a greater usage of the church. For similar reasons, the suggested condition would not be enforceable or reasonable in all other respects as per Paragraph 56 of the Framework. In this respect, I afford this factor no more than minimal weight weighing in favour of the proposal as a public benefit.
24. I find that some of the various public benefits put forward weigh significantly in favour of the proposed development and others less so. However, they do not provide justification for overcoming the less than substantial harm arising to the significance of the designated heritage asset in this case.
25. I therefore conclude that the proposal would not accord with Policies OSS4, RA2, RA3, and EN1 of the CS and Policy DEN2 of the DaSA which, amongst other aims, seek the management of the high quality historic, built and natural landscape character through ensuring the protection of nationally designated heritage sites. In national policy terms, the proposal would conflict with Paragraphs 200 and 202 of the Framework for the reasons set out. The proposal would also fail to preserve the setting of the listed building as set out in the duty at s66(1) of the PLBCA.

Whether a sustainable form of development

26. Policy DIM2 of the DaSA sets out that new development should be focussed within defined settlement boundaries. In the countryside (that is outside of defined settlement development boundaries) development shall normally be limited to that which accords with specific Local Plan policies or that for which a countryside location is demonstrated to be necessary. Policy OSS2 of the CS sets out that the defined development boundaries differentiate between areas where development would and would not be accepted. Policy RA3 of the CS sets out that proposals for development in the countryside will be determined on the basis of a number of criteria, which the Appellant acknowledges does not fall into.
27. Moreover, the Appellant acknowledges that the appeal site is located outside any defined development boundary. I saw from my site visit that the site is located within an agricultural field and therefore located within the countryside in both policy and locational terms. In this respect, Policies DIM2, OSS2 and RA3 are among the most important for determining the application³ in respect of this issue.
28. Paragraph 79 of the Framework sets out to promote sustainable development in rural areas and that housing should be located where it will enhance or maintain the vitality of rural communities. Furthermore, where there are groups of smaller settlements, development in one village may support services in a village nearby.
29. The residential element of the proposal is necessary in order to fund the provision of a car park to serve the church which may help maintain this feature of the rural community. Moreover, the car park itself is necessary to be

³ To be clear, Policies relating to heritage and the AONB are also 'the most important' for determining the application.

positioned within this location given its purpose to serve the church. In terms of access to services it is likely that future occupiers would be reliant on private motor vehicles to access day-to-day services given the limited bus services. At the same time, the proposal seeks the erection of a single dwelling located adjacent to a small cluster of dwellings whose occupiers must face similar challenges to access such services.

30. Paragraph 105 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. In this respect, whilst the opportunities to maximise sustainable transport solutions in this case are limited, they are reflective of what is a very rural area. Moreover, the appeal site is located around 1.5 miles from Battle, which has a number of services, such as schools, supermarkets, and banks.
31. More widely, there is scope at any details stage for sustainable building and construction methods to be used, for the provision of biodiversity improvements which could be secured by means of planning conditions, and the creation of jobs during the construction phase of the dwelling and car park. In this respect, the proposal in this case could meet certain aspects to be considered a sustainable form of development.
32. At the same time, I have found that the proposal would result in harm to the AONB and to the setting of the Grade II* Listed Building. The proposal would not, therefore represent a sustainable form of development in this instance.
33. Accordingly, the proposal, therefore conflicts with Policies DIM2 and OSS2 as it would introduce built form into the countryside outside of the defined settlement boundaries. As such it would be contrary to the aforesaid aims of Policies OSS2, OSS3, RA3 and TR3 of the CS, and Policy DIM2 of the DaSA Local Plan which seek to focus development within defined settlement boundaries.

Other Matters

34. I note that a number of representations were made from interested parties at both the application and appeal stages. This included a large number in support of the proposal and the need for the creation of a safe car parking area in order to support the continued use of the church. The church is clearly a well appreciated asset in aesthetic, historic, and use terms to the local community. However, I do not find that the matters raised in these representations provide the justification for overcoming the harm I have identified in this instance.

Conclusion

35. The main parties agree that the Council is presently unable to demonstrate a five-year supply of housing land⁴. Accordingly, the 'presumption in favour of sustainable development' as set out in Paragraph 11 of the Framework and footnote 8, is engaged. However, Paragraph 11(d)(i) and footnote 7 set out granting permission, unless the application of policies in the Framework provide clear reason for refusing the development proposed; including policies relating to AONB and designated heritage assets. In this case, I have found that the proposal would result in harm to the High Weald AONB and the Listed

⁴ The Council confirmed that it is only able to identify 2.89 years of housing supply in January 2022.

Grade II* Church of St Mary Magdalen and these provide clear reasons for the refusing the development proposed.

36. The proposed development would therefore not accord with the adopted development plan, when considered as a whole, and the material considerations weighing in favour of the proposal do not indicate a decision otherwise than in accordance with it.

37. For the reasons given above I conclude that the appeal should be dismissed.

C Parker

INSPECTOR