



Appeal Decision

Site visit made on 12 January 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 FEBRUARY 2022

Appeal Ref: APP/M2270/W/21/3275063

White Ash Farm, Starvenden Lane, Sissinghurst, Cranbrook TN17 2AN

- 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 Alan Danby of Sunray Developments Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 20/03429/FULL, dated 19 November 2020, was refused by notice dated 26 January 2021.
 - The development proposed is for the demolition of mobile home with lawful residential use, several outbuildings, and the erection of a detached four-bedroom dwelling with associated amenity and parking.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of mobile home with lawful residential use, several outbuildings, and the erection of a detached four-bedroom dwelling with associated amenity and parking at White Ash Farm, Starvenden Lane, Sissinghurst, Cranbrook TN17 2AN in accordance with the terms of the application, Ref 20/03429/FULL, dated 19 November 2020, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. Appeal submissions from both the Appellant and the Council refer to drawing 3220.WD.04C as the relevant proposed site and location plan. However, I was originally supplied with drawing 3220.WD.04B. The Appellant and the Council have both confirmed that any reference to drawing 3220.WD.04C is incorrect and the Council's decision is based on drawing 3220.WD.04B. I have therefore determined the appeal on this basis.
3. The Council are currently in the process of producing a new Local Plan, which is yet to be independently examined. At this stage, I afford it limited weight in my decision making and it does not alter my findings.

Main Issues

4. The main issues in this appeal are whether the proposed development would be in an appropriate location for housing, having regard to the current lawful use and the character and appearance of the area.

Reasons

5. The appeal site is rectangular in shape accessed via a private unmade track from Starvenden Lane which is accessed from the A229. Both parties agree that the appeal site is situated outside the limits to built development as

defined within the Tunbridge Wells Borough Local Plan 2006 (Local Plan) and is therefore in the countryside.

6. In regard to local facilities and services, the local school is accessed along the A229 and Common Road. The pedestrian route to school requires walking down a narrow path and crossing A229. There is also no footpath along Common Road. The Council have also confirmed there are no bus stops close to the appeal site and that there is a small shop at the petrol filling station, within walking distance of the application site. However, this small shop is only likely to meet some limited daily needs with a larger convenience shop located further away and is unlikely to be used by pedestrians. For these reasons, the Council consider that the future occupiers of the proposed dwelling would be largely dependent on a private car to access facilities and services. The appellant also acknowledges that the site has relatively limited access to facilities and services.
7. The appeal site comprises seven agricultural outbuildings and a mobile home. This existing mobile home has a Lawful Development Certificate (LDC) for occupation as a single dwelling issued in 2017¹. The wider appeal site is also located within the Sissinghurst Wooded Farmland Local Character Area as set out in the Tunbridge Wells Borough Landscape Character Assessment 2017 (Landscape Character Assessment). As the assessment notes, 'the site lies within a rural agricultural landscape of pasture and arable farmland, mixed woodland and orchards punctuated by oast houses and sunken rural lanes, enclosed within undulating hills and with occasional extensive views of the Low Weald'. On adjoining land, a former agricultural building has been converted to a dwelling² and this is visible from the appeal site.
8. Within the appeal site the buildings and mobile home are single storey, and the buildings are of an agricultural nature. Some of the buildings have deteriorated, for instance the polytunnel (building B) only partially remains as a lightweight frame. The existing mobile home, however, appears more residential in character by reason of its appearance and associated hardstanding / gravel parking areas.
9. It is proposed to clear the site of all buildings and remove the mobile home and erect a one and a half storey four-bedroom dwelling with associated parking area and garden. The proposed development would be finished in horizontal cladding and metal sheeting. The proposed development's upper floor would sit under a hipped roof and a dormer window is also proposed.
10. Given the appeal site's countryside location, Core Policies 6, 12, 14 of the Tunbridge Wells Core Strategy 2010 (Core Strategy), Policy LBD1 of the Local Plan and paragraphs 8, 105 and 174 of the National Planning Policy Framework (the Framework) prioritise development away from the countryside and acknowledge that development within the countryside should be restrained to, amongst other things, promote sustainable development patterns and protect the intrinsic character and beauty of the countryside.
11. The introduction of a new dwelling, in the countryside located away from services, weighs against the proposal. However, notwithstanding that the

¹ 17/00615/LDCEX - Occupation of mobile home as single dwelling

² 18/01726/PNQCLA - Prior notification for the change of use of a building and land within its curtilage from an agricultural use to a use falling within Class C3 (Dwellinghouse)

proposed development would be neither affordable or a starter home, the appellant considers that the proposed development should be assessed as a replacement dwelling against Local Plan Policy H10. Policy H10 sets out the context for assessing replacement dwellings outside the limits to built development. Whether the removal of the existing mobile home and its replacement by a permanent dwelling is within the scope of Policy H10 is dependent on whether the proposed development complies with the policy's 3 criteria.

12. Criterion a) of Policy H10 requires that, 'the existing building enjoys a lawful residential use which has not been abandoned'. It is not disputed between the parties that the mobile home has a lawful use as a dwelling which has not been abandoned. While the appellant states that the word 'dwelling' and 'building' could be used interchangeably, Policy H10 specifically refers to 'the existing building'. It therefore falls to consider if the existing mobile home is a 'building' for the purposes of this policy test.
13. In order to establish if the existing mobile home is a building, there are 3 primary factors that determine what is a building, those being size, permanence and physical attachment. It may be appropriate to give greater weight to one over another in reaching a conclusion and no one factor is decisive.
14. In respect of size, I have not been provided with any evidence that the mobile home falls outside the size limitations as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended). In terms of permanence and physical attachment to the ground, the mobile home is occupied and has been for some time, and this was evident from my site visit, it therefore has a degree of permanence. However, as a mobile home, by its very nature it would be mobile. No evidence has been submitted demonstrating the mobile home is no longer mobile. Therefore, I consider the mobile home to have a limited degree of permanence. I noted gas canisters adjacent to the mobile home. Detachments from such services is usually a simple matter which can be quickly achieved. I have not been furnished with any other evidence in this regard. Therefore, I consider the mobile home to have a limited degree of physical attachment.
15. When considering all these three factors together, I conclude, on balance, the mobile home would not amount to a building as a matter of fact and degree. Turning to Policy H10, and as the mobile home is not a building, it fails criterion a) of Policy H10. As the policy calls for all 3 criteria to be met, it is not necessary for me to consider Policy H10 any further and this policy is not engaged in respect of the appeal before me.
16. Notwithstanding that I have found no policy support for the appeal proposal within the Development Plan, it is also appropriate to consider if any material considerations exist which outweigh the conflict with the Development Plan.
17. It is common ground that the proposed development would be located on previously developed land. It would occupy the footprint of the existing mobile home and would introduce a garden area to serve the dwelling. The removal of the existing mobile home would deliver a betterment to the countryside landscape. However, the existing mobile home is single storey and is of modest proportions and although the proposed development's materials would be appropriate, the introduction of a taller dwelling with garden area and

associated domestic paraphernalia would be more intrusive in the landscape. If I were to take into account the removal of the other existing agricultural buildings, the spread of development would be reduced. However, these are also single storey lightweight buildings with less landscape impact than a bulkier dwelling.

18. The appellant argues that the existing mobile home could be replaced by a larger mobile home under the provisions of the Caravan Sites Act of up to 20m x 6.7m external and 3.048m internal ceiling height (the fallback position). This could be replaced at any time without any requirement to apply for permission or to demolish the existing buildings.
19. In fallback cases, there should be a 'real prospect' of a fallback development being implemented. In this case the fallback position is for the larger mobile home to replace the existing mobile home. I am satisfied that there is a demand for dwellings given the Council cannot demonstrate a five-year housing land supply. In addition, the existing mobile home, fallback position, and the current appeal are, or would be for a residential use in the same location. On this basis, I consider that the fallback position is not merely a theoretical possibility, and it consequently carries weight as a material consideration in my decision making.
20. The fallback position would deliver a substantially larger mobile home, without control over the materials or detailed design. This fallback position would occupy a significant footprint with a considerable presence and visual impact. Notwithstanding my findings above, when taking this fallback position into account, I find that the appeal proposal would be taller than the fallback position, but it would also be of a rural design and appearance and would have a much-reduced footprint. This in combination with the removal of the existing agricultural buildings would, on balance, create no greater harm to the character of the countryside than the fallback position. The Council considers that the site's access track and surrounding rural lanes would potentially restrict a significantly larger mobile home from being delivered to the site. However, there is an absence of evidence to confirm that this would be the case.
21. The appellant also considers that a secondary fallback position exists wherein the existing outbuildings are retained and converted to residential uses. However, I have not been provided with any evidence of such permissions having been obtained. Consequently, this has no bearing on my findings.
22. The Council raise concern about potential future planning applications to erect outbuildings as well as the size of the plot. However, conditions could be imposed to remove permitted development rights, as well as for hard/soft landscaping, boundary treatments and surface treatments. Furthermore, any future planning applications for development would be considered at the point of submission.
23. It is agreed between the parties that the Council is unable to demonstrate a 5-year housing land supply, and paragraph 11d ii) is therefore engaged. Having had regard to the benefits and the fallback permission set out in paragraphs above, I have found that there are no adverse impacts which would significantly and demonstrably outweigh the benefits. Additionally, any impacts arising from the proposed development being in an unsustainable location and

reliance on the private car, would create no greater harm than the existing situation given the established residential use.

24. The Council suggest that if the mobile home be removed from the site or the occupation ceases, the LDC would no longer apply. The LDC establishes a residential use of the site and the appellant states that the current occupiers have occupied the site for nearly 20 years. There is no evidence before me that the use would not continue. Consequently, this does not change my findings.
25. The Council has also referred to paragraphs 7, 38, 109, 117, 118, 124, 130, 152, 170 and 175 of the Framework in the appeal documentation. While I have had regard to these paragraphs, they do not alter my overall conclusions.
26. Given the location, I have found some conflict with Policies LBD1, EN1 and EN25 of the Local Plan 2006, Core Policies 1, 4, 5, 6, 12 and 14 of the Core Strategy, the Landscape Character Assessment and paragraphs 8, and 174 of the Framework, all of which amongst other things seek to ensure that development is sustainably sited in locations appropriate for housing, and are of a design sympathetic to the character and appearance of the site and locality. However, I have found that the appeal before me would be no more harmful than the fallback position. This is a material consideration which balances the conflict with the development plan and the Framework justifying a grant of planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.

Conditions

27. The Council has provided a list of suggested conditions and I have assessed these regarding the advice provided in the Planning Practice Guidance³. I have amended the wording of some conditions for clarity. Conditions 1 and 2 are required in the interests of certainty. Condition 3 is necessary in the interests of biodiversity. Conditions 4 and 10 are also necessary to ensure that the development is in keeping with the character and appearance of the area. Conditions 5 and 9 are required to ensure that the development is in keeping with the character and appearance of the area and in the interests of biodiversity. Conditions 6 and 8 are necessary in respect to drainage and condition 7 to ensure availability of parking. Given the countryside location and rural landscape, condition 11 is necessary to control alterations to the size and appearance of the dwelling, means of enclosure and to control the proliferation of any outbuildings.

Conclusion

28. For the above reasons, having regard to the development plan, the approach in the Framework and all other relevant considerations, the appeal is allowed.

N Praine

INSPECTOR

³ Paragraph: 21a-003-20190723

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site and Location Plans 3320.WD.04B; Proposed Elevations 3220.WD.03A; and Proposed Floor Plans and Section 3220.WD.02.
- 3) The development shall be carried out in accordance with the recommendations of the submitted Preliminary Ecological Appraisal. Additionally, and prior to the first occupation of the dwelling hereby permitted, a scheme of proposed ecological enhancement works, to include a timetable for implementation and how the agreed works will be maintained / retained, shall be submitted to, and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details and retained thereafter.
- 4) No above-ground development shall commence until details of the external finishes and materials to be used in the construction of the external surfaces of the development hereby permitted along with details of boundary treatments have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and retained as such.
- 5) No above-ground development shall commence until a landscape scheme designed in accordance with the principles of the Council's Landscape Character Guidance has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges, and blocks of landscaping on and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of on-site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a 5-year management plan. Once approved, the development shall be carried out and retained in accordance with the approved details.

All such landscaping shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the Local Planning Authority gives written consent to any variation.

- 6) No excavation shall take place until details of drainage works designed in accordance with the principles of sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details and retained as such.

- 7) The area shown on the approved plans as vehicle parking space, shall be provided, surfaced, and drained in accordance with details submitted to and approved in writing by the Local Planning Authority before the dwelling hereby permitted is first occupied. It shall be retained for the use of the occupiers of and visitors to White Ash Farm. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking and re-enacting that Order with or without modification), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this parking provision.
- 8) The development shall not be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance details to be submitted and approved in writing by the Local Planning Authority. Once approved the details shall be installed and retained thereafter in accordance with the approved details.
- 9) Prior to the first occupation of the development hereby permitted, details of the external lighting of the site shall be submitted to, and approved in writing by, the Local Planning Authority. External lighting shall be installed and retained in accordance with the approved details, and no further external lighting shall be installed at any time.
- 10) All of the existing outbuildings and the mobile home as shown on the existing site plan 3320.WD.01A shall be removed from the site prior to the first occupation of the development hereby approved.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking and re-enacting that Order with or without modification), no development shall be carried out within Classes A, B or E of Part 1 or Class A of Part 2 of Schedule 2 of that Order.