



Appeal Decision

Site visit made on 25 January 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/H2265/W/21/3277002

Land adjacent to Chance Cottage, Long Mill Lane, Dunks Green, Tonbridge TN11 9SA

- 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 Mrs Emma Parker against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/20/02242/FL, dated 6 October 2020, was refused by notice dated 5 March 2021.
 - The development proposed is the change of use of land to luxury self-catered accommodation, including the siting of a shepherds hut and treatment room, together with car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to luxury self-catered accommodation, including the siting of a shepherds hut and treatment room, together with car parking and landscaping, at land adjacent to Chance Cottage, Long Mill Lane, Dunks Green, Tonbridge TN11 9SA in accordance with the terms of the application, Ref TM/20/02242/FL, dated 6 October 2020, subject to the schedule of conditions below.

Preliminary Matters

2. A revised Framework¹ was published by the Government between the determination of the planning application and the appeal coming before me. It does not raise any new considerations in relation to this appeal.
3. The reason for refusal refers to Policy SQ1 of the Development Plan Document (DPD)². However, the officer report identifies the main concern as being highway safety, with Policy SQ8 of the DPD being the key policy. The appellant's appeal submission made reference to Policy SQ1 but was principally focussed on the issue of highway safety, which was addressed in the accompanying Traffic Report. In their Statement, the Council acknowledged the error in the decision notice. The appellant's final comments noted that the key concern related to the existing vehicular access. I am therefore satisfied that the appellant has not been prejudiced by the error. I have dealt with this appeal on the basis that the key policy in relation to the reason for refusal was Policy SQ8, and not Policy SQ1, of the DPD.

¹ National Planning Policy Framework (2021)

² Managing Development and the Environment Development Plan Document (2010)

4. The appeal site is located within the Green Belt. The Council raises no objections to the effect of the proposal on the Green Belt. Based on the evidence before me, including my own observations, I find no reason to conclude otherwise.

Main Issue

5. The main issue is the effect of the proposed development on highway safety, with regard to the adequacy of the proposed visibility splays for the access.

Reasons

6. Long Mill Lane is a rural lane which is generally just about wide enough for two way traffic through Dunk's Green. The road is subject to a 30mph speed limit in the vicinity of the appeal site. There is an existing vehicular access off Long Mill Lane that serves Chance Cottage. However, there is a bend in Long Mill Lane approximately 25m to the south of this existing access, with Chance Cottage's existing boundary alignment and hedgerow limiting visibility to the north. Accordingly, there is no dispute between the main parties that the existing visibility arrangements are poor and that enhancements are required for the proposed development to safely proceed.
7. The Highway Authority, in their initial comments to the Council appeared to be seeking a visibility splay of 60m in length. Subsequently, the Highway Authority noted that the scheme proposed 20m long visibility splays, which it was said equated to a 17mph vehicle speed. Given the traffic survey undertaken by Monson Engineering Limited in April 2021, the 85 percentile speeds it recorded (21.2 – 21.5 mph) and the predicted movements from the appeal proposal, the Council now considers that visibility splays of 20-30m in length would be appropriate in this instance.
8. There is now broad agreement between the main parties that a proposed realignment of the boundary and hedgerow to the north of the existing access could achieve a visibility splay of 2m x 30m. The appellant suggests that, based on the Manual for Streets 2 and the 85 percentile speeds recorded (21.5mph southbound), a splay requirement of 25m would be appropriate and therefore the proposed northern splay of 30m should be acceptable. The Council does not appear to object to this northern splay.
9. From my own observations, I agree that a realignment of the boundary would be necessary to accommodate the proposed development. The proposed visibility splay would represent a significant improvement. I am mindful that such works may have a knock-on effect of improving the amount of oncoming road that is visible to drivers travelling south, and so average speeds of vehicles travelling from north of the access could increase slightly. It is therefore appropriate that the proposed visibility splay is at the upper end of the 20-30m range. Accordingly, in light of the evidence before me, I consider that the proposed visibility splay would be appropriate in this instance.
10. The current visibility splay to the south is 2m x 25m. It cannot be increased and crosses land which appears to belong to the neighbour at Maple Cottage. However, given that this neighbour also requires this visibility to the south when exiting their property, it seems unlikely that there would be much incentive or likelihood of the existing visibility to the south being impeded or reduced, despite the appellant's lack of control over it.

11. The Council has not directly disputed the 25m visibility splay guidance derived from the Manual for Streets 2, which was put forward by the appellant in support of the splays. However, concerns are raised by the Council in relation to the southern splay that the speed limit is 30mph and there will be vehicles travelling from the south above the 21.2mph 85 percentile speed recorded in the survey. Nevertheless, the length of a visibility splay is generally derived from the 85 percentile vehicle speed and not the speed limit itself.
12. Whereas the implementation of the northern visibility splay could lead to a slight increase in 85 percentile speeds for vehicles travelling southwards, there are no works which would see such speeds increase from vehicles travelling north. On this basis, the proposed southern splay would appear to accord with the speed data and this is unlikely to change over time. Accordingly, this visibility splay would not raise highway safety concerns and would be acceptable.
13. The main parties are in broad agreement as to the likely traffic generation from the proposed use and I acknowledge that the overall number of proposed additional movements relative to the use of Long Mill Lane would be low. The majority of these additional movements are likely to be made by drivers unfamiliar with the road. However, there is no substantive evidence before me to indicate that highway safety would be unacceptably prejudiced as a result of the nature of the traffic or drivers who would be associated with the proposal.
14. It is said that the traffic survey was undertaken during a period of national lockdown due to coronavirus, which may have influenced the figures. The appellant acknowledges the reference to February 2021 was erroneous and that the survey was undertaken in April 2021, after the lockdown had been lifted. The days/dates quoted in the survey (Thursday 6th and Wednesday 12th) tally with the calendar for April 2021 and not February 2021. I accept that the lifting of lockdown may not have led to an immediate resumption in the number of vehicle movements and that schools may have been on half term just after Easter. Whilst this may have affected the overall number of vehicles using the road, their speeds are less likely to have been affected by this situation. As such, I consider the survey suitably robust.
15. Local residents have made reference to the nature of the traffic which uses Long Mill Lane and a recent accident in the vicinity of the site. However, vehicles such as school buses are likely to be travelling at slower speeds than private cars and they tend to have a greater road presence which can often cause other vehicles to slow down when near to them. The Highway Authority has not identified the nature of vehicles using the road as being of particular concern. Furthermore, I have no substantive evidence before me that the accident record on this part of Long Mill Lane is worse than might otherwise be expected for a road of this nature and speed limit, which in turn might necessitate more stringent visibility requirements than those proposed.
16. Accordingly, the proposed visibility splays are adequate, and the proposed development would not have an adverse effect on highway safety. The proposal would therefore accord with Policy SQ8 of the DPD which, amongst other things, seeks to ensure developments do not harm highway safety. Furthermore, the proposal would also accord with Paragraph 111 of the Framework, which amongst other things, seeks to ensure that developments are not permitted if there would be an unacceptable impact on highway safety.

Other Matters

17. The site is said to adjoin a priority habitat lowland meadow. The nature of the habitat could house protected species. However, the nature of the proposed development is such that physical works would be limited and unlikely to affect any nearby meadow. The use of external lighting could be controlled to some extent by condition although I accept that guests using torches etc would be difficult to control. However, there is no substantive evidence to suggest that the adjacent meadow definitely does house protected species or that there are more in the vicinity of the site than might generally be found in a rural area such as this.
18. There are a number of mature trees within the appeal site and concerns have been expressed that the proposed use could disturb breeding birds. The proposal would provide accommodation for up to 2 people. Whilst the term luxury is somewhat subjective and I cannot entirely rule out some guests causing some disturbance, given the type of accommodation, cars being kept close to the existing car parking area and the limited number of guests able to use the accommodation at any one time, the level of noise and activity associated with the proposal would, it seems to me, be likely to be relatively low.
19. The site is within an Area of Outstanding Natural Beauty (AONB). Paragraph 176 of the Framework advises that great weight should be given to conserving and enhancing the landscape and scenic beauty of such areas. In this instance, the shepherds hut and treatment room would be positioned adjacent to a heavily screened boundary on land that is slightly lower lying than Chance Cottage itself. There are a number of dwellings and outbuildings in reasonable proximity to, and visible from, the appeal site. The car parking area would be a relatively small extension to the existing parking serving Chance Cottage. Existing trees would be protected, and appropriate additional landscaping could be secured by condition. Accordingly, I am satisfied that the landscape and scenic beauty of the AONB would be protected.
20. The Council indicates that the nearest neighbouring building, Maple Cottage, would be some 40m from the proposed shepherds hut and treatment room. Whilst this neighbouring property would be visible from the site, the distances involved would prevent any direct loss of privacy. The scheme proposes some hedgerow planting which could be secured by condition and would provide some additional screening of the hut and room.
21. The appeal site is described by the appellant as a field which is outside of any defined settlement. Although the land did not appear to be part of the curtilage to Chance Cottage, I do not have any definitive information on whether the land use is agricultural. However, I have considered the proposal on its own merits and based on the evidence available. Even if the land were to be in an agricultural use, which is different from being an agricultural holding, it would not change my findings.

Conditions

22. In addition to the standard time limit condition, a condition is required in the interests of certainty that lists the approved plans.

23. Given the importance to highway safety of the visibility splay and having appropriate access and parking arrangements, it is necessary for a condition securing the full implementation of these works prior to use of the permitted accommodation.
24. The access/visibility arrangements have been predicated on the traffic flows derived from the level of usage/number of guests and the use of the treatment room being limited to guests staying in the hut. Although a condition limiting the occupancy of the hut has been suggested, the size of the hut will inherently limit the number of guests. However, a condition limiting the use of the treatment room to guests staying in the hut is reasonable and necessary.
25. It is also necessary to ensure that the proposed landscaping scheme is implemented and that appropriate measures are put in place to avoid damage to existing trees.
26. Given the location of the site it is necessary for the external materials of the shepherds hut and treatment room to remain as proposed and that details of any external lighting shall first be submitted to and agreed by the Council.

Conclusion

27. For the reasons given above, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Stewart Glassar

INSPECTOR

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 approved plans listed below:
Location Plan
Block Plan – 1819 001 Rev A
Timberpad: Shepherds Hut
Timberpad: Sundowner Viewing Platform (Treatment Room)
Visibility Splays 9517/01 A
- 3) Prior to the use of the shepherds hut and treatment room hereby permitted, the northern visibility splay, access road, parking and turning areas as shown on the approved plans, shall be fully implemented. Thereafter they shall all be retained, and no obstruction to visibility between 0.6 and 2.0 metres in height above ground level shall be erected within the area of the northern visibility splay.
- 4) Prior to the use of the shepherds hut and treatment room hereby permitted, a scheme of landscaping and boundary treatment should be submitted to and approved in writing by the Local Planning Authority.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first use of the shepherds hut and treatment room or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. Any boundary treatments as may be approved shall be erected before first use of the shepherds hut and treatment room and thereafter retained.
- 6) The external surfaces of the shepherds hut and treatment room hereby permitted shall be constructed in the materials shown on the approved plans and thereafter retained.
- 7) The construction of the development hereby permitted shall be carried out so as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:
 - (a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread;
 - (b) No fires shall be lit within the canopy spread of any tree;
 - (c) No materials or equipment shall be stored within the canopy spread of any trees;
 - (d) Any damage to trees shall be made good with a coating of a fungicidal sealant;

(e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the canopy spread of any tree; and

(f) Ground levels within the canopy spread of any tree shall not be raised or lowered in relation to the existing ground level.

- 8) The treatment room hereby permitted shall only be used in connection with the use of the shepherds hut and no treatments shall take place to any person not staying in the shepherds hut accommodation.
- 9) No external lighting shall be introduced on the site unless and until details have first been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be implemented in accordance with the approved details and shall be retained as such thereafter.

END