



Appeal Decision

Site visit made on 31 January 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2022

Appeal Ref: APP/C1435/W/21/3270513

Garden Cottage Featherbed Lane, Carters Corner, Hailsham BN27 4HX

- 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 & Mrs David Cumming against the decision of Wealden District Council.
 - The application Ref WD/2020/0840/F, dated 20 April 2020, was refused by notice dated 4 February 2021.
 - The development proposed is extension to existing garage/store and conversion into new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is taken from the application form. Prior to the Council's decision, revised plans were submitted to omit the extension and reduce the application site red line. I have considered the appeal on this basis and as a conversion.
3. The main parties refer to the Hellingly Neighbourhood Plan but no copies of relevant policies were provided. I have, therefore, determined the appeal with regard to the Council's Local Plan¹ (LP) and Core Strategy² (CS).

Main Issues

4. The main issues are:
 - whether the site would be an appropriate location for housing, having regard to local and national policy for the provision of housing;
 - the effect of the development on irreplaceable habitat, having particular regard to ancient woodland and a local wildlife site; and
 - its effect on the living conditions of the existing occupiers of Garden Cottage, and on the future occupiers of the new dwelling, with respect to privacy, noise and disturbance.

¹ Wealden District Council – Wealden Local Plan, December 1998

² Wealden District (incorporating part of the South Downs National Park) Core Strategy Local Plan, February 2013

Reasons

Appropriate location

5. The appeal building (the building) is a large, detached garage and store of permanent construction in the residential curtilage of Garden Cottage. The proposal would change its use and convert it to a two-bedroom dwelling (the dwelling). A planning permission³ for its use as holiday-let accommodation was not implemented and has lapsed. As that use did not come into effect, and I saw that the building is still at least part in use as a domestic outbuilding, it is not redundant or disused.

spatial strategy

6. There are some rows of dwellings nearby, and some individual dwellings, alternating along both sides of this stretch of Featherbed Lane, which is known as Carters Corner. While Garden Cottage is opposite and towards the end of such a row, it is the only dwelling on one side of the lane at this point. It is otherwise surrounded on three sides by trees in a large woodland and there are open fields beyond the dwellings opposite. The appeal site is not, therefore, in a built-up or urban area, though it is previously developed 'brownfield' land⁴. The dwelling would be proximate to Garden Cottage and geographically near many of these other dwellings. Accordingly, it would not be isolated.
7. However, individually and collectively, these dwellings along Featherbed Lane are nonetheless sporadic in location and intermittent in siting. There are appreciable gaps between dwellings in places where open fields intrude along the lane and being frontage development, there are also gaps and spaces between them with views of open fields or trees behind. There is also no obvious social cohesion or discernible centre or focus to an established local community at this point. As a result, this ribbon arrangement of residential development, and the site, does not form part of any hamlet, village or other settlement, even absent any basic facilities.
8. The site is also outside of any defined settlement 'development boundary' for the purposes of the Council's development plan, by a significant distance. The building is not next to, or visually or physically well-related to, the development boundary of Hailsham or any other development boundary. Nor would it be despite the new development expanding Hailsham in the direction of the appeal site. The site is unequivocally not part of Hailsham for planning purposes but in a distinctly rural location.
9. A purpose of the development boundaries is to focus growth on sustainable settlements. LP Policies GD2 and DC17 do not permit housing outside development boundaries unless it conforms to other policies in this plan. The proposal does not meet any of the exceptions for housing in the countryside contained in LP Policy DC2. Even though it would be just one dwelling by conversion of an existing building, and there are some nearby dwellings, the proposal would nonetheless unduly consolidate a more dispersed pattern of residential development. It would not result in new housing focussed in, or at, a sustainable location or one that could easily be made sustainable. The proposal would, therefore, be at odds with aims of the Council's spatial strategy, settlement hierarchy and its objectives for the countryside.

³ Ref WD/2012/1932

⁴ Framework Annex 2: Glossary

accessibility to services and facilities

10. Another purpose of the development boundaries is to reduce the need to travel by all modes of travel. I appreciate that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, the Framework also states that the planning system should actively manage patterns of growth in support of sustainable transport objectives and that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities.
11. While the site is within theoretical walking distance of the new edge of Hailsham, which is a large urban area and district centre, the edge (and the site) is outlying from the centre. I have been provided with no specific details of any nearby services or facilities or their precise location, nor where there are any bus stops.
12. In any event, from the appeal site in either direction Featherbed Lane is a narrow rural country road, subject to a relatively fast 40mph speed limit. It is unlit, meanders in places, has no footways, limited grass verge for taking refuge and there are vehicular accesses along it. While occupiers of existing dwellings may choose to contend with these conditions, it is, nonetheless, a hostile environment for future pedestrian occupiers of the dwelling who would have to walk along the carriageway and be exposed to significant hazard and risk of injury, including at night and during inclement weather. This would materially reduce the attractiveness of walking, especially for children, parents with pushchairs and the disabled or visually impaired. These conditions would also not be conducive to regular cycling.
13. Even though the future occupiers of the dwelling would likely support some services and facilities in Hailsham, the limited scale of development would have a relatively limited influence in this respect and the proposal would still not limit the need to travel a significant distance, including to schools, for employment and for other day-to-day living needs, particularly by the private car. Nor would it, on the evidence before me, support local services in any nearby village in the immediate or wider rural area.
14. These circumstances can be distinguished from use of the building as a holiday-let which would be transient in nature and temporary in duration. It would not, therefore, place the same demands on need for access to services and facilities as would permanent living accommodation. Tourist or visitor use would also be compatible with other policies of the Council's development plan and objectives of the Framework.
15. I have been referred to a Council decision for conversion of a disused and redundant rural stone barn to a dwelling⁵. I note it was in an isolated location, not in a residential curtilage, last used for employment purposes and of historic provenance. The Council considered it complied with LP Policy DC8, which relates to 'the conversion of existing rural buildings' and granted permission 'as an exception to normal restrictive policies controlling new housing development in the countryside'. It also had regard to what is now Framework paragraph 80 c) which supports isolated homes in the countryside by re-use of redundant or disused buildings.

⁵ WD/2020/0986/F

16. I have also been referred to an appeal decision⁶. While the Inspector found that site was not isolated and 'in the countryside' for the purposes of LP Policy DC8, the development was for re-use of a redundant farm building (livestock barn) as a dwelling. Moreover, the Council's Wealden Design Guide refers to re-use and conversion of rural buildings 'that are of interest or contribute to the landscape character of the area, whether listed or not'.
17. The building is in a rural, countryside location. However, even if it was redundant or disused, it is not isolated or a barn in the usual accepted meaning of this word. Accordingly, it is not a 'rural' building or of 'interest' in the same terms or context as was considered in both of the above decisions. The circumstances of those cases are not, therefore, comparable. I have, in any event, considered the proposal and current appeal on its individual planning merits and the evidence before me.
18. Taking all of the above into account, I find that the appeal site would not be an appropriate location for housing, having regard to local and national policy for the provision of housing. Consequently, the proposal would conflict with LP Policies EN1, GD2, DC2 and DC17 and with CS Policies SPO1, SPO7, SPO8 and WCS14. These policies include that development should be acceptable in location, reduce the need to travel by car and sustain rural communities. Housing in the countryside, which will otherwise be protected, must be necessary.

Irreplaceable habitat

19. Next to the two outward facing sides of the building is a swathe of mainly open grassland (the grassland). It extends further in both directions and includes some older and younger individual trees. The trees gradually increase in number towards a more distinct and densely treed part of a substantial mature woodland. Part of the grassland would form the residential curtilage for the dwelling and be enclosed by two rows of proposed trees.
20. Both main parties have referred me to relevant mapping. I have no reason to doubt the integrity of the maps, some of which are from acknowledged independent environmental sources. These clearly show the appeal site to be within the boundary of land designated as ancient woodland (AW), which is an irreplaceable habitat⁷. I note that the appellant's 'PEA & Impact Assessment' report (PEAIA) states that the AW 'designation applies even though the coverage of trees no longer exists'. The site is also in a local wildlife site (LWS) designated for its range of vegetation types and different habitat types, albeit largely co-incidental and symbiotic with the AW.
21. The regular mowing of the grassland has suppressed the opportunity for trees of any sort, or associated LWS vegetation and habitat, to establish. This has led to the present scattering of trees between the building and the main woodland. I accept that while the grassland has a more open appearance, it is nonetheless next to the building, near Garden Cottage and its domestic environs including other outbuildings, and on the edge of the AW and the LWS. The site is thus not itself, or part of, an entirely natural open space within a woodland, as the Council suggests.

⁶ APP/C1435/W/20/3249689

⁷ Framework Annex 2: Glossary

22. I also note that in terms of above ground conditions, the appellant's 'Ancient Woodland Impact Assessment' report⁸ (AWIA) states that the grassland does not contain any 'ancient woodland habitat' and that individual trees in the grassland do not form a 'woodland'. However, that is not unsurprising given how this land has been managed. In my view, some of the trees in the grassland are old or individually have the stature or appearance of trees within the present extent of the main undisputed AW. As such some may be remnants of a former extent of the AW and, if so, would not be inconsistent with the boundary of the AW designation shown in the mapping.
23. Furthermore, even if the trees in the grassland are not themselves part of an AW, below ground, the PEAIA states that 'the ancient woodland soils may still exist' and that despite the mowing 'it is possible the soils and micro habitats associated with woodland remain and that this could be recovered through change of management, into woodland habitat'. While there is no definitive objective evidence before me that such soils do exist, there is equally no such evidence they do not.
24. Indeed, the AWIA states that in this area 'the mowing regime amongst the existing trees could be relaxed which would allow some natural regeneration of woodland habitats. These enhancements would help to provide a long term benefit for the ancient woodland'. I am also mindful of Natural England standing advice which states that 'Where a proposal involves the loss or deterioration of ancient woodland' the decision maker 'should not take account of the existing condition of the ancient woodland' when assessing 'the merits of the development proposal. Its existing condition is not a reason to give permission for development'.
25. For reasons that are not clear to me, the building has infiltrated into the AW and LWS designations with the benefit of planning permission and the grassland has been managed in a specific way. Nonetheless, the Framework states that irreplaceable habitats are habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed. The proposal would not result in any direct impact on the AW by removals of trees or any direct loss of associated LWS vegetation and habitat. I also accept that the appellants could continue to manage the grassland in the same way, or it is possible that a holiday-let use of the building would have resulted in some use of the grassland by guests.
26. However, the grassland is not the only part of the otherwise extensive, main garden area used by the appellants; whereas it would be the only, limited, external amenity space for the dwelling. It would therefore likely be used more actively and intensively in separate permanent residential occupation, than in holiday-let use or use by the appellants. Consequently, even if AW soils were not destroyed directly or indirectly by dwellinghouse use it is likely that such use would degrade AW soils. It is also likely that there would be little or no meaningful opportunity for future re-instatement of AW or LWS vegetation and habitat in this part of the grassland. It is also possible, particularly given its limited extent, that once a planning permission was granted, other parts of the grassland could be incorporated into an enlarged residential curtilage for the dwelling. These circumstances would be likely to lead to further undesirable

⁸ Ecology & Habitat Management Ltd, August 2020

fragmentation, or at least perpetuate existing fragmentation, of the AW and LWS.

27. The Framework states that development resulting in the loss or deterioration of irreplaceable habitat should be refused, unless there are wholly exceptional reasons, including where any public benefit would clearly outweigh such loss or deterioration. I return to these considerations in my 'planning balance' below.
28. Considering the above, I find that the development would cause harm to an ancient woodland and a local wildlife site which are irreplaceable habitats. It would, therefore, conflict with LP Policy EN13 and with CS Policies SPO1. These policies seek to protect recognised biodiversity interests and development should not prejudice the ecology of Ancient Woodlands.

Living conditions

29. A separate garden would be established for the dwelling and part of the parking area hardstanding apportioned to it. It would share use of the access onto Featherbed Lane that serves Garden Cottage.
30. Details of boundary treatments to divide the parking area between Garden Cottage and the dwelling could be secured by a planning condition. Use of this area for access and parking by the occupiers of Garden Cottage would not be fundamentally incompatible with occupation of the dwelling and likely be a relatively low key activity (similar to such juxtapositions found in many residential environs elsewhere). It would not, therefore, be unduly intrusive to future occupiers of the dwelling. Conversely, parking and access by future occupiers of the dwelling would be next to a short edge of the garden of Garden Cottage and would therefore not unduly interfere with amenity or use of most of its garden.
31. Even if the parking area was not sub-divided the garden of the dwelling would face away from Garden Cottage and its garden and would largely be screened by the dwelling. There would also be few ground floor windows in the dwelling facing towards the cottage and its garden. The views would be at an angle and a significant distance from habitable room windows and the main outdoor seating area next to the cottage. While there would be an elevated view from the top of the external staircase, it would be fleeting and glimpsed in nature. There would be no first floor windows facing towards the cottage. Despite Garden Cottage and some of its garden being on lower ground levels, there would not, therefore be any unacceptable mutual overlooking or loss of privacy and no undue noise or disturbance.
32. In light of the above, I find that the development would not harm the living conditions of the existing occupiers of Garden Cottage, or the future occupiers of the new dwelling, with respect to privacy, noise and disturbance. It would comply with LP Policy EN27 and with CS Policies SPO13 and WCS14. These policies permit development that does not create unacceptable adverse impact on the privacy and amenities of the occupiers of adjoining development and results in high quality and attractive living environments.

Other Matters

Ashdown Forest

33. The appeal site is within a zone of influence of the Ashdown Forest Special Area of Conservation (the SAC). It is a designated site⁹ due to the presence of European dry heath, North Atlantic wet heath and great crested newts. The heathland is vulnerable to atmospheric pollution, including vehicle emissions, in an area where increased traffic flows associated with new development would occur on roads which go through, or run adjacent to, the SAC. I return to the SAC in my decision below.

Interested parties

34. I appreciate that Hellingly Parish Council did not object to the proposal and no comments were made by local residents. Nonetheless, the absence of public objection does not mean the absence of planning harm.

Planning Balance

35. The Council agrees that it cannot currently demonstrate a five year housing land supply. However, in this appeal the application of policies in the Framework that protect areas of particular importance (an irreplaceable habitat) provide a clear reason for refusing the development. Accordingly, by virtue of footnote 7, Framework paragraph 11 d) is not engaged.
36. In terms of benefits, the provision of one dwelling would make a small contribution to housing supply in the district. It would also add to the stock of smaller homes and could be suitable for first time buyers, a small family or people wishing to down-size. This would be aligned with objectives of the Framework to significantly boost the supply of homes and meet the needs of people with specific living requirements. The social, economic and environmental benefits associated with converting and occupying the dwelling, including CIL¹⁰, Council Tax and New Homes Bonus payments, and some enhancement of the AW and LWS by new tree planting and associated biodiversity net gains, are factors which, commensurate with the modest scale of the proposal, carry moderate weight in the scheme's favour.
37. The development would be high-quality in external appearance and materials and subject to improvements, which could be secured by a condition, the access would be suitable. Subject to other conditions there would be adequate car parking and appropriate provision for refuse and recycling. There would be no adverse impact on living conditions. The absence of harm, or compliance with the Council's development plan and the Framework, in these regards are therefore neutral factors in my decision.
38. However, while the Framework recognises that small, windfall and brownfield sites, and efficient or effective use of land, can make an important contribution to meeting housing requirements, it also seeks to avoid housing in rural areas that is not well-related to services and facilities, does not enhance or maintain the vitality of rural communities and does not limit the need to travel, especially by car. The site would not be an appropriate location for housing in these terms. The Framework also seeks to conserve the natural environment

⁹ Conservation of Habitats and Species Regulations 2017 (as amended)

¹⁰ The Community Infrastructure Levy Regulations 2010 (as amended)

and the intrinsic character and beauty of the countryside, whereas the proposal would cause the loss or deterioration of irreplaceable habitat and no exceptional reason for the proposal has been justified. The proposal would conflict with the Council's relevant development plan policies and diminish the Council's objectives in these respects. These are consistent with aims of the Framework to balance meeting housing needs with the objectives of sustainable development. Consequently, I give substantial weight to these considerations.

39. Notwithstanding that the benefits would be aligned with the Framework and my finding on living conditions, and even if the scale of shortfall in the Council's five year housing land supply is as the appellant suggests (a 3.28 year supply), the adverse impacts of the proposed development would nonetheless outweigh the benefits.
40. Since I intend to dismiss the appeal for these reasons, there is no need for me to consider the SAC any further.

Conclusion

41. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
42. Therefore, for the reasons given above I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR