
Appeal Decision

Site visit made on 27 April 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/C1435/C/21/3266742

Land at Sale Lodge (Moons Farm), Sharpsbridge Lane, Piltdown, Fletching, East Sussex shown edged red on the plan attached to the notice

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Randle against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 3 December 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building ("the Building") for use as a dwelling in the approximate position shown coloured green on the plan attached to the notice.
 - The requirements of the notice are to: (i) Demolish, dismantle, break up and remove the Building from the Land (ii) Break up and remove all bases and foundations upon which the Building is sited from the Land (iii) Remove from the Land all domestic and residential furniture, fixtures and fittings and all personal effects and chattels associated with the use of the Building as a dwelling (iv) Remove from the Land all materials, rubble, rubbish, debris, tools, machinery and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by:
 - Replacing "Six (6) months" by "Twelve (12) months" as the time for compliance in section 5, due to the appeal succeeding to this extent under ground (g).
2. Subject to this variation the appeal is otherwise dismissed and the enforcement notice is upheld.
3. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

4. An application for costs was made by Wealden District Council against Mr John Randle. This application is the subject of a separate Decision.

Procedural Matters

5. The appellant withdrew a ground (c) appeal by letter on 7 April 2022.

6. It was agreed by the main parties that, following the withdrawal of the ground (c) matter, the appeal could be dealt with by way of written representations rather than an oral event. The Planning Inspectorate, on behalf of the Secretary of State, subsequently decided upon review that the written representations procedure was indeed the most appropriate procedure under which to determine the appeal.
7. Since the appeal was made, a revised National Planning Policy Framework (the Framework) came into force on 20 July 2021. The main parties were asked for comments and any received have been taken into account.

Ground (b)

8. For success under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that matters stated in the notice have not occurred.
9. The appellant says that, as a matter of fact, a new dwelling has been created from the conversion of an existing agricultural building rather than from the "erection of a building" as stated in the notice.
10. The agricultural building was a barn predominantly used for the storage of hay/straw in connection with the wider farmstead. It comprised of a steel portal frame, formed of twelve steel posts arranged in two parallel lines, which supported a steel framed pitched roof covered with corrugated sheeting. The barn was predominantly open on all sides and was erected on top of a concrete base. Three of the sides were partially covered with corrugated sheeting¹.
11. In developing the site the steel frame and corrugated profile sheet roof have been retained with new walls formed within the footprint of the barn set in from the perimeter of the structure. These are externally faced in vertical timber boarding which runs from ground level to connect to the underside of the roof which oversails the new walls. There are window and door openings in the long northwest and southeast elevations.
12. Copies of the 'as built' plans (though no structural drawings or calculations) have been submitted. I have considered the plans carefully, together with photographs taken by the Council of the new dwelling under construction including the foundations laid to support its new walls². Based on that consideration I find that very substantial elements, including those providing major structural support, have in fact been newly built and that the existing steel portal frame essentially serves, as before, to support the largely pre-existing roof of the barn that now serves as a roof to the dwelling.
13. Therefore, the development goes beyond what could be reasonably considered to be a true conversion and is in practical terms the erection of a new build dwellinghouse within the shell of the former barn, with only a modest amount of help from the original agricultural building. Accordingly, the appellant has not satisfied me to the required standard of proof that the erection of a building has not occurred.
14. The ground (b) appeal does not succeed on this basis.

¹ Statement of Common Ground; 2.2-2.3

² July 2019, reproduced within the Officer Report, and which leads me to disagree with the appellant's assertion that "The conversion here entailed no structural works or introduction of structural elements"

Ground (a) and the deemed planning application (DPA)

Main Issues

15. The main issues in the ground (a) appeal are:

- whether or not the appeal site is in a sustainable location for a new dwelling; and
- the effect of the appeal development on the character and appearance of the rural location within the Low Weald.

Reasons

Location

16. The appeal site is in close proximity to a farm centre operated by the appellant and is located in the countryside on Sharpsbridge Lane, south-east of Piltdown, an unclassified settlement clustered around the A272 (Goldbridge Road).

17. The appellant argues that the site is in reasonable proximity to the services and facilities of Piltdown, and is accessible by public transport routes along the A272 to larger settlements, including Uckfield.

18. I note that, in determining an application for a new detached dwelling made in 2020³, the Officer Report said in respect of Piltdown:

"The hamlet has expanded over a number of years, with light industrial units, offices, housing, shops, and garages centred on the Piltdown Man, public house and restaurant. The developing Ashdown Business Park in Maresfield is within 2 miles distance" and

"...there is a bus and good roads linking the site with nearby towns."

19. However, the application site in that case was situated within the hamlet itself and *"accessible to the village services by footpath"*. This is materially different to the appeal site which I found on my site visit to be approximately a 10-15 minute walk along reasonably narrow country lanes subject to the national speed limit and without footpaths or street lighting. This would not be conducive to walking, being particularly unamenable and potentially hazardous in dark or inclement weather, and particularly not for families with young children and users of pushchairs and wheelchairs.

20. Even were occupiers of the new dwelling minded to reach the bus stop in Piltdown on foot amid these issues, so as to reach a wider level of services and facilities associated with larger settlements, I note that the buses operate an infrequent hourly service during the day and not at all in the evenings.

21. As a result of these factors, occupiers of the new dwelling would be more likely than not reliant on the use of private vehicular transport to access a sufficient level of services and facilities. This is a significant adverse impact of the development given the Framework's advice⁴ that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

³ WD/2020/1130/F

⁴ Paragraph 105. In coming to this finding, I have taken into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

22. For these reasons, the appeal development is in conflict with Policies GD2, EN1 and DC17 of the Wealden Local Plan 1998 (LP) and Policy SPO7 of the Wealden Core Strategy Local Plan 2013 (CS) which together seek to restrict unsustainable housing development outside development boundaries and encourage reduction of the need to travel by car.
23. The appellant raises the approval of a dwelling near the appeal site⁵. However, the Council was clear in its Officer Report that the site was an *"unsustainable location for new residential development"*, with the occupier *"largely dependent on the use of the private car for most needs and services"*. That finding is consistent with my own finding in respect of the appeal site. Significantly, the Council was also clear that approval of that dwelling was influenced by the fact that the development was a conversion. This is materially different, given my finding on ground (b), to the case before me. Further, approval was given on the basis that there was no harm to character and appearance and that is also materially different to the case before me.

Character and Appearance

24. The development is located within Local Landscape Character Area (LLCA) Type C1 (Fletching and Piltdown) which is characterised by gently undulating wooded valleys within the Upper Ouse Valley County Landscape Character Area within the Low Weald National Character Area.
25. The appeal site is reflective of the character of the LLCA on gently undulating land in the corner of a field parcel which has a boundary hedge and tree line onto Sharpsbridge Lane. To the north and east of the appeal site is the open grassland of the field parcel. To the south are residential properties and across Sharpsbridge Lane to the west is a farm centre which comprises a main cattle building and associated infrastructure including feed clamps, feed yards and slurry lagoon.
26. The barn on the appeal site was of functional form and appearance, typical of agricultural storage buildings of its age. It was of a form, bulk and general design that was in keeping with its surroundings, including in relation to the agricultural buildings across the lane and would have been appreciated within that context – particularly when viewed in the same vista from the south where there are largely unobstructed views of buildings on both sides of the lane due to gaps in the hedge and tree line (partly due to site access).
27. The appeal scheme works have created a large 'hybrid' structure in the sense that it neither looks like an agricultural building or a dwellinghouse of a design which is consistent with the local character of residential built form⁶. It therefore sits uncomfortably within its setting and, given the clear visibility of this substantial massed structure, it significantly harms the character and appearance of the rural area and of the Low Weald.
28. For these reasons, the appeal development is in conflict with Policies GD2, EN8, EN27 and DC17 of the LP and Policy SPO1 and SPO13 of the CS which together seek to protect character and appearance, including of the Low Weald landscape. For the same reasons it is also in conflict with design and natural environment policies of the Framework (Chapters 12 and 15).

⁵ WD/2019/2439/F

⁶ Dwellings in the immediate area generally have a traditional, vernacular character with the use of red brick, clay tiled roofs and horizontal dark stained weatherboarding typical of a historic farmstead complex.

Planning balance and conclusion on ground (a) and the DPA

29. The Council and the appellant agree that the housing supply policies of the development plan are out-of-date when considered against the Framework, since the Council cannot demonstrate a 5-year housing land supply. The main parties agree that the Council can demonstrate a 3.66-year supply of deliverable housing sites.
30. In these circumstances, the presumption in favour of sustainable development set out in paragraph 11d)ii. of the Framework would ordinarily apply with permission granted unless the adverse impacts of the development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole ('the tilted balance').
31. However, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment (AA) has concluded that the plan or project will not adversely affect the integrity of the habitats site. A negative assessment in this regard would also provide a clear reason for refusing permission under paragraph 11d)i. of the Framework.
32. The appeal site lies within 10km of the Ashdown Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and also a Site of Special Scientific Interest (SSSI). The main parties agree that the development contributes to a significant effect on habitats sites due to the accumulative recreational impact of nearby new dwellings and in particular disturbance to ground-nesting birds. To this end, the appellant has submitted a Unilateral Undertaking (UU) providing for the payment of monies to the Council towards off-site mitigation pursuant to an agreed strategy with Natural England.
33. Notwithstanding the above, even were I to conduct an AA which concluded positively that the effect of the UU results in a development which does not adversely affect the integrity of the habitats sites, the effect of applying the 'tilted balance' would in any case lead me to refuse permission: The very modest delivery of a single home is a slight benefit of the development given the Framework's aim to significantly boost the supply of housing, which the Council are currently not doing due to the housing supply deficit. However, the adverse impacts of the development I have set out in my findings on the main issues would significantly and demonstrably outweigh that benefit when assessed against the policies in the Framework taken as a whole. As a result, the application of paragraph 11 does not indicate that permission should be granted.
34. The development does not accord with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, the ground (a) appeal fails and I shall not grant planning permission.

Ground (f)

35. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive towards achieving its purpose. It seems to me from the way the notice has been drafted that its purpose is to remedy the breach of planning control (rather than harm to amenity) by restoring the land to its condition before the breach took place.

36. The appellant says that the notice is excessive as the pre-existing steel frame and corrugated sheet roof could be retained. If so, as the purpose of the notice would be met notwithstanding the retention of these pre-existing elements, there might at first glance be a strong case for varying the requirements of the notice as suggested.
37. However, I note that the notice requires the demolition etc of 'the Building' (and other works in connection with it) and the notice is explicit upon its face⁷ that "the Building has been erected within the confines of an existing barn" (my emphasis). It is therefore my interpretation of the notice that 'the Building' solely relate to the works that have been undertaken within the confines of the existing barn – and consequently that the requirements relating to 'the Building' do not apply to elements such as the steel frame and corrugated sheet roof constituting the existing barn. This interpretation is supported by the Council's submissions:

*"It is therefore evident that the development comprises the erection of a self-supported new build dwelling which may best be described as within, and under, the remaining framework of the original barn."*⁸

38. Therefore, as the notice as drafted allows for the retention of existing barn elements in any respect, the notice requirements are not excessive and there is no basis for me to vary them. Accordingly the ground (f) appeal does not succeed.

Ground (g)

39. For an appeal to succeed under this ground, I must be satisfied that the 6-month period for compliance falls short of reasonable.
40. The dwelling is occupied by a family with young children and time is needed for the family to find another home, and then time is needed for quite some significant works to comply with the notice. I consider that 6 months is unreasonably short but that 12 months is a reasonable compliance period. Therefore the ground (g) appeal succeeds to this extent and I am varying the notice accordingly.

Conclusion

41. For the reasons given above I conclude that the appeal should not succeed save for ground (g). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR

⁷ Section 4.ii)

⁸ Paragraph 27, Proof of Evidence on behalf of Wealden District Council by Mr Declan Redman