



Appeal Decision

Site visit made on 18 August 2022

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

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/U1430/W/21/3285269

Land at Benham Cottage, Woodmans Green Road, Whatlington TN33 0NU

- 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 D Ridler against the decision of Rother District Council.
 - The application Ref RR/2021/1165/P, dated 4 May 2021, was refused by notice dated 16 September 2021.
 - The development proposed is described as '*Construction of a detached dwellinghouse, gardens, parking and use of existing access to A21 - resubmission of RR/2020/836*'.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a detached dwellinghouse, gardens, parking and use of existing access to A21 at Land at Benham Cottage, Woodmans Green Road, Whatlington TN33 0NU in accordance with the terms of the application, Ref RR/2021/1165/P, dated 4 May 2021, subject to the conditions set out in Appendix A.

Main Issues

2. The main issues in this appeal are:
 - (i) Whether the proposed development would be in a suitable location, with particular reference to policies concerned with housing in rural areas and the accessibility of services and facilities; and,
 - (ii) The effect of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty.

Reasons

Whether the proposed development would be in a suitable location

3. Policies OSS2 and OSS3 of the *Rother Local Plan Core Strategy 2014* (CS) and DIM2 of the *Development and Site Allocations Local Plan 2019* (DASA) address the use of development boundaries and the location of development. They indicate that planning applications should be considered in the context of the spatial strategy for the area. In this instance, the appeal site is located outside the defined development boundaries of the district. It is therefore within the countryside for planning policy purposes.
4. Policy RA3 of the CS states that the creation of new dwellings in the countryside will be allowed in 'extremely limited circumstances'. These include rural workers dwellings, the conversion of traditional rural buildings,

replacement dwellings and/or rural exception sites providing affordable housing. The proposal in this case does not fall into any of the exceptions listed.

5. Accordingly, the proposal would not be in a suitable location when applying policies concerned with housing in rural areas. As such, the proposed development would be at odds with, and harmfully undermine, the adopted and evidenced-based spatial strategy for rural housing in the development plan.

The accessibility of services and facilities

6. The appeal site is located on the periphery of the small settlement of Whatlington. This provides extremely limited services, including a car servicing and repairs garage, a fireplace shop, and a public house. More widely the Council confirm that day-to-day needs could be served by the settlements of Sedlescombe (about 1.8 miles away), Battle (approximately 2.7 miles away, Robertsbridge (roughly 3.3 miles away) or the coastal town of Hastings (around 7.8 miles distant)¹.
7. In theory it could be possible for future occupiers of the appeal property to walk or cycle to Whatlington or onto the further afield settlements. However the initial journey would take place along the A21, which is a major road between Hastings and northwards up to Tonbridge, and at this point there a large stretches of unlit grass verges. In practice, these would not be conducive to occupiers with young children, older persons or people with mobility issues.
8. There is the potential that future occupiers may cycle to the local settlement listed above to access day-to-day services, and/or onwards to train stations at Battle, Robertsbridge or Hastings. However, such options may well be limited by the level of fitness and proficiency for this mode of transport to be relied upon as an alternative to travel by a private motorised vehicle.
9. There is a bus stop located about 175 metres to the South of the appeal site adjacent to the public house. Notwithstanding my observations on the lack of all-weather pavements, it is clear from Appendix 1 of the Appellant's Statement that buses on the timetables presented run at around two-hour intervals. I have no reason, therefore, to disagree with the Council's evidence which suggests the frequency of the bus service is limited.
10. In light of these various factors, I find that the appeal site is not well placed, relative to day-to-day services and facilities, to accommodate a new dwelling. Future occupants would likely be inclined to travel by private motorised transport to fulfil most of their day-to-day service needs such as food shopping, travel to work, visits to doctors or hospitals, and travel to school for children for example. Such journeys to the facilities in nearby settlements would likely be short in duration, but daily vehicle movements would contribute to a high number of miles travelled with the associated carbon emissions.
11. I note that the Appellant proposes the installation of electrical vehicle charge points on the appeal site. But there is no guarantee that future occupiers would necessarily use such vehicles. Moreover, it would be possible to install such facilities to serve the existing property Benham Cottage should the appellant wish to. I am also mindful that there are around four existing dwellings or buildings close to the appeal site (as shown on drawing

¹ Local Planning Authority's Statement, Page 8, Paragraph 6.3.6

- 6458/LBP/A); the occupiers of which would also face similar accessibility issues and transport needs to those faced by future occupiers of the proposed dwelling.
12. Moreover, as set out at Paragraph 105 of the *National Planning Policy Framework* (the Framework), opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. Existing residents of Whatlington will presumably also utilise a number of transport solutions to meet their day-to-day needs. The fact remains that public transport options in rural communities remain limited, and in such circumstances it is a reality that occupiers of dwellings in rural areas will be predisposed towards using private motor vehicle usage.
 13. In summary, the appeal site is not entirely well-placed for future residents to access day-to-day services and facilities other than by traveling via private motorised transport. This would undermine Policy TR3 of CS, which seeks to minimise the need to travel. Nevertheless, the harmful impact is partially offset by the potential for future occupants to occasionally walk or cycle to nearby settlements (or cycle to train stations). These factors moderately mitigate the harm that would arise from the conflict with Policy TR3.
 14. The Council has drawn my attention to Paragraph 80 of the Framework, which seeks to avoid the development of isolated homes in the countryside. To that end they have also drawn my attention to caselaw² which indicates that a decision-maker is required to consider whether the development would be physically separate or remote from a settlement rather than being isolated from other dwellings.
 15. In this case, the proposed dwelling would be located between two existing dwellings and in a small cluster of dwellings on the periphery of Whatlington. Whatlington itself does not have a defined settlement boundary, but from my site inspection it appears as a generally ribbon-like settlement that is principally focussed around a triangle of development straddling the A21 (Woodmans Green Road) and Whatlington Road with large areas of open countryside between buildings.
 16. This pattern of development extends to at least the Parish Church of St Mary Magdalene and Whatlington Village Hall to the south, and Benham and Willow Cottages to the north; on either side of the proposed building. I am reinforced in my assessment of the facts on the ground by the fact that, whilst not determinative in itself, residents of nearby dwellings give 'Whatlington' as part of their address. This suggests that those occupiers feel a part of the settlement and community of Whatlington. As such I do not find, as a matter of fact and planning judgement, that the development would result in a new isolated home in the countryside under Paragraph 80 of the Framework.

The impact on the character and appearance of the area

17. The appeal site is located towards the northern edge of Whatlington and would be accessed from the A21. This part of the street scene is characterised by loosely arranged and irregularly sited clusters of development that intersperse tracts of open countryside. The appeal site is located within one of these clusters, with the proposed dwelling situated between Benham Cottage to the

² *City and Country Bramshill Limited v SoS HCLG & Ors* [2021] EWCA Civ 320 and *Braintree District Council v SoS for CLG & Ors* [2018] EWCA Civ 610

south and Willow Cottage / Two Jays Cottage to the north. In this respect, the appeal site is viewed as being within an existing area of development.

18. The appeal site would utilise an existing access of the A21, with metal access gates supported by brick piers and an area of hardstanding visible from the main highway. The site also contains an outbuilding which would be demolished to facilitate the proposal and the dwelling of Benham Cottage which would be retained on the site. The site already has a developed appearance, including an existing access off the public highway, areas of hardstanding and domestic paraphernalia. These existing features would limit any urbanising impacts flowing from the appeal scheme as they are not uncommon elements of residential developments.
19. The proposal in this case seeks the erection of a detached dwellinghouse, but on a larger footprint and height compared to the existing outbuilding. Nonetheless, as is evidenced on drawings 6458/21/3/A and 6458/21/1/A the proportions of the dwelling would reflect the height of the Willow and Benham Cottages located to the north and south respectively. Whilst the depth of the proposed building would be slightly greater it would not be unusual given the square form footprint of the proposal. Moreover, the use of clay tiles at upper floor level, brick work on the ground floor with clay roof tiled roof would not be out of keeping with that found in this part of Sussex, or the immediate area as this is found at Willow Cottage to the north. The combination of these factors would soften the impact on the wider landscape and minimise the sense that there had been an urbanisation of the site.
20. Given the existing character of the appeal site and its environs, the modest scale and massing of the dwelling relative to the existing buildings it would be located between, I do not consider the proposal would harm the character and appearance of the area or the landscape character and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB).
21. In terms of the rear garden space, due to the shape of the site this would vary in length from around 11.1 metres to 7.5metres (as shown on drawing 6458/21/1/A). Policy DHG7 of the DASA sets out that '*private rear garden spaces of at least 10 metres in length will normally be required*' with the supporting text indicating that '*Gardens should be of an appropriate size to provide sufficient, useable amenity space. This will normally mean a minimum rear garden depth of 10 metres. This requirement has a dual purpose, as it also aids the achievement of appropriate separation distances between dwellings to maintain levels of privacy and to prevent a cramped form of development that could otherwise adversely affect the amenity of existing and future residents.*'
22. Whilst I acknowledge that the length of 10 metres would not be consistently provided across the whole of the rear garden area, it is clear that both the proposed dwelling and Benham Cottage would be served by useable areas of private garden. Moreover, there are no immediate residential dwellings located to the rear of the appeal site – with trees along the rear boundary; and thus there is little risk that the proposal would result in a cramped form of development or reduce the privacy of nearby residential occupiers. As such the proposal would not conflict with the aims or content of this policy in this instance.

23. With regard to the size of parking spaces, the Council confirmed in its Statement³ that the drawing contained in Appendix 5 of the Appellant's Statement of Case satisfied its concerns the parking spaces were insufficiently sized. In the absence of significant evidence to the contrary, and in view of the fact no objections were raised by the local highways authority, I see no reason to disagree and find that the proposal would provide sufficient parking for the development proposed.
24. Accordingly, the proposal would have a neutral impact on the character and appearance of the area and therefore a conflict with Policies OSS4, BA1, RA3 and EN1, EN3 of the CS and Policies DEN1, DEN2 and DHG7 of the DASA on this issue would not occur. These policies seek to secure development that does not detract from the character and appearance of the locality, the setting of the town and provide stewardship to the distinctive local landscape.

Other Matters

25. A number of other matters have been raised by interested parties. I now consider these before considering planning conditions and then coming to an overall conclusion.
26. In terms of the right of way to Knell Field from A21 and/or to Dorrels Farm and Hancox, this is a private matter between the respective parties. The granting of planning permission does not override any existing rights in this respect.
27. With regard to the potential loss of light into kitchen at Willow Cottage and its garden, the proposed dwelling would be located around 14 metres from the centre of the building. This would reduce to around 10 metres between the respective flank walls. The main openings at Willow Cottage are located in the front and rear elevations. Given these various factors; the separation distance between the buildings and the lack of significant openings, I do not find that the proposal would lead to a materially harmful loss of light for the occupiers of adjacent dwellings – whether indoors or in the rear garden area.
28. Similarly, in terms of overlooking of the rear garden of Willow Cottage, the proposed dwelling would be positioned at an angle to that dwelling. As such occupiers of the proposed dwelling would only be able to overlook the rear garden of Willow Cottage at oblique angles and over some distance. In this respect, I do not find that any overlooking arising would be materially harmful.
29. With regard to the lack of ecological information relating to bats and Great Crested Newts, I have been provided with very little detailed evidence that supports the assertion that either protected species or their habitats are present on the appeal site – for example there are no photos or surveys demonstrating that such species are present. Moreover, most of the site is covered by hardstanding, which generally has a low level of biodiversity value. Given the paucity of evidence in this case, I do not find that there is a reasonable likelihood of protected species being present on site.

Planning Balance

30. The Council confirms that it cannot currently demonstrate a 5-year supply of housing⁴. The Council confirmed that the housing supply was at around

³ Local Planning Authority's Statement of Case, Page 15, Paragraph 6.4.7

⁴ Ibid, Page 15, Paragraph 7.1

2.89 years in April 2021⁵. As such, Paragraph 11d) of the *National Planning Policy Framework* (the Framework) is engaged as an important material consideration. I have not identified harm to the High Weald AONB landscape. Consequently, the application of policies in the Framework aimed at protecting them do not provide a clear reason for refusing the development proposed. Instead, planning permission should be granted unless the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.

31. The appeal scheme would represent residential development in the countryside contrary to Policies OSS2, OSS3 and RA3 of the CS and Policy DIM2 of the DASA. However, there remains a pressing and urgent need for the housing deficit in this district, which arises from a lack of identified supply against housing projections, to be met. I have seen little which suggests that the Council are likely to address the shortfall in the near future without releasing some sites in the countryside. Consequently, the appeal site, which is viewed as infill of an existing cluster of development, is well placed to contribute to housing supply through redevelopment. As such, I afford the conflict with the aforementioned policies limited weight in this case.
32. The appeal site is not well placed for future residents to regularly access everyday facilities and services without using private motorised transport. However, for the reasons I have already considered above the harm would be moderately mitigated. Nevertheless, the conflict with Policy TR3 is afforded moderate weight because this policy is broadly consistent with the Framework's aim to promote and encourage sustainable transport.
33. Turning to the benefits. The delivery of a new home would boost the supply of housing. The boost would be modest – with one new dwelling; but it is still a point of moderate weight in favour of the proposal because the Council are at a point in time when the shortfall in the housing land supply is notable. This needs to be considered in the context of the Framework's aim to significantly boost the supply of homes as set out in Paragraph 60 of the Framework, which the Council is currently failing to do due the housing land supply deficit.
34. The appeal scheme could support the retention of services and facilities in the area as future occupants of the appeal scheme may spend locally. Given that only a single dwelling is proposed in this case, these benefits would be of a modest scale. Nonetheless, the benefits to the local community would be a matter of limited weight in favour of the proposal. The appeal scheme would also support the construction industry, albeit in a short term and modest way given the small size of the development.
35. Consequently, when the proposal is assessed against the policies in the Framework taken as a whole the adverse impacts of the appeal scheme, to which I afford limited to moderate weight, would not significantly and demonstrably outweigh the benefits of the proposal, to which I have also afforded limited to moderate weight. This is a material consideration of some force that indicates the proposal should be permitted in spite of the conflict with the development plan.
36. A number of other planning appeals have been referred to by the Appellant with the Council having commented on them. The circumstances presented

⁵ Ibid, Page 4, Paragraph 5.6

within them are not entirely similar to the proposal before me. For example in two of the example appeals, the Inspectors identified harm to the AONB. I concur with the Council's assessment that '*none of the mentioned cases are considered to be directly comparable to the appeal proposal*'⁶. These cases do not, therefore, alter my assessment of the planning merits of the proposal before me.

Conditions

37. The local planning authority and interested parties suggest a number of conditions. I consider these in light of Paragraph 56 of the Framework and the national Planning Practice Guidance and the use of planning conditions. The Appellant has confirmed in writing that they agree with the suggested pre-commencement conditions, should they meet the above requirements.
38. Conditions requiring the proposed development to be started within three years and in accordance with submitted drawings are necessary for the avoidance of doubt and to provide certainty.
39. A condition requiring the submission of a Construction Management Plan is necessary to ensure that through-traffic using the A21 is not unnecessarily impeded. Similarly, conditions requiring that gated access is provided and installed, that surface water run-off is directed to within the appeal site, the provision of parking and turning areas, and that only the existing access is used off the A21, are necessary to ensure that any risks to road safety are minimised. A condition requiring that the internal layout is provided as shown is not necessary as that is shown on the approved drawings.
40. The submission and agreement of details of materials and landscaping are necessary and reasonable to ensure that the proposal remains in keeping with the location within the AONB and general street scene. The use of obscured glazing in upper floors of the proposed side elevations is necessary in order to protect the privacy of neighbouring occupiers.
41. Given the space around the proposed dwelling, it is not necessary for a planning condition to be imposed requiring the exact location and retention of waste and recycling area. Conditions requiring water efficiency measures, and accessible and adaptable dwellings under the Building Regulations are necessary and reasonable to accord with Policies SRM2 and OSS4 of the CS and Policies DHG4 and DRM1 of the DASA, which seek to achieve certain sustainability standards.

Conclusion

42. In conclusion, the proposed development would not accord with the development plan, but there are other considerations which outweigh this finding in this instance. Accordingly, the appeal should succeed.

C Parker

INSPECTOR

⁶ Ibid, Pages 11-13

Appendix A – 3285269 list of conditions imposed

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:

6458/LBP/A, 6458/4/B, 6458/6/A, 6458/21/1/B, 6458/21/2/A, and;
6458/21/3/A.
3. No above ground development level shall take place until samples/details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. No part of the development hereby permitted (including site preparation or clearance) shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved CMP.
5. No part of the development hereby permitted (including site preparation or clearance) shall commence until a detailed scheme of proposals showing the gated access arrangements to the development site are submitted to and approved in writing by the local planning authority.
6. No part of the development hereby permitted shall be brought into use until such time as the approved gated access arrangements are implemented in full and are operational and thereafter maintained in working order in perpetuity.
7. Any external surfacing materials and layout for hardstanding shall be designed so that no storm water run-off arising from the development shall be directed onto the public highway and there should be no connections into the highways drainage systems network from the development and its drainage systems.
8. The new dwelling shall not be occupied until the parking and turning areas for both dwellings have been provided in accordance with the approved plans and the areas shall thereafter be retained for that use and shall not be used other than for the parking and turning of motor vehicles.
9. No part of the site shall be accessed (either temporary or permanently) to or from the A21 at any other location other than the existing A21 site access.
10. No development above ground level of the site shall take place until the hard and soft landscaping details of the site have been submitted to and approved in writing by the local planning authority. Such works shall be carried out as approved.
11. At the time of construction and prior to the first occupation or use of the dwelling hereby approved, the glazing at first floor level within both side elevations serving bedroom 1 and bedroom 2, as indicated on the approved drawing no. 6458/21/2/A dated 1/4/21 shall be non-openings and glazed with obscure glass of obscurity level equivalent to scale 5 on the Pilkington Glass Scale and shall thereafter be retained in that condition.

12. The dwelling hereby approved shall meet the requirement of no more than 110 litres/person/day water efficiency set out in Part G of Schedule 1 of the Building Regulations 2010 (as amended) for water usage. The dwelling hereby permitted shall not be occupied until evidence has been submitted to and approved in writing by the local planning authority to demonstrate that the dwelling(s) has been constructed to achieve water consumption of no more than 110 litres per person per day.
13. The dwelling hereby approved shall not be occupied until it has been constructed in accordance with Part M4(2) (accessible and adaptable dwellings) of Schedule 1 of the Building Regulations 2010 (as amended) for access to and use of buildings.

*** END OF CONDITIONS ***