



Appeal Decision

Site visit made on 13 September 2022

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/E2205/W/21/3286599

Lower Woolwich, Mounts Lane, Rolvenden, TN17 4NX

- 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 Hillier against the decision of Ashford Borough Council.
 - The application Ref 21/00887/AS, dated 17 May 2021, was refused by notice dated 27 July 2021.
 - The development proposed is an access driveway to serve Lower Woolwich, including change of use of associated agricultural land.
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Decision

1. The appeal is allowed and planning permission is granted for an access driveway to serve Lower Woolwich, including change of use of associated agricultural land, at Lower Woolwich, Mounts Lane, Rolvenden, TN17 4NX in accordance with the terms of the application, Ref 21/00887/AS, dated 17 May 2021, and the plans submitted with it, subject to the conditions in the schedule below.

Preliminary Matters

2. In the heading and decision above, I have used the application date and site address as stated on the application form. These differ slightly from the details provided on the appeal form, but not to a degree which raises any uncertainty as to the site address or application in question.
3. The reason for refusal refers to the National Planning Policy Framework 2019 (the Framework). The Framework had been amended on 20 July 2021, shortly before the Council's decision was issued, although the paragraphs relating to development within an Area of Outstanding Natural Beauty were not materially amended, insofar as is relevant to this proposed development. I have referred to the 2021 version when considering the appeal.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area, including whether it would conserve or enhance the natural beauty of the High Weald Area of Outstanding Natural Beauty.

Reasons

5. The appeal site lies within the High Weald Area of Outstanding Natural Beauty (AONB). Section 85 of the Countryside and Rights of Way Act 2000 (CROW Act) requires that decision-makers have regard to the purpose of conserving and enhancing the natural beauty of the AONB. With this in mind, and in

accordance with paragraph 176 of the Framework, I have attributed great weight to conserving and enhancing the landscape and scenic beauty of the AONB.

6. The High Weald AONB Management Plan 2019-2024 includes a statement of significance, identifying features which together comprise the natural beauty of the High Weald. These include a dense network of historic routeways, now used as roads, tracks and paths, together with a pattern of small, irregular fields, used for grazing and bounded by hedgerows and woodland. Farmsteads surrounded by open fields are part of the historic settlement pattern.
7. Lower Woolwich lies within open countryside around Mounts Lane, a narrow but well-established track with loose, hardcore surface. Mounts Lane currently serves a handful of residential properties and the surrounding farmland. I have not been provided with clear evidence as to whether it is classified as a historic routeway, although I note that it leads to a cluster of Grade II listed farm buildings, typical of the historic farmsteads described in the AONB Management Plan, which indicates some degree of historic significance in the landscape.
8. The appeal site comprises a long, narrow strip of land across fields and paddocks. These are part of a mosaic of small fields, interspersed with hedgerows, field trees and small pockets of woodland, typical of the AONB. Although there are a number of scattered dwellings and farmsteads, the surrounding landscape has a largely undeveloped, pastoral character. The rolling topography opens up some attractive long views, although in places these are curtailed by hedgerows and pockets of woodland.
9. The intended use of a permeable sub-structure beneath a grass and topsoil surface would minimise any contrast between the proposed driveway and the adjacent fields, which are laid to grass. Since the surface would not be built up above the adjacent ground level, it would conserve the existing rolling topography. The proposed change of use of agricultural land applies only within the application site and there is no indication of any intended change to the use or appearance of the grazing land to either side.
10. The proposed alignment makes use of existing gates, eliminating any need to create new openings in the hedgerows. The fields to either side of the appeal site are already enclosed with stock-proof fencing of varied design and materials. Subject to approval of an appropriate detailed design, the proposed realignment of fencing and gates to define the driveway would have a neutral effect on the surrounding landscape.
11. Since a dense network of routeways is an established feature of the landscape, and this particular route would be visually unobtrusive, the proposed driveway would have a neutral effect on the natural beauty of its surroundings. The proposed materials also ensure it would be visually subservient to the more historic track along Mounts Lane, which would be retained. This would prevent any potential dilution of the historic pattern of routeways in the AONB.
12. The small number of trees proposed for removal are part of a much larger clump of trees and shrubs around the curtilage of Lower Woolwich. They are outside the application site and their proposed removal is not a consequence of the proposed development. As such, the proposed development would not have any adverse impact on the integrity of this tree group or its contribution to the landscape.

13. While the plans indicate some encroachment into root protection areas, in each case there are existing and well-established hard surfaces within those areas. Therefore, any additional disturbance as a result of the proposed development would be minimal. Subject to conditions to ensure appropriate working practices, the proposed development would not erode the existing pattern of small woodlands and hedgerows which contributes to the wider landscape.
14. Although there is a public right of way in the vicinity of Lower Woolwich, the appeal site is screened from this location by the topography and by existing mature trees and hedgerows. In any case, the proposed driveway would not be visually intrusive, for the reasons outlined above. Other than for a short period during construction, there would be no adverse impact on tranquillity experienced by those accessing the landscape, since the driveway would serve an existing dwelling and the likely level of vehicular movement would be unchanged.
15. Notwithstanding its length, the development would be neutral in landscape terms and therefore would not have any adverse impact on the purposes for which the AONB is designated. Therefore, I do not consider that it would amount to major development for purposes of paragraph 177 of the Framework or the similar tests in Policy ENV3b of the Ashford Local Plan to 2030.
16. For the reasons above, I therefore conclude that the proposed development would not harm the character and appearance of the area and that it would conserve the natural beauty of the High Weald Area of Outstanding Natural Beauty. It would be in accordance with Policies SP1, SP6 and ENV3b of the Ashford Local Plan to 2030, adopted February 2019, Policies RNP1 and RNP3 of the Rolvenden Neighbourhood Plan 2013-2030, made December 2019, and with relevant paragraphs in the Framework. These policies require, amongst other things, that proposed development conserves or enhances the natural beauty of the AONB, having regard to the contents of the AONB management plan.

Other Matters

17. Lower Woolwich is a Grade II Listed Building, as is the timber framed barn in its grounds and an adjacent dwelling known as Lower Murgie Oast. The Council does not allege that the development would have an adverse effect on the listed buildings, their settings or any features of special architectural or historic interest which they possess. Although the Council's Officer Report does not explicitly mention the timber framed barn, its relationship with the proposed access driveway is similar to that of the other two listed buildings. Having considered the development and visited the site, I concur that the appeal proposal would preserve the listed buildings, their settings and their significance as designated heritage assets.

Conditions

18. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result I have amended some of them for consistency and clarity and have omitted others.
19. A condition specifying the approved plans is necessary as this provides certainty. I have adapted the Council's suggested condition regarding external

materials, to ensure that both the proposed method of construction, and the proposed topsoil and grass surface are explicitly required. This is to ensure that the access driveway is constructed using a system which is designed to support effective retention of a grass surface once in use. This is necessary to conserve the landscape in the long term, since an alternative surface finish would be more visually intrusive.

20. A condition requiring compliance with the proposed tree protection measures is justified to prevent damage leading to loss of trees in the vicinity of the proposed access driveway. Although these trees are not individually protected, they form part of the pattern of woodland and hedgerows which is a key characteristic of the AONB. Therefore, measures to protect the trees from construction damage are required, so as to conserve the natural beauty of the AONB. A pre-commencement condition is justified, since the first stages of development would involve disturbance of the ground which would be potentially harmful to root systems. The appellant has provided formal agreement for this pre-commencement condition, if the appeal is allowed.
21. For a similar reason, a condition to secure use of a no dig method of construction within root protection areas is justified. While the plans indicate that no ground disturbance is intended within these areas, the condition would come into effect if it becomes apparent that the existing hard surfaces need to be disturbed in order to implement the development.
22. The erection of fences and gates does not necessarily require planning permission, if covered by permitted development rights. However, in this case the requirement for additional fencing is a direct consequence of the proposed development. Given the lack of visual contrast on the ground, fencing would be needed to define the route to be used by vehicles. It would also be needed to maintain separation between the driveway and the adjacent grazing land, to protect livestock. As such a condition relating to the erection and design of fences and gates meets the test of being fairly and reasonably related to the development being permitted.
23. In order to conserve the natural beauty of the AONB, it is important that any new fencing and gates are of a type typical of a rural, agricultural landscape. Only limited details of the proposed design have been provided, therefore further details are required through submission and approval of details, to ensure that the fencing and gates are of an appropriate design.
24. I have amended the Council's proposed condition to encompass gates as well as fences, since appropriate design of these would be equally important in terms of conserving the natural beauty of the AONB. However, I do not consider that approval of details is required prior to the commencement of development, so long as they are submitted and approved prior to the erection of any fencing, gates or other means of enclosure. Should the appellant ultimately choose not to enclose the driveway with fencing, this would be equally acceptable in terms of conserving the natural beauty of the AONB, therefore I have not included a retention clause.
25. I am mindful that the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. In this case, the change of use from agricultural land to a domestic access raises a risk of future alterations to fences and gates, potentially introducing less appropriate designs more suited to an urban residential

setting. This would be harmful to the natural beauty of the AONB. Therefore, maintaining control over future alterations to means of enclosure is justified in this particular context. However, this would only apply to the land edged in red and not to the surrounding land.

26. No external lighting is proposed on the application drawings, but the proposed domestic use of the driveway may encourage installation of such lighting in future, either for decorative purposes or to highlight the driveway for drivers. Since the development includes the erection of fences and gates, it also introduces structures to which lighting could be attached without necessarily requiring planning permission in its own right. External lighting would be potentially harmful to wildlife (as highlighted by the Kent County Council Biodiversity Officer) and could also undermine dark skies within this part of the AONB, contrary to the objectives of the AONB Management Plan. Therefore a condition requiring approval of any future lighting installation is justified against the tests in the Framework, being both fairly and reasonably related to the development and necessary to conserve the natural beauty of the AONB.
27. The recommendations in the Ecology Partnership Preliminary Ecological Appraisal (PEA) cover an extensive area, including land outside the appeal site. In particular, recommendations relating to the consequences of tree felling are not related to the proposed development, since the trees to be removed are outside the appeal site and their removal would not be a consequence of the development. Similarly, the mammal holes referred to in the PEA are within the residential garden and would be unaffected by the proposed development.
28. The evidence indicates low risk of protected species being present or affected by the proposed development. The extent of ground disturbance would also be relatively limited, given the nature of the proposed development. As such, the evidence does not justify the imposition of conditions requiring further survey work or specific biodiversity protection measures during construction. The species in question are protected by other legislation and these specific requirements would be disproportionately onerous based on the evidence.
29. While the ecological enhancements suggested in the PEA may be worthwhile in their own right, they are not related to any ecological impacts arising from the proposed development.
30. For the above reasons, conditions relating to protection of biodiversity and ecological enhancements, as suggested by Kent County Council's Biodiversity Officer, would not meet the tests in the Framework as they are not fairly and reasonably related to the development being permitted.

Conclusion

31. For the above reasons, having had regard to 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 set out in the schedule below.

Jane Smith

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans: 1762-01, 1762-02, 1762-03.
3. The development shall be carried out in accordance with the method of construction specified in the application, including formation of a topsoil and grass surface prior to the first use of the driveway to access the dwelling, and shall thereafter be so maintained.
4. No site clearance, preparatory work or development shall take place until tree protection fencing has been erected in accordance with the specification in the Arboricultural Implications Assessment, Ref J56.96 dated 19 December 2019. Thereafter, the tree protection fencing shall be retained, and the associated tree protection measures specified in the Arboricultural Implications Assessment observed, for the duration of construction of the access driveway hereby permitted.
5. Any construction works undertaken within Root Protection Areas (RPAs) identified in Appendices 2 and 3 of the Arboricultural Implications Assessment, Ref J56.96 dated 19 December 2019 shall be constructed to a no dig design following the recommendations in BS 5837:2012 (Trees in relation to design, demolition and construction – recommendations) and APN 12 – Through the trees to Development (Arboricultural Advisory and Information Service). No works within RPAs shall begin until such design has been submitted to and approved in writing by the Local Planning Authority. Such design drawings shall include cross sections showing the method of construction and demonstrating that the levels required are achievable without significant changes within the RPAs of retained trees. The construction of the driveway approved shall then only be carried out in accordance with the approved specification.
6. Prior to the erection of any gates, fences or other means of enclosure within the site, details of such gates, fences or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority and the development shall be implemented in accordance with those details, once approved.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no development shall be carried out within Class A of Part 2 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior approval of the Local Planning Authority.
8. No external lighting shall be installed on the site without the prior written approval of the Local Planning Authority.