



Appeal Decisions

Site visit made on 31 October 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal A: APP/C1435/C/20/3256516

Land at Carewell House, Chalvington Road, Golden Cross, Chiddingly, East Sussex BN27 3SS

- 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 Ms Carla Dellow against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 24 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of improvement works to the access approved under planning reference WD/2000/2266/F including the provision of a formalised vehicular crossover, extension of track, erection of brick gate piers with electric gates, erection of brick walls, and the associated laying of a block paved driveway and parking/turning area.
 - The requirements of the notice are: (i) Break up and remove the block paving from the vehicular crossover. (ii) Demolish, dismantle and remove the brick gate piers and electric double gates (including all wiring and electricity supply to the gates), and brick walls, from the land, retaining the accessway as approved under WD/2000/2266/F. (iii) Break up and remove the block paved driveway and parking/turning area from the Land. (iv) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: APP/C1435/C/20/3256518

- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from equestrian and agricultural use to a mixed use for equestrian and agricultural use, for the stationing of a mobile home for business use as a beauty salon, and for residential purposes.
 - The requirements of the notice are: (i) Stop using the Land for the stationing of a mobile home for business use as a beauty salon. (ii) Disconnect and remove all services and facilities serving the mobile home. (iii) Demolish, dismantle and remove the mobile home from the Land. (iv) Break up and remove from the Land the raised decking platform and associated steps and handrails and any blockwork foundations upon which the mobile home is sited. (v) Remove all materials, rubble, rubbish, debris, tools and equipment from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/C1435/C/20/3256519

- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from use as a paddock to use as domestic curtilage land.

- The requirements of the notice are: (i) Stop using the Land as domestic curtilage land. (ii) Remove from the Land all domestic and residential effects, chattels and paraphernalia including, but not limited to, all lighting columns statues and decorative water feature. (iii) Break up and remove the block paving driveway and parking area. (iv) Remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/C1435/W/20/3252311

- 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 Ms Carla Dellow against the decision of Wealden District Council.
 - The application Ref WD/2017/2890/FR, dated 18 December 2017, was refused by notice dated 20 March 2020.
 - The development proposed is: Change of use of paddock to residential, erection of ancillary building for home business and associated crossover to existing access.
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Appeal E: APP/C1435/W/21/3267336

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The application Ref WD/2020/1010/O, dated 20 May 2020, was refused by notice dated 21 August 2020.
 - The development proposed is: Outline application for residential development for 4 dwellings.
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the notice upheld.

Appeals B and C

2. The appeals are dismissed and the notices are upheld subject to corrections.

Appeals D and E

3. The appeals are dismissed.

Preliminary Matter

4. Appeal E relates to the refusal of permission for an outline application with all matters reserved. I have however had regard to the illustrative drawings before me for the purposes of my assessment.

The Enforcement Notices

5. The Appeal B notice relates to the use of the land for the stationing of a mobile home (caravan) for business use as a beauty salon and for residential purposes. The first requirement then only requires that the business use as a beauty salon stop. The notice then requires, amongst other things, that the mobile home be removed from the land. Given the requirements of the notice should mirror the allegation, and in light of the requirement to remove the caravan from the land, injustice to the parties does not arise from correcting the notice to also require the cessation for residential purposes.

6. The Appeal C notice relates to a change of use of land from paddock to use as domestic curtilage land. However, curtilage is not a use of land, and therefore the notice should be directed against the residential use of the land. Injustice to the parties however does not arise from making corrections to change the reference from domestic curtilage to residential use.

The ground (a) appeals and refusal of planning permission – Appeals A, B, C and D

Main Issues

7. The main issues are the effect of the developments on the:
- i. character and appearance of the area, including suitability of location; and,
 - ii. highway safety.

Reasons

8. The deemed planning applications before me relate to works undertaken to the access, including gates, piers, walls and hardstanding, the stationing of a caravan for use as a beauty salon and residential purposes, and, the residential use of the land, thereby extending the garden of Carewell House. The refusal of planning permission relates to ostensibly the same developments, albeit the caravan is described as an ancillary building for use as a home business.

Character and appearance, including location

9. The site amounts to a paddock of approximately 0.2ha between the adjoining dwelling and a commercial stables. The site is located in the Low Weald landscape character area. It is located in rural surroundings outside of a settlement boundary.
10. The landscape of the Low Weald is generally more open than surrounding areas. Whilst the site itself consists of considerable soft landscaping, the caravan is not well screened within the site. Indeed, even though it is located to the rear, it is a conspicuous timber clad structure, surrounded by a significant area of raised timber decking, including a water feature. Around this is then a large area of paved hardstanding.
11. I could also see during my site visit evidence of the wider domestication of the site, including ornamental planting and lighting. This extends to the boundary treatment associated with the access, with high brick piers and solid timber gates. The scale of the residential use is then at-odds with the pattern and scale of residential development in the immediate area.
12. I therefore do not accept there has been a beneficial effect on the landscape of the Low Weald or that it sits far better with surrounding residential gardens. Indeed, the developments are conspicuous and do not respect the character of adjoining development. They are accordingly detrimental to the character and appearance of the surrounding rural locality and not well designed or sensitive to their context.
13. Moreover, part of the development at the site clearly relates to a business use, namely the use of the caravan as a beauty salon. It is then located a

considerable distance from the dwelling, and at the time of my site visit was also equipped for residential occupation comprising a kitchen, living space and bedroom complete with a double bed. It is situated on a separate parcel of land, namely a paddock, and so cannot be reconciled as merely a home business or ancillary residential use.

14. Given the rural character of the area, I am not persuaded the site is in a suitable location for a business use as a beauty salon, and there is limited evidence before me about the existing scale or turnover of the business. It is therefore not a form of sustainable growth in this rural area with very limited evidence that it is assistive in the development of the rural economy or reduces the need to travel by car.
15. I conclude the developments are harmful to the character and appearance of the area and not in a suitable location in contravention of Saved Policies EN8, EN27, EN29, DC19, GD2 and EN1 of the adopted Wealden Local Plan, 1998 (the WLP) and Policies SPO1 and SPO7 of the adopted Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan, 2013 (the CS). These policies, amongst other things, require development to conserve the low rolling agricultural character of the landscape, respect the character of adjoining development in terms of scale, minimise light spillage, not be detrimental to the rural setting, be in a sustainable location, assist the development of the rural economy and reduce the need to travel by car.
16. For the same reasons the developments contravene the achieving well designed places and supporting a prosperous rural economy objectives of the National Planning Policy Framework (the Framework) and the adopted Wealden Design Guide Supplementary Planning Document, 2008. This is a planning harm to which I attach considerable weight.

Highway safety

17. I could see during my site visit that Chalvington Road is largely straight in this location, albeit with a 60mph speed limit.
18. I do not accept the use of the site would not result in an increase in vehicular trips and there is little evidence that customers would undertake linked trips.
19. However, speed survey data has been provided which evidences a reduced visibility splay requirement of 114m and 123m respectively and I could see during my site visit that these can be provided, satisfactorily, despite the vertical alignment of the highway. Moreover, on-balance there is adequate parking and turning space within the site given the likely limited number of vehicles at the site at any given juncture.
20. Whilst the validity of the speed survey data is questioned, an access has previously been granted planning permission and it is also in close proximity of that used by a commercial stables. There is also limited evidence of accidents in the vicinity of the site. Accordingly, subject to the imposition of suitably worded planning conditions the residual cumulative impacts on the road network would not be severe. That there is not a highway benefit arising does not detract from my findings.

21. I conclude the developments would not be harmful to highway safety and so would accord with Policies TR3 and TR16 of the WLP and SPO12 of the CS and the Framework. These policies, amongst other things, require development to provide a satisfactory means of access, the on-site provision of vehicle parking and servicing and ensure that Wealden remains a safe place. I attach neutral weight to the absence of this planning harm.

Other matters

22. I appreciate matters have been on-going for a considerable period of time and I have some sympathy for the appellant in this regard as they feel they have tried to work with the Council in light of a perceived changing policy position. However, and accordingly, a temporary planning permission is not required to demonstrate any form of need and neither would it assist to address the harm I have identified.
23. It is said there was previously a caravan at the site, albeit there is very limited evidence before me that there has been a caravan lawfully stationed at the site. I also appreciate there is no harm to neighbouring living conditions. These are however only neutral matters.
24. I do not accept that were the site to remain in agricultural use, it follows that the appellant could erect a permanent larger building for storage purposes.

Planning balance

25. I have found harm to the character and appearance of the area which attracts considerable weight. That there is not highway safety harm only attracts neutral weight and other matters do not outweigh the harm I have identified.

Conclusion

26. For these reasons I conclude that the ground (a) appeals and that against the refusal of planning permission should fail.

The ground (f) appeals – Appeals A, B and C

27. The purpose of the enforcement notices are to remedy the breaches of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notices to be taken exceed what is necessary to remedy the breaches of planning control and propose lesser alternatives steps.
28. The appellant contends that the requirements of the notices are excessive and there has been a caravan in the same position with services and facilities prior to their purchase of the site.
29. However, the notices, including my corrections, go no further than remedying the breaches of planning control, to include the removal of the debris arising and I have already considered the planning merits of the developments under the ground (a) appeals. There is then very limited evidence before me that there has been a caravan lawfully stationed at the site.
30. In the absence of suitable lesser steps, the appeals on ground (f) therefore fail.

The refusal of outline planning permission – Appeal E

Main Issues

31. The main issues are:

- i. whether or not the site is in a suitable location for residential development having regard to local and national planning policy;
- ii. the effect of the development on the character and appearance of the area; and,
- iii. highway safety.

Reasons

Location

32. The site amounts to a paddock of approximately 0.2ha between the adjoining dwelling and a commercial stables. It is located in rural surroundings, with sporadic development, and is outside of a settlement boundary for planning policy purposes.
33. The proposed development is for 4 dwellings. Whilst the appeal application is in outline form with all matters reserved, the submitted plans indicate a courtyard arrangement with buildings of up to two-stories with dual-pitched roofs.
34. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites, with a figure of 3.67 years. Accordingly, whilst the policies cited by the Council may provide locational or generic guidance, the most important locational policies are out of date. The presumption in favour of sustainable development may therefore apply in accordance with paragraph 11.d) of the Framework.
35. The Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The appellant contends the development would provide for much needed smaller units of accommodation. However, based on the indicative plans before me, the units do not appear to be particularly small, and irrespective of their size, there is no evidence as to their prospective affordability. I therefore do not accept the development would make a valuable contribution to housing supply in the district. Based on the evidence before me, the development would only bring very moderate benefits to the economy and the social well-being of the local community.
36. The site is a rural one, accessed by means of a road which is unlit and without footways. There is also little evidence about employment opportunities that could be accessed without being heavily reliant upon a private car. There is then an absence of proximate services and facilities, even in Golden Cross. I am therefore not persuaded on the evidence before me, including that of my site visit, that the site is in a sustainable location. It is therefore not a location where a new residential development would normally be considered acceptable, which is an adverse impact that significantly and demonstrably weighs against the proposal.

37. That the development is said to make better use of a parcel of land or completes an approved vehicular access does not persuade me that the site is in a suitable location. I appreciate that there have been permissions granted for residential development in the wider area, notably in relation to caravan sites, but the decision notices provided by the appellant do not contain detailed reasons for those permissions. In any event, I only afford such decisions very limited weight given the facts before me.
38. I therefore conclude the site is not in a suitable location for residential development which contravenes the delivering a sufficient supply of homes objectives of the Framework. This is a planning harm to which I attach significant weight.

Character and appearance

39. The site is located in the Low Weald landscape character area. I could see during my site visit that the immediate area was rural in character, consisting of agricultural fields, some in equestrian use, as well as sporadic residential development.
40. In contrast, the development would introduce a significant quantum of built form onto the site, which would not respect the character of adjoining development in terms of scale. It would also result in the loss of the spacing afforded by the current paddock between the stables and adjoining dwelling. This spacing reinforces the rural scene and sporadically developed character of the area. The development would therefore be intrusive and have an urbanising effect.
41. I appreciate the site could be further landscaped and that the courtyard is intended to resemble converted farm buildings. I however do not accept that the development of the site would result in an overall beneficial effect on the landscape of the Low Weald, fit better or otherwise improve the appearance of this paddock or street-scene, given its rural context. Indeed, it would not conserve the agricultural character of the landscape.
42. I conclude the development would be harmful to the character and appearance of the area in contravention of Saved Policies EN8 and EN27 of the WLP. These policies, amongst other things, require development to conserve the low rolling agricultural character of the landscape and respect the character of adjoining development in terms of scale. This is a planning harm to which I attach considerable weight.

Highway safety

43. It has since been demonstrated that the necessary visibility splays could be provided, However, because the appeal application is in outline form only, with access matters also reserved, there is only limited evidence before me concerning trip generation and the impact this could pose on the surrounding highway network, as well as the suitability of the width of the access itself and for the parking and turning of vehicles within the site.
44. I am therefore not persuaded there would not be harm to highway safety in contravention of Policies TR3 of the WLP and SPO12 of the CS and the Framework. This is a planning harm to which I attach moderate weight.

Other matters

45. The Council has raised that the site is within a red impact zone for Great Crested Newts and therefore their presence cannot be discounted. However, in light of my other findings I need not consider this further.

Planning balance

46. I have found that the site is not in a suitable location for residential development. This is a planning harm which attracts significant weight. I have also found harm to the character and appearance of the area, which attracts considerable weight. Highways harm attracts moderate weight.
47. Accordingly, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

48. For these reasons I conclude that the appeal should not succeed.

Overall Conclusion

49. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices, along with the aforementioned corrections, refuse to grant planning permission on the deemed applications and dismiss the other appeals.

Formal Decisions

Appeal A

50. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

51. It is directed that the enforcement notice be corrected by:

- inserting the words '*and for residential purposes*' between the word '*salon*' and '.' in section 5.(i) of the notice.

52. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

53. It is directed that the enforcement notice be corrected by:

- deleting the words '*use as domestic curtilage land*' and replacement with the words '*residential use.*' in section 3. of the notice.
- deleting requirement 5.(i) in its entirety and replacing it with the words '*(i) Cease the residential use of the Land.*'

54. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

55. The appeal is dismissed.

Appeal E

56. The appeal is dismissed.

Paul T Hocking

INSPECTOR