



Appeal Decision

Site visit made on [Event Date]

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal Ref: APP/U1430/W/21/3288271

Whitelands Kennels, Westfield Lane, Westfield TN35 4SB

- 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 Damon Robinson against the decision of Rother District Council.
 - The application Ref RR/2020/1416/P, dated 27 July 2020, was refused by notice dated 22 October 2021.
 - The development proposed is described as the demolition of existing kennels, proposed new dwelling comprising of 5 bedrooms, new driveway, parking area, double garage and associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On the decision notice drawing 20.179.01.F has been referred to, however this does not form part of the submission nor is it referenced anywhere else. Nevertheless, I am satisfied the submitted plans show an accurate representation of the proposed scheme and are the same as those submitted at the application stage. For clarity the plans I have considered in this decision are, 20.179.10.A; 20.179.11.A; 20.174.12.B; 20.174.13; 20.174.14 and the topographical survey dated 24.07.2020.

Main Issues

1. The main issues are whether the appeal site is suitable location for the proposed development, having regard to a) relevant national and development plan policies relating to the countryside, b) accessibility to services and facilities, c) the effect on employment, d) the conservation and enhancement of the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB); and e) whether the proposed development would provide adequate affordable housing.

Reasons

Relevant Policies

2. The appeal site is within the countryside and the development plan seeks to control development by focusing it within the policy defined boundaries of settlements. The main parties dispute the distances involved and what constitutes the boundary of Westfield. However, I am satisfied the appeal site is located beyond Westfield's policy defined settlement boundary, as set out in the development plan, so would constitute a countryside location.

3. Rother Local Plan Core Strategy (CSLP) Policy RA3 sets out specific tests for when development in the countryside could be acceptable including circumstances when new dwellings would be appropriate. Paragraph 80 of the National Planning Policy Framework (the Framework) also provides limited circumstances when an isolated home in the countryside would be acceptable
4. The proposal would not constitute a dwelling to support farming or other land-based industries or meet a local affordable housing need. It would not convert an existing building(s), replace an existing dwelling nor has it been evidenced it's design would constitute exceptional quality as set out in the Framework.
5. The appeal site would constitute brownfield land (also known as previously developed land), and this is not contested by any party. Paragraph 120c) of the Framework gives substantial weight to the use of suitable brownfield land within settlements. However, the appeal site is not within a settlement, so this weighting does not apply.
6. Consequently, the proposed development would not comply with the spatial strategy set out in CSLP Policies OSS2, OSS3, RA1 and RA3 and the Development and Site Allocations Local Plan (DaSA) Policy DIM2, insofar as they deal with development in the countryside. Nor would it comply with any of the exceptions for development in the countryside as set out in Paragraph 80 of the Framework.

Accessibility

7. The access track to the appeal site is an unmetalled surface with no lighting or footpath. In places it narrows between hedges providing little opportunity for pedestrians or cyclists to seek refuge when a vehicle is approaching. It is understood to not form part of the public highway, nor is it designated a public right of way. Pedestrians and cyclists would be required to first travel down the access track, then along the pavements of Westfield Lane to either the bus stop, or Westfield village and its various services.
8. Although the physical distance from the end of the access track to the village and bus stop, and frequency of bus service, would be conceivably suitable. The significant length of the access track would mean the proposed new dwelling would be a considerable distance from Westfield; and the track's poor condition means it would be difficult to use for those less able, such as those with a pushchair or requiring mobility assistance. I am, therefore, unconvinced that the appeal site's location would support or prioritise pedestrian and cyclist access over that of the private car.
9. The appellant has drawn my attention to the proximity of a farm shop at the bottom of the access track. On inspection it appears to sell predominantly animal feed and agricultural supplies rather than goods more likely to be used within a domestic setting. So, I have discounted it as an example of a nearby shop.
10. They also state there is access through Whiteland Wood to Vicarage Lane on the outskirts of Westfield. However, to access the public right of way from the appeal site would require using informal pathways through the wood, and there is nothing before me to confirm the owners of the wood would allow permission for such access to be formalised. Notwithstanding this, the public right of way through the wood is not suitable for anything other than abled persons walking

as it is narrow, uneven, and muddy. The access onto Vicarage Lane is also width-restricted and would prevent cycles and pushchairs passing. Notwithstanding this Vicarage Lane is a narrow country road with no pavement or lighting which would then need to be traversed before accessing Westfield. I therefore do not find this a viable alternative to using the access track.

11. I therefore find that the opportunity to provide access to the site along the access track, or by other routes, other than by private vehicle is limited. Although the proposal would likely produce less vehicle movements than the existing site use, relying on this to show a reduction in environmental impact does not overcome the harm an over reliance on private cars would have. There is nothing before me to show mitigation of this within the proposal.
12. As such I conclude that the location of the appeal site is not suitable in relation to the accessibility of services and facilities. The proposal would therefore conflict with CSLP Policies PC1, OSS3 (v), SRM1 (vii) and TR3 insofar as they relate to travel and lowering environmental impact. The proposal would conflict with Paragraph 104c) of the Framework where it seeks to promote walking, cycling and the use of public transport for new development.

Employment use

13. The main parties agree the last use of the appeal site was as boarding kennels and so would constitute an employment site. The appellant's Development Viability Report sets out that the kennels were run by a single member of staff, with dog walkers and groomers paid as and when required. The submitted 3 years of accounts show that little to no wages were paid to the single employee, and the profits were not significant, so could not be considered a substitute for the lack of a meaningful wage. I am therefore satisfied that the previous kennel was not a viable business concern which would ensure the livelihood of its only employee.
14. However, there is nothing before me which sets out that the business could not be viable in the future, nor that the site has been considered for other employment uses. There is equally no evidence the site has been marketed for any period of time.
15. Consequently, although the proposal would ultimately represent the loss of a single employee on sub-optimal wages, I am not satisfied it has been demonstrated that there is no reasonable prospect of a continued or alternative viable employment use for the appeal site. The proposal would not, therefore, comply with DaSA Policies DEC3 and DC01, insofar as they seek to retain existing employment site with economic value.

AONB

16. AONBs are designated for the purposes of conserving and enhancing natural beauty and Section 85(1) of the Countryside and Rights of Way Act 2000, places a duty upon me to have regard to these purposes in this decision. Paragraph 172 of the Framework puts great weight on the conservation and enhancement of AONBS.
17. The appeal site constitutes a series of single storey buildings, a small paddock, large areas of hardstanding and multiple fenced enclosures all situated within a natural hollow in the landscape. It is part of an established but informally laid out group of residential properties, stables, and other non-residential buildings,

known as Whitelands. Whitelands is located within a relatively constrained pastoral clearing within the fringes of Whiteland Wood, set well away from Westfield Lane and Westfield village.

18. The current mix of buildings, hardstanding and fencing creates a somewhat disparate appearance to the more intensely developed site, at odds to the relatively enclosed and contained development nearby. It is visually intrusive in views from the private track and limits the appreciation of the enclosed pastoral setting Whitelands enjoys.
19. The proposal would make use of the hollow of the land by nestling the new building into it. Although this would require a reasonably large amount of groundworks, it would ultimately reference the existing topography of the site. It would not project beyond the existing built up areas of the site and would consolidate the built form to a single location. It would be located toward the access track at the centre of Whitelands, and away from the appeal site boundaries with the fields beyond. This would create visual space between Whitelands and its surroundings which is lacking in the current site layout.
20. The proposed dwelling is large and would provide accommodation over 3 floors. However, the integration of the building within the topography of the site and the use of a basement level would ensure its size is not visually or physically obvious. Equally appropriate landscaping would further improve the appeal site's open aspect, soften the visual impact of the proposed building, and ensure the proposal would assimilate with the pastoral setting of Whitelands. This along with suitable hard landscaping materials could be conditioned.
21. The proposed development would therefore conserve and enhance the landscape and scenic beauty of this part of the AONB. It would comply with Paragraph 176 of the Framework, CSLP Policies OSS4 (iii), RA2 (viii), RA3 (v) and EN1 (i) and (v), and DaSA Policies DEN1 and DEN2 insofar as they seek to protect the AONB and landscape character.

Affordable housing

22. DaSA Policy DHG1 sets out the Council's affordable housing requirements. It states at DHG1 (iv) (a) that in rural areas in the AONB 40% affordable housing should be provided on schemes of 6 dwellings or more, or 0.2 hectares in size or more. Consequently, the Council have stated that a contribution of circa £32,500 is required for affordable housing as the appeal site is larger than 0.2 hectares.
23. Paragraph 64 of the Framework states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The Framework does not define a site size trigger for affordable housing provision.
24. Notwithstanding this, there is nothing within the wording of policy DHG1 stating a contribution should be sought instead of on-site provision nor is there anything substantive before me qualifying the figure quoted. Consequently, I do not find the affordable housing contribution, in this case, justified.

Other Matters

25. The proposal's lack of harm to the living conditions of existing neighbouring occupants is noted. Nevertheless, a lack of harm is a neutral matter and cannot weigh for or against the proposal.
26. The potential of the proposal to be environmentally sustainable and resilient to climate change, in accordance with CSLP Policy DEN7, is noted, however with minimal details as to how this would be achieved, I can only afford this limited weight.
27. The appellant has stated that there are 3 new build properties in Westfields. However, there is nothing before me to confirm the age or lawfulness of those properties, nor whether the circumstances of their approval were similar to the proposed development. Therefore, I am unable to give this matter any weight.

Planning Balance

28. The Council can only demonstrate 2.87 years of the required 5-years housing supply. As such, the presumption in favour of sustainable development, set out in paragraph 11(d) of the Framework, is engaged. As I have not found harm in relation to the AONB, it is necessary for me to weigh any adverse impacts of the proposal against its benefits.
29. The proposed development conflicts with CSLP Policies OSS2, OSS3, RA3 and DaSA Policy DIM2. These are important policies in the development plan's spatial strategy. However, and in the above context, they would be deemed out of date. I would accordingly reduce the weight I have attached to any conflict with them. Nevertheless, I have found significant harm in relation to the accessibility of the site in conflict with paragraphs 8, 80 and 104 of the Framework as I have explained in the first and second main issues, as well as moderate harm in relation to the loss of an employment site.
30. I have considered Paragraph 60 of the Framework which seeks to significantly boost the supply of housing, and Paragraph 69, which recognises the importance of small sites in meeting the housing requirement of the area. However, the provision of a single dwelling would only make a small contribution towards the current housing shortfall of the district, and along with the associated economic and social benefits, these matters would attract only limited weight. Limited weight would also be given to the enhancement of the AONB and the potential environmental credentials of the proposal.
31. Overall, I therefore find the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the Framework, taken as a whole.

Conclusion

32. For the reasons above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, that would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR