



Appeal Decision

Site visit made on 29 November 2022

by D R McCreery MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/U1430/W/22/3294724

Mill Corner Stables, New Road, Northiam TN31 6HR

- 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 Hukins against the decision of Rother District Council.
 - The application Ref RR/2020/2261/P, dated 12 November 2020, was refused by notice dated 17 November 2021.
 - The development proposed is Construction of an 'Earth House' comprising an Eco-Dwelling in conjunction with associated rural business, incorporating conversion of Stables into therapy and treatment rooms and a permaculture and smallholding business.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Rother District Plan (District Plan), Rother District Plan Core Strategy (Core Strategy), and the Development and Site Allocations Local Plan (DASA). The National Planning Policy Framework (the Framework) is a material consideration.
3. The site is in the High Weald Area of Outstanding Natural Beauty (AONB). I have therefore considered the duty under section 85(1) of the Countryside and Rights of Way Act 2000 to have regard to the purpose of conserving and enhancing the natural beauty of the AONB.

Main Issues

4. The main issues are:
 - Whether the establishment of a dwelling on the site would accord with planning policy that governs the location of new housing development.
 - The effect on the character and appearance of the area, in particular whether the proposal would conserve and enhance the landscape and scenic beauty of the AONB and the setting of nearby heritage assets.
 - Whether users of the development would be overly reliant on the private motor car and the need to travel.

- The suitability of the location for a therapy clinic and treatment room use when regard is paid to development plan policy relating to rural employment uses.
- Affordable housing provision.
- Whether paragraph 80 of the Framework is relevant

Reasons

Housing location

5. Policy OSS2 of the Core Strategy confirms the use of development boundaries to control most forms of new development as part of the overall spatial strategy for the area, supported by Policy OSS3. Policy DIM2 of the DASA, and the related policy map, gives definition to the development boundaries.
6. Areas that are outside of the defined development boundaries, such as the site, are regarded as countryside for the purposes of development plan policy. Paragraph 12.47 of the Core Strategy confirms that the term countryside includes not only farmland and woodland but also scattered development outside the main confines of villages. Development in such areas is to be normally limited to that which accords with specific plan policies or where a countryside location is demonstrated to be necessary.
7. Specific plan policies of relevance in this case are Policies RA2 and RA3 of the Core Strategy. RA2 sets out the overall general strategy for the countryside, while RA3 provides a criteria based policy against which to assess proposals for development. Given the link between the two it is appropriate to consider Policy RA2 and RA3 together. My conclusions are reached with this in mind.
8. The proposal would create a new permanent dwelling on the site, with an accompanying business model that embraces four aspects. This is set out in paragraph 4.8 of the Appellant's planning statement and comprises a holistic therapy business, permaculture and smallholding (production and training), bed and breakfast guest accommodation, and seasonal events relating to the various business activities.
9. The scheme would support the Appellant's wish for self sufficient living and a live/work lifestyle. As such, the intention is for the activities within the site to operate as a single planning unit, although the establishment of a permanent dwelling is a key element.
10. Whilst I understand the vision behind the proposal, the evidence does not demonstrate that any of the extremely limited circumstances that would allow for the creation of a new dwelling in RA3(iii) would be met. Some of the activities proposed, namely those relating to permaculture and running of a small holding, may be regarded as 'other land based activities'. However, I see no evidence to show that the specific requirements of RA3(iii)(a)(i-iv) have been fulfilled.
11. Some of the business activities on the site would encourage land based economic activities, and support local economic and tourism needs, which would be consistent with elements of Policy RA2 of the Core Strategy. However, fundamentally these elements of the scheme do not in themselves justify the establishment of a dwelling on the site.

12. The Council's decision notice refers to Policy RA1 of the Core Strategy. As this policy relates to addressing the needs of rural villages, which the site falls outside of, conflict with it has not been demonstrated by the Council.
13. For the reasons set out, the location of the proposed development would not accord with planning policy that governs the location of new housing development. As such, there is conflict with policies OSS2, OSS3 and RA3 of the Core Strategy and policy DIM2 of the DASA which collectively governs the location of new housing development.

Character and appearance

14. The site comprises two connected fields, described in the Appellants Design and Access Statement as Paddock 1 (northern field) and Paddock 2 (southern field) that are bounded by hedgerow and fencing. Apart from earthworks in Paddock 1, the land naturally slopes down from New Road in a way that is consistent with the wider surroundings.
15. The site is mostly surrounded by land of agricultural appearance, interspersed with copses. There is an area of ancient woodland at the far boundary of Paddock 2. A number of residential properties are visible, scattered at low density at the edge of the small settlement of Mill Corner. The site adopts an exposed and elevated position slightly away from the dwellings at the edge of Mill Corner and on the other side of New Road.
16. Establishing a dwelling on the land, along with the accompanying business activity set out by the Appellant, would lead to more intensive use of it for a wider range of purposes. That use would be fundamentally different to equestrian activity. Whilst I appreciate that equestrian and agricultural uses are not the same, they share common characteristics in terms of their ability to be appreciated for their rural and undeveloped character, assisted by a predominantly open nature and built forms that are readily perceived as having a rural identity. This is evident in the present case where the equestrian facilities are concentrated to the north of the site and do not impact significantly on the character of the land, as they are of a scale and nature that is compatible with the rurality of the surroundings.
17. Although individual elements of the proposal are intended to be low key, put together they would fundamentally change the characteristics of the land. This is both in terms of the built structures, but also the increase in activity and intensification in use that brings with it pressures that result from increased levels of urbanisation. The term urbanisation in this context should be understood to include the loss of rural identity that would arise from the domestic and other nature of some of the proposed activities, including lighting, hardstanding, increased pressure for parking space and associated appearance of cars, formalisation of outdoors spaces, as well as more general increased activity resulting from intensification in use.
18. This issue goes beyond simply the prominence of any particular building when viewed in isolation and is instead about the wider effects of landscape character change that arise as a consequence of the activities proposed taken as a whole. I also appreciate the intentions to use much of the land for food growth and related activities. It is, however, unrealistic to not expect that the dwelling and other

business uses would not bring with them all the elements of human activity that would traditionally be associated.

19. The Appellant's accompanying design evidence sets out how the scheme has evolved and responds to the site and the wider surroundings. I do not doubt the intention to take care over the placement of individual buildings and activities to minimise the visual impact of the development, particularly in relation to visibility from New Road and the nearest formal footpath to the east of the site.
20. There is, however, an absence of more detailed evidence to demonstrate that the contribution of the site to wider landscape character is properly understood and has been fully considered. There are references within the evidence to considering various landscape character assessments that are relevant to the AONB (including the High Weald AONB Management Plan and East Sussex County Landscape Assessment). I have considered these insofar as they are drawn to my attention. However, while I acknowledge there is some discussion (particularly in the Design and Access Statement), there is a lack of depth in terms of explaining what the important aspects of landscape character and sensitivity are and how the proposal would respond in a satisfactory way.
21. The evidence does not consider in sufficient depth the site in its wider landscape setting, including how the change in landscape character would be perceived or experienced in longer views. This is important as the exposed position of the site and openness to longer views from the south east suggests that the capacity of the land to absorb change without impacting on wider landscape quality is low.
22. In relation to effects after dark, this is an issue of particular sensitivity, as much of the built development (and therefore potential for more intensive activity) would be located towards the north of the site at its most exposed point and open to longer views from the south east. I understand that the large area of glazing in the rear elevation of the dwelling would be screened by the proposed green house space to some degree. However, in the absence of more detailed evidence on wider landscape effect, I am not persuaded that this would satisfactorily obscure the dwelling at night or that associated effects resulting from lighting within the dwelling would be contained in a way that would avoid negative impacts on the landscape after dark in terms of light pollution.
23. Linked to this is the cumulative impact that would arise when this issue is considered alongside any additional outside lighting. I appreciate that outside lighting could be controlled by condition, and that a sensitively designed outdoor lighting scheme may reduce the potential impacts. However, such a condition would be unreliable in this case due to the need to consider lighting cumulatively along with sources from within the dwelling and for that to respond to wider evidence on landscape effects, which is currently lacking.
24. I appreciate that elements of the proposal would utilise existing built areas, notably the stable and manège which would be extended. This does not offer a complete response to my concerns about effects on the character of the landscape as these arise as a consequence of all the activities proposed taken as a whole and associated use.

25. I have noted the intention to work with the existing contours of the land. Earthworks and reprofiling would be limited principally to altering the existing man made bunds adjacent to the manège. In this respect, the emphasis that the Council place on the scheme involving significant earthworks is overstated. This does not, however, negate my wider concerns in relation to the proposal as a whole and the effect of landscape character change.
26. As such, in the absence of more detailed evidence, I am not satisfied that the cumulative effects of the proposed activities described above and their impacts on the character of the land would not be harmful. In light of the statutory duties relating to AONBs and the strength of national policy protection given, including in paragraph 176 of the Framework, it is necessary to take a precautionary approach to this issue.
27. Turning to potential effects on the Grade II Listed Brookes Farmhouse. The Farmhouse is separated from the site by an agricultural field and hedgerow. The undulating nature of the topography results in low levels of intervisibility between the two. The separation distance between the Farmhouse and the site, coupled with intervening natural features and topography, would mean that development of the scale and nature proposed would not impact on the rural setting of the Listed Building. As such, the significance of the heritage asset would be preserved. As a consequence, there is no conflict with Policy EN2 of the Core Strategy relating to the historic built environment or the statutory duties relating to Listed Buildings¹.
28. In conclusion on this issue, the proposal would not have an acceptable effect on the character and appearance of the area when particular regard is paid to whether it would conserve and enhance the landscape and scenic beauty of the AONB. Consequently, there is conflict with policy OSS4(iii), RA2(vii), RA3(v) and EN1 of the Core Strategy and DEN1 and DEN2 of the DASA, which collectively seek to ensure that development with potential to impact on the landscape and rural character of an area, including within the AONB, will have acceptable effects.

Sustainable transport

29. The nearest day to day services can be found in Northiam. Given the distance and the nature of the journey in terms of street lighting, pavement availability, and topography, day to day access to these services by foot cannot realistically be regarded as safe and convenient for most users. Bicycle would be a more realistic option for more confident cyclists able to tackle the topography.
30. There are bus links, which go to Northiam and beyond. The bus stops are conveniently located in relation to the site and the service frequency makes access by public transport a viable option.
31. The public transport and cycling options available would reduce the risk of users of the development being solely dependent on their own car to a degree. Added to this is the intention that the current prospective owners have to live self sufficiently on the land, although this is not a matter that could be assured in perpetuity via traditional planning tools such as conditions.

¹ S66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

32. In relation to the therapeutic business use, I have paid regard to the Appellant's business evidence and note that the tranquillity of the setting is an important aspect of the intended business from a treatment perspective. I accept, to a degree, that such benefits could not be achieved within a more built up setting. As such, a degree of potential car dependence is to be anticipated and is tolerable in order to generate the business and treatment benefits, particularly at the scale of development proposed.
33. Taking these issues and the other comments on this matter into consideration, users of the proposed development are likely to be dependant on the private motor vehicle to a degree. This arises by virtue of the location and the options to realistically minimise it are limited.
34. However, weighing the degree of car dependence up against the mitigating and beneficial elements discussed (including the Appellant's comments relating to the wider sustainability credentials of the scheme), I am not persuaded that the proposal would materially undermine sustainability and carbon reduction objectives when regard is paid to the potential for car dependency.
35. In reaching a view on this issue I have paid regard to paragraph 105 of the Framework which notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, which should be considered.
36. Overall, users of the development would not be overly reliant on the private motor car and the need to travel. As such, there is no conflict with policies OSS3(v), SRM1(vii) and TR3 of the Core Strategy insofar as they relate to minimising the need to travel and the relationship this has with supporting the transition to a low carbon future.

Rural employment uses

37. The Council's second reason for refusal focuses on the suitability of the location for the proposed therapy rooms. The decision notice refers to Policy RA3(i) of the Core Strategy relating to farming, woodland, and other land based activities. The proposed therapy rooms would fall outside this policy.
38. However, Policy RA3(i) is a positively worded policy that provides development plan support for what might be regarded as agricultural type uses. RA3(i) does not in itself perform the function of limiting employment uses in the countryside to only those specified. Adopting such an approach would be an overapplication of the policy that would run counter to the aim of supporting the rural economy.
39. In this regard, Policy RA3(ii) is more relevant to the consideration of the proposed therapy rooms. Like RA3(i), the policy is positively worded but aimed at supporting suitable employment opportunities in the countryside. Paying regard to the Appellant's evidence relating to the therapy business, I am satisfied that it would provide a small scale employment opportunity, in addition to an element of specialised tourism use, that would be consistent with the scale of the surroundings. Both have the potential to support vibrant rural communities.

40. The proposal would convert an existing stable building, with a modest extension. Whether the stable building is a 'farm building' within the intentions of RA3(i) is debatable, given its link with the previous equestrian use. Nevertheless, the conversion of the building would allow for an employment use to be established without the need for a new building, which would be of benefit.
41. I appreciate the Council's point about whether the therapy room use may be more sustainably located in a town or village centre. However, paying regard to the specific nature of the intended use, there is reasonable evidence to demonstrate that the therapy provided would be less effective in such locations for the reasons explained above.
42. For the reasons set out, the proposed therapy rooms would be suitably located when regard is paid to development plan policy relating to rural employment uses. Consequently, there is no conflict with policy RA3 of the Core Strategy and DIM2 of the DASA which provide the relevant policy framework for supporting suitable employment opportunities in the countryside.

Affordable housing

43. The proposal makes no provision for affordable housing on a site that exceeds 0.2 hectares. As such, Policy DHG1(iv)(a) would expect 40% on site affordable housing provision.
44. As the proposal is for a single dwelling, no evidence has been provided by the Council to explain how the requirements of this policy would apply in this instance. The footnote to Policy DHG1 says that regard will be had to whether the size of the site would make it capable of accommodating more than the proposed number. This is presumably in the interests of site optimisation, however no evidence has been provided on whether the footnote has been considered in this case.
45. Nevertheless, attempting to increase the number of dwellings on the site in an attempt to generate a deliverable affordable housing provision is unlikely to be appropriate when regard is paid to the location and the basis on which the development has been put forward.
46. In the circumstances, it is hard to see how the Appellant could meet the policy requirement. As such, whilst the absence of affordable housing would conflict with Policy DHG1(iv)(a) of the DASA, this should be regarded as technical conflict and not therefore a deciding factor in the final outcome of the appeal. My overall conclusions are reached on this basis.

Relevance of paragraph 80 of the Framework

47. The Appellant would like the proposal considered against paragraph 80 of the Framework. Although the Framework is not part of the development plan for the area, paragraph 80 may be a material consideration if it is engaged. In order to be relevant, the proposal must result in the creation of an isolated home in the countryside.
48. The proposed dwelling would sit outside the physical context of Mill Corner. From most vantage points it would be observed as being away from the settlement, in a position that is more consistent with the scattered individual dwellings that lie beyond its confines.

49. Notwithstanding the physical position of the dwelling, it would be close enough to Mill Corner to benefit from the social connections that come from an established community. As discussed above, the dwelling would not be within easy reach of local services that are beyond Mill Corner, in this respect it would be remote.
50. Considering this issue in the round, along with the Court of Appeal judgement in Braintree², and commentary that the parties have provided on it, I am of the view that the dwelling would be isolated.
51. In relation to Paragraph 80 (e) the sustainability credentials of the scheme alone are capable of falling within 'standards in architecture'. As such, the question is not just about whether the external appearance of the dwelling would result in exceptional architecture. Carefully considering the Appellant's evidence on the sustainability aspects of the scheme in isolation, including the contents of the energy statement, the proposed dwelling would fall within a class of architecture that I would regard as exceptional.
52. However, within paragraph 80(e) there is also the requirement that the development would significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area. This would not be met for the reasons set out in my conclusions on character and appearance. As such, paragraph 80 (e) is not fulfilled.
53. Nor is there satisfactory evidence that allows me to conclude that other elements of paragraph 80 would be met. Criteria (a) relates to essential rural workers, which I address in my conclusions relating to the location of housing. Overall, there is not adequate demonstration of a need to be on site full time that justifies the establishment of a permanent dwelling.
54. Criteria (c) on re-use of buildings that enhances the immediate setting is substantively addressed in my reasoning relating to character and appearance. For the reasons explained, enhancements to the setting have not been demonstrated.
55. For the reasons set out, Paragraph 80 is not relevant in this instance and, as such, is not a material consideration.

Other Matters

56. I have paid regard to comments in support and objection to the scheme from other interested parties, received both in response to the planning application and this appeal. Comments relating to the main issues have been considered as part of my reasoning elsewhere in this decision.
57. I have also considered the Appellant's submitted letters of support for the scheme, as well as their submitted comments from engagement that has been undertaken with the wider community.

Conclusions

58. The location of the proposed development would not accord with planning policy for housing. It would also not have an acceptable effect on the character and appearance of the area when particular regard is paid to whether it would conserve

² Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610.

and enhance the landscape and scenic beauty of the AONB. There is consequent conflict with the development plan for the area that flows from this, in addition to statutory duties in the Countryside and Rights of Way Act 2000.

59. Conservation and enhancement of the landscape and scenic beauty of the AONB is a matter that attracts great weight, as per paragraph 176 of the Framework.
60. I have paid regard to the case precedents provided by the Appellant. Each of these have their own context, both in terms of their location, applicable planning policy, and other factors. Whilst they are informative, the level of relevance is not such that they are material to the final outcome of the appeal.
61. Notwithstanding the conflict with the development plan for the area, I acknowledge that the proposal would bring with it benefits.
62. It would showcase high sustainability standards, with a reasonable likelihood of influencing practice if it is accompanied by an element of public access to the site in order to allow it to be studied and understood. In this regard the proposal would support the transition to a low carbon economy.
63. In addition, the proposal would provide economic benefits, including resulting from the various business activities, that have the potential to impact positively on the rural economy.
64. There would also be ecological benefits, resulting from the implementation of the enhancements that are suggested in the Appellant's ecological evidence. These benefits are in addition to those arising from crop growth, which has the potential to improve biodiversity, and workshops involving local schools and others in terms of education and spreading good practice.
65. Whilst I acknowledge the benefits, taken as a whole they do not represent a material consideration that would justify taking a decision other than in accordance with the development plan for the area. This is particularly in light of the statutory duties relating to the AONB and the policy weight it attracts in terms of protection.
66. The Council is unable to demonstrate a 5 year supply of housing at present. This triggers consideration of the presumption at paragraph 11 of the Framework. For the reasons discussed above, the policies in the Framework relating to AONBs (particularly paragraph 176) provides a clear reason for refusing the development. As such, by virtue of the exception at 11(d)(i) the presumption does not apply in this case.
67. For the reasons given, and considering all the other points made, I conclude that the appeal should be dismissed.

Darren McCreery

INSPECTOR