



---

# Appeal Decision

Site visit made on 7 February 2023

**by E Dade BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 March 2023**

---

**Appeal Ref: APP/U1430/W/22/3297750**

**Land opposite Oast View, Bodiam Business Park, Bodiam TN32 5UP**

- 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 S Berry of Westridge Bodiam Park Limited against the decision of Rother District Council.
  - The application Ref RR/2021/2644/P, dated 15 October 2021, was refused by notice dated 22 December 2021.
  - The development proposed is construction of 2no. two-bedroom homes and 3no. three-bedroom homes with associated landscaping.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues in this appeal are:
  - Whether the appeal site is in a suitable location for new housing development, having regard to the local development strategy for the area;
  - The effects of the proposal on the character and appearance of the area, with particular regard to the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB); and
  - The effects of the proposal on the living conditions of future occupiers, with particular regard to private rear garden space, privacy and internal storage.

## Reasons

### *Suitability of location*

3. The appeal site includes a former car park situated within a business park. The appeal site is outside the development boundaries defined by Policy DIM2 of the Development and Site Allocations Local Plan (LP) and is located within the countryside.
4. The development plan strictly limits the types of development which can take place in the countryside. The proposal would involve the construction of five dwellings which would not satisfy any of the exceptional circumstances for the creation of dwellings in the countryside set out in Policy RA3 of the Rother Local Plan Core Strategy (CS). The local development strategy does not therefore support the proposed development in this location.

5. It is my understanding that the two buildings located to the front and side of the appeal site are former office blocks which, through prior approval, have been converted into residential flats. The prior approval process involves the consideration of more limited matters than an application for planning permission and such schemes are not subject to the requirements of the development plan including the spatial strategy for the location of development. The presence of residential uses on the business park does not in itself demonstrate that the location is suitable for new residential development.
6. Since the majority of the site formerly served as a car park, the appellant suggests the proposal would involve the redevelopment of brownfield land. The site is free from permanent structures but could be considered as falling within the curtilage of the former office, thus satisfying the National Planning Policy Framework's (the Framework) definition of brownfield land. However, the Framework indicates that it should not be assumed that the whole of the curtilage should be developed. The Framework supports the use of suitable brownfield sites within settlements. However, the appeal site is outside of any settlement. Therefore, whilst the site could be considered previously developed land, this does not in itself justify the proposed development.
7. The appellant notes the rural and constrained nature of the district with opportunities for the development of market housing generally confined by the development plan to market towns and larger villages. The appellant suggests the site's location can be justified through a reduced need to travel arising from modern opportunities for homeworking and greater provision of delivery services from retailers who may also be servicing customers within nearby flats. In addition, the appellant's travel plan has sought to reduce the environmental effects of travel through a range of innovative measures.
8. Whilst these factors could help to reduce the need to travel and its associated environmental impacts, the site is remote from any settlement and therefore would form isolated dwellings in the countryside, the development of which is generally prohibited by paragraph 80 of the Framework except in exceptional circumstances. I consider that occupants of the proposed development would generally be dependent on private motor vehicles to meet their day-to-day needs, with limited opportunities to meet such needs via public transport, walking or cycling.
9. Consequently, having had regard to the local development strategy for the area, the appeal site would not provide a suitable location for new housing development. The proposal would conflict with CS Policies RA3, OSS2, OSS3, and LP Policy DIM2 which together generally restrict the development of new dwellings in the countryside.
10. The proposal would also conflict with CS Policy TR3 which requires new development to minimise the need to travel and support good access to employment, services and community facilities, and paragraph 8 c) of the Framework which requires planning decisions to contribute to minimising pollution and mitigating climate change.

#### *Character and appearance*

11. The appeal site and adjoining business park are set within the High Weald AONB and are surrounded by fields which slope downwards from north to south. Whilst woodlands and tree belts provide some enclosure to the north,

there are wider, open views across fields to the south. The surrounding landscape is generally spacious, open, rural, and green in character.

12. The appeal site includes a former gravel car park, landscaped with trees and shrubs, and includes part of the field at the rear. Some of the proposed two-storey dwellings would be set into the sloping field, with only a single storey projecting above the level of the land at the rear. This, along with the tree belts at the side boundaries, sloping topography, and proposed planting, would serve to reduce the site's visibility within the landscape. However, whilst such measures would help to reduce the visual impacts of the scheme, the proposed development would substantially alter the natural landform of the area and would have a significant urbanising effect to the detriment of the landscape character of the AONB.
13. Buildings within the business park are large in scale and well-spaced along the road and include a mix of building types and designs. Whilst generally modern in their appearance with asymmetrical layouts and a variety of pitched roof sections, the former office blocks adjacent to the appeal site incorporate some traditional features such as black timber weatherboarding to reflect buildings of the local area. Conversely, the proposed dwellings would appear modest in scale, tightly packed within the site, and of a highly contemporary design which is irregular in layout and form and with a geometric appearance using a range of external materials. The proposed dwellings would markedly differ in scale and appearance from surrounding buildings and would appear out of keeping with surrounding development and the area's rural landscape.
14. For the reasons set out above, the proposal would adversely impact the character and appearance of the area and would harm the landscape and scenic beauty of the High Weald AONB. The proposal would therefore conflict with CS Policies OSS4 and RA2 which require proposals to respect and not detract from the locally distinctive rural character of the locality. In addition, the proposal would not comply with LP Policies DEN1 and DEN2, and CS Policies RA3, OSS2, and EN1, along with paragraph 176 of the Framework, which collectively give great weight to conserving the High Weald AONB and require the siting, layout and design of proposals to protect the area's landscape and scenic beauty.

#### *Living conditions*

15. LP Policy DHG7 states that, for dwellings, private rear garden spaces of at least 10 metres in length will normally be required. The Council considers that plots 1 and 5 would provide adequate garden space. I see no reason to disagree with this conclusion.
16. Due to the layout of the site and proposed dwellings, the rear garden spaces would be irregularly shaped. The appellant indicates that plots 2 and 4 would achieve the 10m standard. However, whilst the total depth of the garden may satisfy the standard, due to the site's topography the rear gardens would be split over two levels connected by a staircase. This split in levels would constrain the usability of the garden and result in a poor-quality garden space for future occupants.
17. Plot 3 would have a rear garden of around 8m which would not satisfy the 10m standard. The appellant suggests that this would be compensated by additional garden space to the side and front of the proposed dwelling. However, the front

garden would be within the street scene within clear public view and therefore would not provide private garden space. The area to the side of the dwelling is an irregular shape situated at a different level to the rear garden reducing its usability and quality.

18. The raised rear garden areas for plots 2 and 4 would allow direct overlooking of plots 1 and 5 and would thus harm the privacy of future occupiers. The appellant has suggested that privacy issues could be mitigated through a condition requiring landscape planting. However, a condition to ensure the planting provides adequate levels of privacy at all times would not be enforceable and the extent of maintenance involved would not be reasonable. Such a condition would not therefore comply with the Framework's tests.
19. The proposed dwellings would not satisfy the Nationally Described Space Standard for built-in storage which has been incorporated into the development plan for the area by policy LP Policy DHG3. However, whilst the proposal would not satisfy the standard, were I allowing the appeal, the provision of storage could be secured through condition.
20. The proposal would therefore harm the living conditions of future occupiers, with particular regard to private rear garden space and privacy. The proposal would therefore conflict with CS Policy OSS4 which requires new development to meet the needs of future occupiers, including providing appropriate amenities, Policy DHG7 which requires proposals to provide appropriate and proportionate levels of private usable external space, and Policy DHG3 which requires new dwellings to provide adequate minimum internal space.

#### *Other considerations*

21. The Council cannot demonstrate a five-year supply of deliverable housing sites and states it has a supply equivalent to 2.89 years. This is a significant shortfall against the housing requirement. In addition, I understand the Council's latest housing delivery test measurement is 57% which is substantially below the housing requirement. As a result of this shortfall, and because of the provisions of footnote 8, paragraph 11 d) of the Framework indicates that policies which are most important for determining the appeal are out-of-date, and at 11 d)i. states that permission should be granted unless its policies which protect areas of particular importance, including AONBs, provide a clear reason for refusing the development.
22. The proposal would provide five additional dwellings, would utilise previously developed land, provide construction jobs and support the local economy. In addition, the proposal would aim to deliver net zero carbon dwellings and would enhance biodiversity including through the removal of non-native trees and planting of additional native species. The proposal would therefore provide a range of modest social, environmental and economic benefits. Set against the area's housing supply shortfall, the proposal's contribution to the overall supply of housing in the area carries additional weight.
23. However, paragraph 176 of the Framework places great weight on the conservation and enhancement of the landscape and scenic beauty in AONBs and provides the highest status of protection in relation to these issues. As set out above, I have found the proposal would harm the landscape and scenic beauty of the High Weald AONB and this harm would not be outweighed by the range of benefits that would result from the proposed development and

therefore the Framework's policies provide a clear reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply.

24. In addition, the harms I have identified above in respect of character and appearance, living conditions of future occupiers, and the suitability of the site's location add further weight against the proposal.

### **Conclusion**

25. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

*E Dade*

INSPECTOR