



Appeal Decision

Site visit made on 9 May 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/L2250/W/22/3311083

Boyke Bungalow, Boyke Lane, Rhodes Minnis CT4 6XN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Paul Williams against Folkestone and Hythe District Council.
 - The application Ref 21/2520/FH, is dated 4 November 2021.
 - The development proposed is a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at Boyke Bungalow, Boyke Lane, Rhodes Minnis CT4 6XN in accordance with the terms of the application, Ref 21/2520/FH, dated 4 November 2021, and subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Paul Williams against Folkestone and Hythe District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is made against the failure of the Council to determine the application within the statutory period. The Council has confirmed, that had it determined the application, it would have granted planning permission. It has set out the reasoning in a Planning Report which was agreed by its Committee. Consequently, the Council does not wish to defend the appeal.

Main Issues

4. In the light of the position of the Council, the main issue is whether or not there are any planning policies, planning issues and/or matters raised in the representations that would justify refusal of the proposal. I have considered the main issues that have been raised in the representations under the headings below.

Reasons

Character and appearance

5. The site lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the locally designated Special Landscape Area (SLA). Within AONBs, the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty, which has the highest status of protection in relation to these issues.

6. The site includes the shell of a bungalow attached to the adjoining property, Rivendell Cottage. The bungalow is elevated above Boyke Lane with the road sloping down from broadly the south east to the north west. There is also a similar slope on the elevated part of the appeal site.
7. In terms of the surroundings, the attached property, Rivendell Cottage, is a fairly sizeable bungalow, with a garden area running parallel with the appeal property.
8. To the broadly north of the existing Boyke Bungalow, and on a lower level, is Coppendale. This neighbouring property is a bungalow in quite a sizeable plot, and which has an outbuilding close to the appeal site boundary. Other properties in this group include another bungalow and a bungalow with accommodation in the roof space. In the wider area there is a greater mix of dwelling types, many of which are two storey houses.
9. The appeal scheme proposes a replacement dwelling on the site. This dwelling would be a detached building, separated from Rivendell Cottage. A single detached garage would be constructed in the space between the two properties. The design of the appeal dwelling, including with the proportions of the front projecting gable, the fairly steeply sloping roof with modest sized dormers, brick elevations with some decorative courses and the overall architectural composition would combine to provide an attractive building that would make suitable reference to appropriate local styles and character.
10. The replacement dwelling would be elevated above the road and the increased height and bulk of the building, compared with the existing modest sized and low-level structure, would make it more apparent. However, it would be set back sufficiently from the road, adequately spaced from its neighbours and would have an acceptable design, such that the replacement building would not appear cramped or unsympathetic in its plot when viewed from the frontage areas.
11. Because of the slope across the site, the north west, side gable of the dwelling would be built from a base that would be above existing ground level. The ridge would be higher than the existing low ridge of the bungalow and this section of the dwelling, together with other elements of the profile of the building, would be visible including from public and private areas in and around Coppendale. This north western side profile would be clearly seen. However, it would in some views have the backdrop of trees further up the slope and with the acceptable design and proportions would not be overly conspicuous or appear out of place in the general rural surroundings and scatter of other buildings.
12. The existing building is in a very poor condition with a shell-like structure and, together with the condition of the plot, detracts from the character and appearance of the area. The replacement dwelling, although larger and more prominent, has been sympathetically designed with a bulk and form that would improve the character and appearance of the site in its surroundings. Consequently, the scheme would enhance the landscape and scenic beauty of this section of the AONB. I am also satisfied that the scheme would meet with Policy HB5 of the Folkestone and Hythe District Council Places and Policies Local Plan September 2020 (the Local Plan) which concerns the requirements for replacement dwellings in countryside.

13. Accordingly, I conclude that the replacement dwelling would be acceptable development in terms of the effect on the character and appearance of the area, including the AONB and SLA. It would, therefore, comply with Policies HB1, HB5 and NE3 of the Local Plan, the Kent Downs AONB Management Plan 2021-2026 and the Framework which seeks, amongst other things, that replacement dwellings demonstrate that the scale, bulk, massing, external appearance, architectural detailing, materials, lighting and location within the site does not harm the wider landscape. Consequently, in these respects, I agree with the Council and its conclusions in the Planning Report.

Effect on the living conditions of the occupants of neighbouring properties

14. The replacement dwelling would be a higher building than Rivendell Cottage but would have adequate spacing to this neighbouring boundary. With the largely side by side position of these properties, together with the bulk and slopes of the proposed roofs of the replacement dwelling, the development would not have a materially overbearing or overshadowing effect on the living conditions of the occupants of Rivendell Cottage, including with any substantive impacts on daylight and/or sunlight. While I have carefully considered all the information on these issues, including from the occupants of Rivendell Cottage, I am satisfied that the scheme would not have an unacceptable impact in these respects.
15. The windows in the rear elevation of the replacement dwelling would be predominantly ground floor and, therefore, even with the angle of the property towards the neighbour, would be unlikely to lead to any material overlooking of the garden of Rivendell Cottage. There would be windows in the proposed rear gable of the replacement dwelling which would light the living room. However, these are at higher level above this space and would not allow for occupants of this room to have direct views into the garden of Rivendell Cottage.
16. There would also be a window in the rear dormer of the replacement dwelling that would light a bathroom. Any views from this window towards the neighbouring property would be likely to be partially obscured by the roof of the living room projection. I do not consider that this window in this position would lead to an unacceptable overlooking situation. Furthermore, the proposed rooflight in the rear elevation is set back from the boundary from Rivendell Cottage. Together with the angle of the rooflight in the roof slope this would mitigate against any undue overlooking.
17. The principal first floor windows to the bedrooms of the proposed dwelling would face towards the road and they would not lead to adverse overlooking of any of the private areas of adjoining properties.
18. Taking all these matters into account, the replacement dwelling would not cause any material level of overbearing, overshadowing or overlooking impacts that would unacceptably affect the living conditions of the occupants of Rivendell Cottage.
19. In terms of any effects on the living conditions of the occupants of Coppendale, the replacement dwelling would be clearly apparent from sections of the adjoining garden of this neighbouring property. However, the new building would be sited away sufficiently from this neighbouring dwelling itself. The existing planting and the outbuilding in the adjoining part of the garden of Coppendale would be such that the replacement dwelling would not cause an

unacceptable overbearing or overshadowing effect to the living conditions of the occupants of Coppendale.

20. The position of the windows in the replacement dwelling, the angle of this new building generally facing down the garden, the spacing to Coppendale and the established boundary planting within the neighbour's boundary would all help to ensure that no unacceptable level of overlooking would result.
21. In the light of the above analysis, I conclude that the scheme would not cause an unacceptable impact on the living conditions of the occupants of adjoining properties. Accordingly, the scheme would meet with Policies HB1 and HB5 of the Local Plan and the Framework which seek, in this respect, that development does not lead to an adverse impact on the amenity of future occupiers, neighbours, or the surrounding area. This conclusion again accords with the view of the Council and the analysis in the Planning Report.

Other matters

22. I have carefully considered the objections from local residents and the Parish Council, and I have analysed the key issues above. I have fully taken into account the height of the replacement dwelling in my considerations on the effect on neighbours and the area. I note that the chimney of Rivendell Cottage may not be accurately drawn, however, that does not affect the details of the proposed dwelling and there is no clear evidence that the plans for the dwelling are inaccurate.
23. Suitable opportunities have been identified as part of the design to enhance biodiversity and they could be made the subject of details to be submitted as part of a condition in any approval. Consequently, the scheme would meet with the biodiversity requirements of the development plan and Framework.
24. At the present time, Boyke Bungalow is attached to Rivendell Cottage. The occupants of this attached property have raised concerns with the effect on their property with the removal of the existing building and the lack of details on the works to make good. This issue is directly related to the acceptability of providing a detached dwelling. I have concerns with the level of detail at the present time and, thereby, with the visual appearance of the final works as well as the need to be reassured that the neighbouring building would be weatherproof at all times. In these circumstances, it would be appropriate in any approval, for the details of the works to Rivendell Cottage that would be required as part of the demolition and to make good the end wall, to be the subject of a planning condition.
25. The evidence indicates that the site falls within the Stodmarsh Nutrient Impact Area because waste water could drain through the River Stour catchment to the Stodmarsh Special Area of Conservation, Special Protection Area and Ramsar site (the Stodmarsh Habitat sites). This area is impacted from excessive waste water discharges.
26. There is a lawful dwelling on the site and the building could potentially be renovated, and occupation recommence such that waste water discharges from the site could take place in the future. The present proposal would be an alternative dwelling and, if permitted, built and occupied there would still be a single dwelling on the land. Natural England has not raised objection to the proposal. In these circumstances, the development should not materially

increase waste water flows from the site that could ultimately affect the Stodmarsh Habitat Sites. The scheme, therefore, would not, either alone or in combination with other schemes, have a significant or adverse effect on the integrity of the Stodmarsh Habitat sites. Consequently, when undertaking an appropriate assessment, I am satisfied that the scheme would accord with the requirements of the Conservation of Habitats and Species Regulations 2017.

Conditions

27. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance (the Guidance). I have taken into account the comments of the appellant in relation to individual conditions. I have amended the wording where necessary in the interests of clarity and/or to meet the tests in the Guidance.
28. The statutory time limit is required and a condition specifying the approved plans is necessary in the interests of certainty. While I note that the appellant questions the condition requiring the works to take place in accordance with the approved plans, this is best practice and this would allow consideration of an application to vary the plans under s73 of the Town and Country Planning Act 1990, if required. The comments regarding forthcoming Building Regulation changes do not alter my view on the necessity and reasonableness of a planning condition which lists the approved plans in the way drafted.
29. The Council seek a planning condition which would remove some permitted development rights for additions and alterations. However, the Guidance explains that removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. There are reduced permitted development rights for dwellings within AONBs and I do not consider that the Council has demonstrated the harm that could result from the exercise of permitted development rights to the proposed dwelling on this site. Accordingly, it would not be reasonable to attach the suggested condition.
30. Conditions requiring the submission and approval of the external materials and soft and hard landscaping are required in the interests of the character and appearance of the area within the AONB. This is a replacement dwelling which is larger than the existing and the landscaping is an important component of the assimilation of the building within its plot. Nevertheless, to try to address some of the concerns with the appellant on this issue, I have changed the timing for the submission of the landscaping scheme to prior to first occupation and the implementation to the first planting season following that occupation.
31. A condition is necessary requiring the submission and approval of biodiversity enhancements to accord with the Framework and Policy NE2 of the Local Plan. This is not a refurbishment of an existing dwelling but a larger replacement dwelling and the requirements of biodiversity enhancement are reasonable and necessary.
32. Conditions to minimise water usage as referenced in Policy CC2 of the Local Plan, and the requirement to provide an electrical vehicle charging point, are necessary in the interests of sustainable design and subsequent occupation of the property. The footprint of the replacement dwelling is not entirely the same as the present structure and there has not been detailed investigations

regarding any contamination on the site. Consequently, a condition is necessary so that any contamination found during construction is formally addressed in the interests of the health and wellbeing of future occupants.

33. A condition requiring the parking area to be provided and retained is necessary in the interests of highway safety and the convenience of other drivers. I have simplified the condition in the interests of clarity.
34. Finally, in addition to the Council's suggested conditions, a condition is necessary for the reasons explained above to ensure that the works to the joint boundary structure with Rivendell Cottage are submitted and agreed. This needs to be a pre-commencement condition so that it is clear the details of the works are acceptable before any demolition takes place. I appreciate that some of these works and processes may also be covered by the Party Wall Act 1996. However, ensuring that the works are visually acceptable, and the living conditions of the adjoining occupants are not adversely affected, is directly related to the provision of a detached dwelling and is a planning matter. I have carefully considered the alterations to the wording of the condition that have been suggested by the appellant. I consider that there needs to be agreement with the Council to the timetable of the works so that at all times Rivendell Cottage is maintained in a weatherproof state. Agreeing to the details and timing for the stages of the works would help to ensure, through the sequencing of the agreed works, that Rivendell Cottage is protected at all times.

Conclusion

35. The Council do not object to the scheme for the replacement dwelling and I have found that the proposal would be acceptable. In particular, it would not harm the character and appearance of the area nor unduly affect the living conditions of the residents of neighbouring properties. I am satisfied that there is no planning policy, planning issue or planning matter that would justify refusal of the proposal.
36. The proposal would comply with the development plan when considered as a whole and material considerations do not indicate a decision should be made otherwise. Accordingly, I conclude, subject to the specified conditions, that the appeal should succeed, and planning permission should be granted.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 21_91_01 Location & Block Plan
 - 21_91_06 Rev F Ground Floor plan
 - 21_91_07 Rev F First Floor Plan
 - 21_91_08 Rev D Front Elevation
 - 21_91_09 Rev D Side Elevation
 - 21_91_10 Rev D Rear Elevation
 - 21_91_11 Rev D Side Elevation
 - 21_91_12 Rev D Garage Plans and Elevations
 - 21_91_13 Rev B Proposed Sections
- 3) Notwithstanding the submitted details, no construction above foundation level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted, inclusive of (windows, doors, bricks, tiles, cladding, rainwater goods and their routing/position), have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development above foundation level shall take place on site until details of how the development shall enhance biodiversity has been submitted to and been approved in writing by the Local Planning Authority. These details shall include the installation of bat and bird nesting boxes, the provision of generous native planting where possible, and the timing of the installations. The approved details shall be implemented as agreed and thereafter retained.
- 5) The replacement dwelling hereby permitted shall not be first occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out within the first planting season following the first occupation of the dwelling or in accordance with the programme agreed in writing with the Local Planning Authority.
- 7) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

- 8) No development beyond the construction of foundations shall take place until details to demonstrate that the dwelling hereby permitted shall use no more than 110 litres of water per person per day have been submitted to and approved in writing by the Local Planning Authority. The details shall be implemented as agreed.
- 9) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, in respect of details of how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.
- 10) The parking area shown on the submitted plan shall be provided and made available prior to the first occupation of the dwelling hereby approved and thereafter shall be kept available for such use at all times.
- 11) Prior to the first occupation of the dwelling hereby permitted, one electric vehicle charging point shall be provided, in accordance with specifications and in a location that have been submitted to and approved in writing by the Local Planning Authority.
- 12) Prior to the commencement of any works on site, including demolition, details and a timetable of the works to remove the existing building without adversely affecting Rivendell Cottage, and the subsequent works, materials, finishes and timetable to make good the joint/side boundary of Rivendell Cottage, shall be submitted to and be approved in writing by the Local Planning Authority. The works shall take place in accordance with the approved details and timetable.

End of Schedule