



Appeal Decision

Site visit made on 20 June 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 26th July 2023

Appeal Ref: APP/C1435/W/22/3307188

Woodside Farm, Caneheath, Arlington, BN26 6SL

- 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Martyn Fowdrey against the decision of Wealden District Council.
- The application Ref: WD/2022/1747/FA was dated 6 July 2022.
- The application sought planning permission for Redevelopment of part of the farm to upgrade the equestrian facilities, to include the demolition of some buildings and the extension of others and the erection of a new workshop building. Replacement of the existing holiday let and dwelling within more sustainable buildings, in different positions, with associated landscaping and access alterations, without complying with conditions attached to planning permission Ref: WD/2021/2476/F dated 26 August 2022.
- The conditions in dispute are Nos 8 and 16 which state that:
- Condition 8: Before first use / occupation of the dwelling and holiday let or stables hereby approved, the car parking spaces and turning areas shown on drawing no 601IH shall be provided, and thereafter shall be retained for such purposes to the satisfaction of the Local Planning Authority.
- Condition 16: This planning decision relates solely to the information contained within the application form, the following plan(s) and (where appropriate) documents:
 - Planning/ Design & Access Statement
 - Preliminary Roost Assessment Survey
 - Existing and proposed surfacing
 - 202D
 - 502
 - 401D
 - 400D
 - 505D
 - 201d
 - 501D
 - 1:2500 Site plan
 - Tree Survey & Arboricultural Impact Assessment Demolished Structures Plan
 - Curtilage site plan
 - Riding school floor plan
 - 600H
 - 601H
 - 100F
 - 101G
 - 302H

- The reasons given for the conditions are:
Condition 8: In the interests of and for the safety of persons and vehicles using the premises and/or the adjoining road and in order to secure a satisfactory standard of development, having regard to SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies EN27, TR3 and TR16 of the adopted Wealden Local Plan 1998.
 - Condition 16: For the avoidance of doubt
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Decision

1. The appeal is dismissed and planning permission refused.

Preliminary Matters

2. The appeal is against the failure of the Council to give notice of its decision within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
3. Permission was granted in April 2022 under the Council's ref: WD/2021/2476/F for redevelopment of part of Woodside Farm to upgrade the equestrian facilities, to include the demolition of some buildings and the extension of others and the erection of a new workshop building together with the replacement of the existing holiday let and dwelling with new buildings. The Appellant now seeks to make some changes to that permission as the site has been split in two and to include various changes to the layout and design of the approved buildings.
4. Since the submission of the appeal, the Appellant has advised that the Council granted permission for a series of changes to the original permission (WD/2021/2476/F) under the reference WD/2022/2551/FA on 9 March 2023, alongside the discharge of some of the conditions and a variation to the Section 106 Agreement relating to the original permission. The outstanding matter and therefore the principal consideration in this appeal relates to the proposed changes to the approved replacement dwelling granted permission under WD/2021/2476/F.
5. The Council's appeal statement raises two principal matters, the first relating to the acceptability of the proposal to be considered as *minor material amendments* to an approved scheme, and secondly, notwithstanding the first concern, confirmation that the application would have been refused because of the scale of changes to the permitted replacement dwelling, contrary to policy.
6. In respect of the first matter, the changes sought would not require a variation to the terms of the 'operative' part of the planning permission, that is the description of the development for which planning permission was originally granted; it would still relate to a replacement dwelling. There is no statutory definition of a *minor material amendment*, and indeed is not a term used in Section 73 of the Town and Country Planning Act 1990 (as amended). The Appellant has referenced guidance produced by the Council in this respect. I understand the Council's concerns in this regard about whether the changes properly fall to be regarded as a *minor material amendment* against the criteria it has set out. However, as it would not affect the operative part of the

permission, for the purposes of this appeal I am prepared to accept the procedure used.

Main Issue

7. The main issue in this appeal is the effect of the proposed changes to the permitted replacement dwelling, in comparison with the original dwelling, on the character and appearance of the countryside.

Reasons

8. The appeal site is within the open countryside with sporadic residential and commercial businesses in the locality. The existing site comprises a number of buildings in equestrian use, as well as a holiday let and a residential dwelling established through a Lawful Development Certificate. There is a general policy of restraint to development in the countryside as set out under Policy GD2 of the Wealden Local Plan (Local Plan). Following on from and related to this objective, Policy DC17 of the Local Plan resists new housing outside development boundaries and Policy DC18 of the same plan allows for the replacement of existing dwellings subject to compliance with criteria.
9. It is my understanding that the original permission for the redevelopment and works at the site, which include for a replacement dwelling, were the subject of revisions to find a scheme which could be supported by the Council. The revision as now proposed seeks to introduce additional habitable accommodation at a new basement level, as well as further floorspace at the basement level, over which there is a dispute between the Appellant and the Council over whether or not it would or could be habitable space. The introduction of the basement accommodation would introduce external changes to the dwelling and externally to accommodate the changed levels.
10. Criterion 1 of Policy DC18 sets out that that in order to be acceptable, *the proposal is of comparable size to the existing building*. It is my understanding from the information provided that the permitted replacement dwelling provided for 130sqm floorspace which represented an uplift from the 80sqm of the LDE dwelling, or a 60% increase.
11. The proposal now seeks to add a basement level and the relevant plan indicates that this would provide additional habitable floorspace of some 84 sq m. The Council suggests that this could be further increased because of changes in the levels and that fairly modest additional changes to the levels would enable further habitable floorspace to the building. Even without taking this potential additional floorspace into account, a further increase of 84 sq m habitable space would be a significant uplift on that already approved and when compared with the original dwelling. It is my view that in simple arithmetic terms, the further additional floorspace would not meet criterion 1 of the Policy which requires the proposal to be of comparable size and massing to the existing building. The size of the replacement dwelling, as now proposed, in relation to the size of the original dwelling would be excessive.
12. I do not agree with the Appellant's contention that because the proposed additional floorspace would be at basement level it would therefore have very limited impact on the appearance of the development. In terms of massing the approved replacement dwelling appeared to be single storey in form. By comparison and from certain positions, the replacement dwelling would appear

to be two storeys in form with excavation and steps to the basement terrace with glazed sliding doors to the basement level. I therefore consider that in addition to the actual additional floorspace proposed, the resultant building with the basement accommodation would appear as a much more substantial dwelling on the site. It would become disproportionate in both size and massing to the original dwelling it would replace. It would not therefore comply with the second criterion of Policy DC18 of the Local Plan.

13. Furthermore, given the very modest level changes around the site in the vicinity of the proposed replacement dwelling, I agree with the Council that some considerable excavation of the land levels would be required to accommodate the basement level necessitating additional external steps and level changes. The introduction of the basement and surrounding changes to the levels would appear as an artificial and alien feature within the site and in the local landscape. This would add further to my concerns in respect of meeting the second criterion.
14. The suggestion that the use of the basement accommodation could be controlled by condition would not overcome the harm I have identified above.
15. I understand the Appellant's view that the Council's suggestion that further changes once the replacement dwelling has been built may be possible, would not be practical in so far as they would relate to changes at the basement level. However, my consideration is based on the scheme proposals before me.
16. No concerns are raised by the Council in respect of Criteria 3 and 4 of the Policy and I have no reason to take a different view.
17. Although Policy DC18 of the Local Plan focuses solely on the relationship of the proposed replacement dwelling, in comparison with the original dwelling, I have taken into account that the other changes proposed and indeed now permitted would lead to a net reduction in floorspace across the site. However, this would not outweigh the harm I have concluded from the proposed larger size and massing of the proposed replacement dwelling. Furthermore, these other changes would not modify the impact of the much larger replacement dwelling which would be seen as a much more dominant building within the site.
18. I agree with the Appellant that there would be limited views of the replacement dwelling from outside of the site. However, the increase in massing and resultant more dominant building would impact the character of the countryside which both national and local plan policies seek to protect.
19. I therefore conclude that the proposed amendments in so far as they relate to the changes to the approved replacement dwelling would not conserve the rural character of the local area. The proposal would therefore conflict with Policies GD2, DC17 and DC18 of the Local Plan as well as the National Planning Policy Framework and in particular Sections 12 and 15, all of which amongst other matters seek to control development, including in respect of the Local Plan policies, replacement dwellings, to protect the character and appearance of the local context.
20. I have noted that the Council cannot demonstrate a five year housing land supply but as this proposal relates to amendments to an existing permission for a replacement dwelling, this is not pertinent to my consideration. The Appellant

has referred to the identified need for larger family dwellings, but this does not persuade me to a different conclusion given the harm I have found.

Conclusion

21. There are no other material considerations which would justify me making a decision other than in accordance with development plan policy. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be dismissed and planning permission refused.

L J Evans

INSPECTOR