
Appeal Decision

Site visit made on 12 July 2023

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2023

Appeal Ref: APP/U1430/W/22/3308193

Holland of Rye Furniture Makers, 145 South Undercliff, Rye, TN31 7HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission with all matters reserved.
 - The appeal is made by Mr A Holland on behalf of Holland of Rye against the decision of Rother District Council.
 - The application Ref RR/2020/995/P, dated 20 May 2020, was refused by notice dated 22 August 2022.
 - The development proposed is described as Outline: Proposed demolition of existing building, construction of four semi-detached four bed houses with allocated parking spaces. Construction of separate commercial building to include 2 retail outlets (A1) and 3 offices (B1(a)), together with allocation parking.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description for the development refers to proposed uses as being within use classes A1 and B1(a). These use classes have been superseded and now fall within use class E.
3. The proposal is for outline planning permission, with all matters reserved. The proposal was accompanied by indicative site, layout, floor, elevation and street scene drawings, which show how the proposed development could be accommodated and look.
4. In their decision notice the council refer to policies DHG9 (Extensions to existing dwellings) and DEN2 (Areas of Outstanding Natural Beauty) and Policy S2 of the High Weald AONB Management Plan, however in their appeal statement they confirm that they are not relevant to the proposal. Also, that whilst policies DEN5 (Drainage) and DEN7 (Environmental Pollution) are relevant to the proposal they are not relevant to the reasons for refusing the appeal application.
5. The Appeal has been dealt with on this basis.

Main Issues

6. The first main issue is the effect of the proposal on the supply of employment workspace within the immediate and wider area. The second main issue is the effect of the proposal on the immediate and wider street scene and the setting of Ferry Cottage, which is Grade II listed, and the Rye Conservation Area (RCA).

Reasons

Employment floorspace

7. The appeal site is located in a settlement where, in principle, policies OSS2 & OSS3 of the Rother Local Plan Core Strategy 2014 (CS), policy DIM2 of the Rother Local Plan Development and Site Allocations Local Plan 2019 (DaSA), and policy E1 of the Rye Neighbourhood Plan (RNP), support the provision of new development, including housing and commercial, through infilling and redevelopment, particularly on previously developed land.
8. This is subject to compliance with other policies in the development plan, including those relating to the need for and access to employment opportunities, making effective use of land and maintaining the character and qualities of towns and the landscape. Paragraph 47 of the National Planning Policy Framework points out that planning law requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise.
9. The appeal site is situated within an accessible modest sized and long-established commercial area on the edge of the town. The appeal premises are located close to the junction of Rock Channel and South Undercliff (A259) and comprise an old general industrial building that is made up of a number of part single and part two storey elements that have evolved over the years. The overall structure extends to some 798m² and is constructed from a combination of red brick, painted blockwork, timber, asbestos and metal sheeting. To the front of the building is a parking area that fronts directly onto Rock Channel.
10. The appeal premises are old, not in a particularly good state of repair and would require significant refurbishment or reconstruction to comply with modern day building standards. With the proposal the appeal site would be redeveloped to provide four semi-detached, three storey family houses and a two storey commercial building with a floor area of some 143.2 m².
11. Collectively and amongst other things DaSA Policies DCO1 and DEC3, CS Policy EC3 and RNP Policy B1 seek to protect and enhance existing employment premises and encourage economic growth in the local area. Where proposals would result in the loss of sites of economic value it must be demonstrated that there is no reasonable prospect of their continued use. Such evidence should be backed up with evidence from a marketing campaign of normally at least 18 months, that offers the site/premises for sale, or rent at a realistic valuation. The submitted evidence should demonstrate that the unit is not capable of being financially viable, including for appropriate alternative economic or community facilities.
12. CS Policy EC3 (iv) goes on to state that where lack of viability is demonstrated, complementary enabling development as part of an overall scheme to make the most effective use of the property for employment purposes will be permitted. If this is not possible community and affordable housing uses should be prioritised ahead of open market housing, subject to local needs. Paragraph 8 a) of the Framework explains that one of the overarching objectives of sustainable development is helping to build a strong, responsive and competitive economy by ensuring that sufficient land of the right types is available in the right places and at the right times to support growth.
13. The viability report submitted by the appellant states that Rye is an established market town that offers a good range of independent shops, restaurants and

tourist related uses. It also has a low manufacturing base and Rye Harbour Road is the main focus for the provision of business space within the town. Unemployment levels in the district were low in 2011 and Rye is not an attractive location for businesses. This is because it lacks the critical mass and range of services necessary to attract business occupiers and employers.

14. The report goes on to state that more than sufficient land has been allocated, developed or granted planning permission in the district to meet future business needs and that in this respect the loss of the appeal site would be of no significance. The Rother Employment Land Position Statement 2021 advises that Rye/Rye Harbour and the rural area have exceeded their new employment floorspace targets, although Bexhill and Battle had failed to meet theirs. Overall, the district is expected to exceed its stated target. The report advises that whilst the figures suggest that there is no quantitative requirement for additional floorspace in Rye and Rye Harbour, it should be appreciated that the targets are the minimum required floorspace and there may be needs and opportunities for additional floorspace in particular locations.
15. With regard to the appeal proposal, little evidence has been submitted regarding the locations and nature of the allocated business sites, the loss of existing business sites in the area and the current availability and demand for industrial units in this location. In addition, no evidence has been submitted regarding the availability and take up of industrial units for sale or lease in the locality.
16. The appellants viability report assessed the existing use value of the premises to be £350,000 and that the redevelopment of the site for 4No. 120m² light industrial units would result in a substantial loss and would not be viable. The council's viability report does not disagree with these figures and conclusions. However, the council's viability consultants were unable to comment on whether the buildings in their existing form would be saleable/lettable due to the lack of evidence submitted by the appellant. They advise that an 18 month marketing campaign would establish whether the premises are saleable or lettable for industrial/commercial use, along with their employment potential.
17. I agree with this view. Further, inadequate evidence has been submitted to demonstrate that no other commercial or community uses would be viable on the site and their employment potential. Also, that the appeal proposal would represent a complementary enabling development as part of an overall scheme to make the most effective use of the property for employment purposes.
18. Finally, it is acknowledged that the larger industrial area at Rock Channel Quay has planning permission for residential and community uses. However, this is in accordance with the development plan policies for that particular site and so it does not set a precedent for the appeal proposal.
19. For these reasons I conclude on the first main issue that the proposal would result in an unacceptable and unjustified loss of employment space within an existing employment area. Accordingly, it would conflict with CS Policy EC3, DaSA Policies DCO1 & DEC3, RNP Policy B1 and paragraph 8 a) of the Framework.

Character and appearance

20. The appeal site is located within a primarily industrial area that is characterised by Rye fish market, various sized commercial/industrial buildings and a number of boat yards, with several dwellings interspersed between them. The siting of

the various buildings and uses is at times haphazard and primarily includes a mix of single and two storey buildings from a diverse range of designs, ages and materials. The stored boats are visible between and over some of the buildings and in the gaps between the buildings are views across the flat open marshlands towards the coast. There are a number of new buildings and refurbishments along Rock Channel, which are generally modest in form and respect the overall character and appearance of this particular area.

21. The existing building on the appeal site is unattractive. It is fragmented, utilitarian and industrial in appearance and in a declining state of repair. Notwithstanding this, it is modest in height and form and does not look out of place within its older industrial and boatyard setting.
22. To the west of the appeal building, the attached building (No.145), which is immediately adjacent to the junction of Rock Channel and the A259, comprises a single storey red brick commercial building with a flat roof. To the rear of the appeal building and No.145 is a short row of older one and half storey industrial buildings that are used for vehicle servicing and holiday lettings, with a builder's merchants a short distance beyond.
23. Directly opposite the appeal site is 'Salts' park, which sits at a lower level to the appeal site and is partially screened from Rock Channel by trees around its boundaries. To the east of the appeal site and Rock Channel is a large single storey industrial building that is occupied by a building maintenance and contractor's business.
24. A short distance to the northeast of the appeal premises is Ferry Cottage, which is a small single storey late C17th to early C18th grade II listed dwelling, whose history is associated with the social and maritime commerce of the immediate and wider locality. This building occupies a relatively prominent and spacious position just to the rear of a junction in Rock Channel, within a cluster of spaciouly sited single storey structures and close to the river Rother, river Brede and open marsh land. The other dwellings served by Rock Channel are randomly sited along the western part of the road and are typically single and two stories in height.
25. These features, together with the narrow width of Rock Channel, contribute to the low key and informal historic maritime and industrial character and appearance of the immediate area and the setting to Ferry Cottage.
26. The character and appearance of the street scene changes on the western side of the A259, where rows of terraced and other dwellings look out over 'Salts' park and are seen against a backcloth of elevated houses, landscaped gardens and elevated views towards the Ypres Tower, The Church of Saint Mary and the historic town centre. These features are more domestic and cultural and reflect their inclusion in the RCA, whose boundary runs along northern the section of Rock Channel and includes Ferry Cottage and 'Salt' park.
27. Whilst not within the RCA, the industrial area served by Rock Channel is within its immediate setting and contributes to the cultural and historical significance of the development of the town of Rye. As stated in the RCA-Character Appraisal, whilst this area is not included in the RCA due to its lack of substantial architectural character, its special interest is in the open foreground to the town when seen from the south across Rock Channel. It provides a contrast between the sharp cliff face with the town atop and the low-lying reclaimed land below. For these reasons and notwithstanding the utilitarian appearance of many of its buildings, this area contributes to the visual and historic setting of the RCA.

28. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires that when assessing proposals for new development which affects the setting of a listed building, special attention shall be paid to the desirability of preserving its setting.
29. Section 16 of the Framework states that when considering the impact of a development on the significance of a designated heritage asset great weight should be given to its conservation. Any harm to the significance of a heritage asset or from development within its setting requires clear and convincing justification. Where a proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Collectively, CS Policies EN1 & EN2 and DaSA Policies DHG9 & DEN2 are consistent with these requirements.
30. Together and amongst other things CS Policies EN1, EN3, OSS2, OSS3 & OSS4, DaSA Policies DEN1 and RNP E1 & E3 seek appropriate scale and design having regard to the application site, its relationship to the surrounding built form and landscape and its relationship to adjacent designated heritage assets. This is consistent with paragraph 130 of the Framework, which states that new development should be designed to a high standard, be sympathetic to local character and history, function well and safeguard the environment, whilst optimising the development potential of a site. Paragraph 126 of the Framework states that that good design is a key aspect of sustainable development.
31. It is noted that the submitted plans are for illustrative purposes only and thus concerns relating to its design detailing could be addressed at the reserved matters stage. Despite this, it is clear from the illustrative plans that to achieve the level of development proposed the overall development would be both intensive and in parts taller than the adjacent buildings.
32. Being located on the edge and at the entrance to the industrial area and next to a public park the proposed development would appear dominant and out of scale with its surroundings. Its scale would appear particularly uncharacteristic and overbearing when viewed from Rock Channel due to its narrow width and absence of pavements, as well as from 'Salts' park, which sits at a lower level to the appeal site. Although the trees along the adjacent boundary of the park would partially screen the development during the summer months, during the winter months the proposed development would be clearly visible across the park and beyond. It would similarly be unduly prominent in views to and from Ferry Cottage and from this part of the RCA, including from Ypres Tower gun garden.
33. The proposed dwellings would project very close to the industrial unit to the rear of the site. The outlook from the rear windows of the westernmost pair of dwellings in particular would be dominated by the side walls, roof and boundary with the adjacent industrial building. The outlook from the other pair of proposed dwellings would similarly be dominated by the adjacent industrial site.
34. The proposed rear gardens would be less than 10 metres in depth, whereas DaSA Policy DHG7(i) states that normally rear gardens for houses should be at least 10 metres deep. Whilst this policy indicates a degree of flexibility, in this instance the proposal is for four 4-bed family houses and their rear gardens would be both materially less than 10 metres deep and enclosed by the adjacent industrial premises. Notwithstanding their location opposite a public park, the

- severely restricted garden areas, particularly for the westernmost pair of dwellings would be inadequate to serve the proposed family dwellings.
35. The proposed drawings indicate that the dwellings would each have an integral garage which would be five metres deep x three metres wide. This meets with the county councils minimum recommended width for a garage and depth for a carport. This is reasonable given that the garages will not have doors, which is something that could be secured through the imposition of a condition. However, it is also noted that the illustrative layout does not show cycle or refuse and recycling storage facilities. If provided within the garages it would not be possible to provide minimum parking space within them. Alternatively, if stored within the gardens it would reduce still further the amount of external garden space. As a consequence, the proposal would conflict with SaDA Policies DHG7 and potentially DHG12, which relate to garden size and minimum carport/garage sizes.
36. The above factors serve to highlight the cramped and over-intensive nature of the proposal. Whilst the council has also referred to DHG11, as that policy refers to boundary treatment, I do not consider it is relevant to the reasons for refusal.
37. For these reasons the proposal would result in a cramped, over-dominant and uncharacteristic development that would unacceptably detract from the character and appearance of its surroundings and the setting of both Ferry Cottage and the RCA. The harm to the significance of these heritage assets would be low and thus less than substantial, due to the poor quality of the existing premises. However, as required by paragraph 202 of the Framework, this harm needs to be weighed against the public benefits that would result from the proposal.
38. The proposal would result in the removal of a utilitarian older building that is in a declining state of repair, the provision of modern commercial floor space and four family sized dwellings. In addition, I acknowledge that the council is expected to readily meet its overall employment land supply target, but has a significant housing land supply shortfall. These public benefits weigh in favour of the proposal.
39. However, the loss of employment floorspace in this location has not been justified. It has not been demonstrated that the proposal's employment potential would be comparable to or exceed that of the retention of the whole site in employment use. Also, the proposal is cramped, over-intensive and would provide unsatisfactory living conditions for the occupiers of the proposed dwellings. Accordingly, I only give moderate weight to these combined public benefits. I also give a modest amount of weight to the employment provided during the construction of the proposed development and the benefits the occupiers of the scheme would bring to the local economy.
40. Overall, I find that the public benefits that would result from the proposal would clearly fail to outweigh the identified harm that would be caused to Ferry Cottage and the RCA. As stated in paragraph 199 of the Framework, when assessing the impact of a proposal on the significance of a heritage asset great weight should be given to the asset's conservation.
41. I acknowledge that there have been a number of redevelopments within Bridge Point, which is located to the southwest of Rock Channel. However, much of this area has been allocated in the development plan for redevelopment. The

overall site layout plan for this area shows that the modern residential developments occupy more spacious sites than the appeal site and that they front onto the river Brede. Whilst their gardens are modest in size they have open outlooks over the river and beyond. The approved developments at Sandrock Marine accord with their commercial allocation in the RNP.

42. Finally, the development referred to at 74 Fishmarket Road relates to a site on the western side of the A259, where two and three story terraced houses back onto the steeply rising ground to the rear. That scheme involved the provision of commercial space on the ground floors, with apartments above, which are served by balconies/terraces to the rear. The heights of the resultant buildings are staggered to respect the existing three storey warehouse on one side and the existing two story dwelling on the other. Accordingly, none of these developments are directly comparable to the appeal scheme.
43. I conclude on the second main issue that the proposal would unacceptably harm the character and appearance of on the immediate and wider street scene and the setting of Ferry Cottage and the RCA. It would result in less than substantial harm to Ferry Cottage and the RCA and this harm is not outweighed by any public benefits. Accordingly, the proposal conflicts with CS Policies EN1, EN2, EN3, OSS2, OSS3 & OSS4, DaSA Policies DHG7, DEN1, DEN2 & DHG12, RNP Policies E1 & E3 and paragraphs 126, 130, 199, 200 & 202 of the Framework.

Planning Balance and Conclusion

44. The appellant has confirmed that the district does not have a deliverable supply of sites to provide a minimum five-years supply of housing sites. Therefore, the development plan policies that are most important for determining the appeal are out-of-date and the tilted balance as set out in paragraph 11d of the Framework is engaged. However, as stated in paragraph 11 d) and d)i of the Framework, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to designated heritage assets.
45. Accordingly, having regard to my conclusion on the second main issue, the tilted balance set out in paragraph 11 of the Framework is not applicable to the appeal proposal.
46. I conclude that the conclusions on the main issues amount to compelling reasons for dismissing this appeal, which the imposition of conditions would not satisfactorily address.

Elizabeth Lawrence

INSPECTOR