The Planning Inspectorate

Appeal Decision

Site visit made on 14 June 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/U1430/W/22/3303505
Little Hides Farm Cottage, Stonestile Lane, Westfield TN35 4PH

- 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 Vidmantas Jokubauskas against the decision of Rother District Council.
- The application Ref RR/2021/1647/P, dated 30 June 2021, was refused by notice dated 6 June 2022.
- The development proposed was originally described as *"Change of use from land that is non-compliant with agricultural occupancy to curtilage of an existing residential property."*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form and decision notice, on the evidence before me the Council, in 1994[1], approved an application to retain the Farmhouse without complying with an agricultural occupancy condition. As such, the wording in the description referring to this is consequently not relevant to this appeal proposal. The reference to curtilage is equally not relevant as it is not a land use. I have no evidence that the parties sought or agreed to an alternative description of development. However, the Design and Access Statement accompanying the planning submission makes clear that *"the applicant is seeking the change of use of the shaded area on the map to residential"* in association with the main building Little Hides Farm Cottage and I have therefore dealt with the appeal on that basis.

3. I note that the submission is specific in that it refers to the change of use of the land hatched red. For the avoidance of doubt, given that a much larger area of land is also enclosed within the red line, my consideration of the change of use of land encompasses only the area hatched red indicated by the appellant and not to any larger landholding.

4. The plans and accompanying details whilst referring to the use of the land for residential purposes also refer to the siting of mobile homes, fuel tank and a water storage as well as vehicle parking. The Council has previously refused a lawful development certificate for three static caravans[2]; however, in the

[1] LPA Ref. RR/94/2369/P
[2] LPA Ref. RR/2019/1135/O

interests of clarity my consideration in this appeal relates only to the use of the land as applied for in the original submission.

5. The appellant indicates on the application form that *"this part of the land is in permanent incidental use adjacent to the main building …"* this reflects what I observed on the land during my site visit. I have therefore considered the appeal proposal as retrospective development, as did the Council during the determination of the application.

Main Issue

6. The main issue is the effect of the development on the character and appearance of the area including the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

7. The appeal site is located within the High Weald AONB where paragraph 176 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty.

8. The site comprises Little Hides Farm Cottage and adjoining land. The Cottage is a large dwelling, which from the plans includes a garden area immediately adjacent to it and bordered by mature trees. The size of the garden land relative to the size of the cottage is modest. From the evidence before me, the enlarged garden does not benefit from planning permission.

9. The dwelling alongside its garden is typical of surrounding development which in this location is characterised by large dwellings set in dense woodland settings surrounded by open fields, thick hedgerows, and long ranging views across rolling hills. These characteristics are reflected in the High Weald Management Plan[3] which identifies that the landscape is *"a detailed agricultural tapestry of fields, small woodlands and farmsteads"* features which serve to conserve the landscape and scenic beauty of the AONB.

10. The land that the appellant wishes to authorise as a residential use, comprises an area of ancient woodland, albeit with areas of hardstanding, an access track, and part of an open field. The latter of which is located between the cottage and Stonestile Lane.

11. Policy DHG8 of the Development and Site Allocations Local Plan (DASA), December 2019, supports extensions to residential gardens but only where they are modest in area and where the change of use and associated domestic paraphernalia does not harm the rural character of the area or where such an extension to the garden would be up to a natural boundary or could be considered a logical rounding off. In this case the area of land is significantly more than could be described as the above characteristics. Moreover, DASA Policies DEN1 and DEN2 support development which maintains the landscape character through reinforcing the natural and built landscape character of the area; and all development within the AONB that conserves its landscape and

[3] The High Weald AONB, An outstandingly beautiful Medieval landscape, Management Plan 2019-2024, A statutory plan setting out local authority policies for the management of the High Weald Area of Outstanding Natural Beauty.

scenic beauty. DASA Policy DEN2 also highlights development within the AONB should be small scale.

12. Policies OSS4, RA2 and EN1 of the Rother Local Plan, Core Strategy (CS), September 2014, supports development which does not detract from the character and appearance of the locality; identifies conserving the intrinsic value, locally distinctive rural character as part of its overall strategy for the countryside; and, the management of the high quality natural landscape character is to be achieved by ensuring the protection of the district's nationally designated landscapes.

13. Whilst the change of use relates only to a small proportion of the land under the appellant's ownership, the extent of the change is large and covers an area far beyond the land associated with the original house. The area detailed in the change of use does not relate to a natural boundary, nor is there any evidence that would point toward a logical rounding off. This is despite the appellant's contention that the site boundary envelopes the mobile homes, fuel tank and water station and therefore does not need to be modest or follow a natural boundary or be considered a logical rounding off and that its main purpose is to delineate part of the land which is currently ancillary. This may be the appellant's interpretation; however, the basis on which the policy is applied is quite different.

14. Consequently, and notwithstanding the appellant's main intention, the appeal proposal conflicts with DASA Policy DHG8, for the reasons given above.

15. It is clear to me that without these structures the land would be undeveloped ancient woodland or agricultural fields. The relatively open field to the south and the ancient woodland to the north are also markedly different in character to the domestic character of the original property and its garden area. In summary, the development leads to an urbanisation of land within the AONB, due to the introduction of domestic paraphernalia across a much larger area and beyond the land legitimately related to the use of Little Hides Farm Cottage.

16. The appellant contends that siting the mobile homes within the existing land associated with Little Hides Farm Cottage would have a more harmful effect on the AONB than if they were sited on the land intended as an enlarged garden through this appeal development. To my mind, the siting of domestic paraphernalia within the authorised garden would have a less harmful effect on the landscape and scenic beauty of the AONB, as it would be viewed in combination with the dwelling rather than sprawled and intruding across a much larger area. Critically though, allowing this appeal would not restrict the appellant from siting additional domestic paraphernalia on the land authorised as residential garden to Little Hides Farm Cottage.

17. The increase in the amount of residential land at the appeal site, has an urbanising effect on the AONB and is harmful to the locally distinctive rural character. If allowed, the enlarged garden area alongside other similar development could disrupt the detailed agricultural tapestry of fields, as identified in the High Weald AONB Management Plan. Consequently, the development causes substantial harm to the landscape and scenic beauty of the AONB.

18. The development would conflict with paragraphs 130 and 174 of the Framework which require planning decisions to ensure that developments are sympathetic to local character and landscape setting; and recognise the intrinsic character and beauty of the countryside.

19. The use of conditions to control aspects of the development, including boundary treatments, would not overcome the harm caused by it. In fact, the installation of boundary treatments could have a greater urbanising effect on the AONB. Following the approach outlined in paragraph 55 of the Framework, I do not consider that there would be any conditions, which would not materially alter the development, which would mitigate the development such that it would make it acceptable.

20. For the reasons outlined above, the development substantially harms the character and appearance of the area, in conflict with DHG8, DEN1 and DEN2 and CS Policies OSS4, RA2 and EN1 and to the provisions of the Framework. These policies amongst other things seek to conserve or enhance the landscape and scenic beauty of the High Weald AONB; ensure the protection, and where possible enhancement, of the district's nationally designated landscapes; and strictly limit new development to that which supports local agricultural, economic or tourism needs and maintains or improves the rural character.

Other Matters

21. The evidence indicates that planning permission, Ref. RR/93/1759/P, removed the agricultural occupancy condition attached to the original permission for Little Hides Farm Cottage. A further reference to a 2012 Lawful development certificate for Little Hides Farm Cottage without compliance with an agricultural occupancy condition is also within the appeal documentation. As such, the matter of an agricultural tie is not of relevance to the determination of this appeal although it is noteworthy that the deliberations at that time did not conclude that the agricultural use on the land was unsuitable or unviable. There is no evidence to demonstrate that the land would not be able to be incorporated into an agricultural or horticultural business or included as part of a viable wider agricultural unit. On that basis, I therefore do not consider that the use of the land for agricultural purposes would be either unsuitable or unviable. The appellant contends that the site is grossly underutilised but there is no substantive evidence before me which indicates that the land could not be actively managed or used more intensively for agricultural purposes, as such this does not weigh in favour of the appeal proposal.

22. Paragraph 119 of the Framework requires planning decisions to promote the effective use of land, nevertheless, it is caveated by the need to safeguard and improve the environment. Likewise, paragraph 120 also promotes and supports the development of under-utilised land. In this instance, it is argued by the appellant that the development makes more of an effective use of the land than its previous use, but these factors do not mitigate or overcome the harm to the landscape setting and are afforded very limited weight.

23. Equally, the appellant emphasises that paragraph 124 of the Framework indicates that planning decisions should support development that makes efficient use of land, considering the desirability of maintaining an area's prevailing character and setting. In this instance, the appeal site is located within the High Weald AONB which is a nationally designated landscape and is an area which the Framework attributes the highest status of protection. As

such, there is a strong desirability to retaining the site's rural character, and great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB.

24. The appellant has highlighted that the land where the mobile homes are sited, formerly accommodated Nissen huts. They acknowledge that they have been removed and only remnants of the huts remain. During my site visit, there was no obvious appearance of Nissen huts, and any remaining remnants have blended into the landscape. Therefore, the Nissen huts referred to are making little, to no contribution to the prevailing character of the site, such that this factor could weigh in favour of the appeal development.

25. Paragraph 123 of the framework does not weigh in favour or against the development, as it concerns applications for alternative uses of land which is currently developed. The evidence makes clear than an application for a certificate of lawful development for the three static caravans was refused[4]. Development which is deemed not to be lawful is not a justification for the appeal development especially on a site that is afforded the highest status of protection as set out in the Framework. As such, the current use of this land is without the benefit of planning permission.

26. Whilst local planning authorities are expected to approach decisions in a positive and creative way[5], the development does not constitute sustainable development, as outlined within the Framework as crucially it conflicts with the fundamental principles of protecting AONBs. These are areas which are afforded the highest status of protection in relation to conserving and enhancing landscape and scenic beauty.

Planning Balance

27. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. There would be limited social benefits to the appellant in seeking the provision of land which he intends for purposes ancillary to the existing residential use, and the potential for limited economic benefits if additional ancillary accommodation was to be provided on site.

28. However, these benefits would be personal to the appellant and would not outweigh the harm upon the character and appearance of the AONB resulting from the development. That harm affects land designated as AONB to which the Framework affords the highest status of protection to which great weight must be attributed. There are also no material considerations which would outweigh the countryside protection policies, or which would warrant a decision other than in accordance with the Development Plan.

Conclusion

29. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

[4] LPA Ref. RR/2019/1135/O
[5] Paragraph 38 of the Framework

30. Therefore, for the reasons given above, the appeal is dismissed.

J Hobbs

INSPECTOR