



Appeal Decision

Site visit made on 8 August 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/U1430/W/22/3301063

Land at Bodiam Business Centre, Junction Road, Bodiam TN32 5UW

- 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 Park Lane Homes (South East) Ltd against the decision of Rother District Council.
 - The application Ref RR/2021/1609/P, dated 23 June 2021, was refused by notice dated 25 April 2022.
 - The development proposed is erection of 4 x 3 bedroom terraced dwellings together with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the site would be an appropriate location for housing, having regard to the Council's spatial strategy for development;
 - whether the proposal would result in the unjustified loss of a site for employment or community use; and
 - whether it would provide satisfactory living conditions for future occupants having regard to outdoor private amenity space and to noise and disturbance.

Reasons

Location

3. The appeal site is a large, partially overgrown gravel surface within the confines of Bodiam Business Centre (BBC). A planning permission for an office building on the site has been implemented¹ but it has not been constructed. The site would be redeveloped with four, three-bedroom terraced houses.
4. Policy OSS2 of the Council's Core Strategy 2014 (CS) contains a spatial strategy. Development boundaries around settlements differentiate between areas where most development, including housing, would be acceptable and where it would not. These reflect the main built-up confines and rural fringes of towns and villages in the district, including having regard to settlement function, availability and accessibility to facilities and services and to avoid scattered development. CS Policy OSS3 seeks, amongst other things, to locate

¹ RR/2003/3267/P

development in the context of the spatial strategy and CS Policy TR3 requires that it should minimise the need to travel, including to public transport, and have good access to employment, services and facilities.

5. Policy DIM2 of the Council's Development and Site Allocations Local Plan 2019 (LP) defines the settlements with development boundaries, including in a Neighbourhood Plan. Outside these boundaries this policy normally limits development to that which accords with other development plan policies or needs to be in the countryside. CS Policy RA3(iii) specifies limited instances for new dwellings in the countryside for rural workers, conversions of buildings, replacement dwellings or rural exception affordable housing.
6. The houses would be near two former office blocks on one side of the site converted to 25 flats and an employment building on the other side. This development does not itself constitute a settlement due to its limited extent and absence of any facilities or services. The site is in the countryside about 1km (in a straight line) to the west of Bodiam and this discrete pocket of buildings are distinctly separate from any closest development which is itself sporadic and mostly rural in nature. The dwellings would not, therefore, be in Bodiam or on its fringes but isolated from any settlement. Bodiam does not anyway have a defined settlement boundary and the dwellings do not need to be in the countryside for any reason recognised by the development plan.
7. The site (and BBC) is accessed from the B2244 Junction Road to the west. This fast (60mph) reasonably busy main road is unlit, has no pavements, grass verges sit above raised kerbs and it does not connect to any nearby settlement or have bus stops near the site. The public footpath to the east has a concrete surface, partly overlain by earth and vegetation. However, it meanders such that it is over 1km into Bodiam. It is also unlit, narrow in places and tightly bordered by hedges and trees either side making it disconcerting to use for fear of safety, especially for lone users. It also has agricultural field gate access along it and is part of a network of tracks leading to nearby farm buildings.
8. As a result, while walking is an available travel mode it is not conducive to pedestrians in this case, including to the bus stops in Bodiam which anyway provide very limited services and there are no local shops to meet day-to-day living needs. While some cyclists could travel to Bodiam or elsewhere by either route the occupants of the dwellings would be mainly reliant on the car. Even if this helped to enhance or maintain the vitality of Bodiam, four households would have a modest proportionate effect in these regards. There is no evidence that the houses would support the vitality of Bodiam or any other rural community in a significant way or give the future occupants suitable access to services or facilities and reduce the need to travel, especially by car, or enable the sustainable development of any rural area.
9. The district is largely remote countryside and about 80% is in the High Weald Area of Outstanding Natural Beauty. Nevertheless, the spatial strategy contains a significant number of settlements to meet most housing requirements, including main towns or larger villages. The appellant does not agree with the Council's approach in this regard, but it is not in the scope of this appeal to reconcile matters that are for the plan-making process. I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise².

² Section 38(6) Planning and Compulsory Purchase Act 2004 as amended.

10. Covid-19 has influenced working patterns and home delivery services. It is, though, widely reported in the public domain that staff are now required or encouraged to return to a place of work rather than exclusively work from home. I cannot anyway be certain that future occupants of the dwellings would work from home for any time. There is no evidence that all the existing flats receive weekly grocery or other home deliveries. Nor is there any guarantee that future occupants of the dwellings would conduct any or all shopping needs by this means or use the same delivery services, thus not increase such vehicle movements to this remote rural location. Such planned deliveries are also not likely to be responsive enough to meet immediate or unforeseen daily needs.
11. There is no certainty that any future occupants would be employed at BBC and I have not been informed of any significant employment provision in Bodiam. If the consented office building has little prospect of being built and occupied, as the appellant suggests, then there is no reasonable prospect of an actual comparable or net reduction traffic generation fall-back position. Moreover, car use associated with an employment or community use of the site is anticipated by the Council's spatial strategy, whereas car journeys from unjustified residential development in the countryside is not.
12. The flats exist by virtue of permitted development rights³ not planning permission granted with regard to the development plan. As such they are not comparable to the proposed houses and do not provide justification for further residential development in this location. It is likely that the Council has granted planning permission for housing development outside existing development boundaries, but even if it has there is no evidence that the circumstances are the same as in this appeal.
13. Taking all the above into account, I find that the site would not be an appropriate location for housing, having regard to the Council's spatial strategy for development. Consequently, the proposal is contrary to CS Policies OSS2, OSS3, RA3(iii) and TR3 and to LP Policy DIM2.

Employment or community use

14. The site is part of BBC. The lawful use and starting point in this appeal is that it is an employment site. CS Policy EC3(i) and LP Policy DEC3(i) seek to make effective use of existing employment land by retaining it for this use unless there is no reasonable prospect of continued employment use. LP Policy DCO1 requires evidence to meet two criteria; (i) a comprehensive and sustained marketing campaign which clearly indicates a lack of demand for the existing use or alternative commercial or community use, normally over at least 18 months with the premises offered for sale or rent at a realistic valuation, and (ii) that the building is not or is not capable of being financially viable for any of these uses.
15. The consented office building has been regularly marketed with a local and national profile since 2016⁴. There is no dispute that this has been over a suitable period and at an appropriate rental value. Further information has been requested by some potential interested parties but no firm site viewings for reason of location and distance from main town centres. While the site has not been marketed for sale or rent for any other office use, including smaller

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

⁴ 25 March 2021 letter by Dyer+Hobbs commercial property.

units or the sub-division of the consented building, it appears unlikely to have resulted in a different outcome in this respect.

16. However, there is no evidence that the site or the consented building has been marketed (subject to any necessary change of use) for other commercial or community use. It is therefore unsurprising that no approaches have been received in these regards. Nor is there evidence to substantiate that the site is too small for any of these other uses, including industrial use, or to show there is no need or demand for employment or community sites locally or in the district. On the face of it the non-office businesses in the existing employment building occupy small(er) units. Given that these alternative uses have not been tested by marketing to ascertain the actual level of interest or reasons why any interest did not progress, I cannot be reasonably certain that there has been no potential interested party. So, there is little compelling force of argument to what the appellant contends which is largely assertion or speculation no matter how well-informed.
17. It has also been suggested that it is no longer viable to build the consented office building once, amongst other things, the cost of the land and build costs have been accounted for. I appreciate that the appellant seeks the proposed residential use of the site, but the appeal ownership certificate confirms the appellant is the sole owner of the site. The cost of the land has already therefore been assimilated, were the appellant minded pursuing this development instead. Notwithstanding this, no figure has anyway been provided for the cost of the land or build costs for the consented office development or any other employment or community development on the site. There is no viability report before me. There is therefore no substantiated objective evidence that it is unviable to build the consented office building or redevelop the site for another employment or community use.
18. Taking all the above into account, I am not satisfied that the appellant has clearly demonstrated no reasonable prospect of continued employment use or alternative commercial or community use of the site. Nor has it been shown that any such use is not financially viable. On this basis, I find that the proposal would result in the unjustified loss of a site for employment or community use. Consequently, it is contrary to the Council development plan policies specified above which otherwise seek to retain such sites.

Living conditions

Outdoor private amenity space

19. The houses would be suitable in size for family occupation but the diminutive rear gardens would be between 5m and 6m deep. While the shorter 5m gardens at plots 1 and 4 would be wider (than plots 2 and 3) so also greater in area, about half of each of these gardens would project abruptly sideways beyond the backs of the end terrace houses. All the gardens would be overshadowed for most of the day from the south by the two-storey scale and massing of the houses. Additionally, these gardens would be enclosed to the north by the close proximity of a tall, imposing thick belt of mature trees on raised ground which is not part of the site.
20. Prospective future occupants might deem these gardens sufficient to meet their personal needs. However, in the wider public interest all the houses would have unduly cramped, restricted or confined rear gardens, manifestly shorter than

the 'at least' 10m length normally required by LP Policy DHG7. Additionally, the gardens at plots 1 and 4 would be awkward in layout and as such less convenient to use. These circumstances would not be conducive to normal expectations for outdoor activity including by families, such as for entertaining, relaxation or play and front gardens would be virtually non-existent. The proposal is not for flats so what might be an appropriate level of communal amenity space in that regard is not relevant to this case. No other reason has been given to significantly depart from the Council's normal standard.

Noise and disturbance

21. With conversion of the former office buildings to flats and an otherwise secluded rural location there is a tangible general background sense of tranquillity at the site, including because some of the units in the employment building appeared to be vacant or in low-key storage or distribution use with ancillary offices. However, from roughly the position of plot 1, I noted the unloading of a curtain sided lorry in front of the site and its departure, including movement of a forklift truck back and forth to the employment building. The engines of both vehicles and especially the repetitive reversing 'beeper' of the forklift were intrusive.
22. The appellant's noise impact assessment (NIA)⁵ does not give any insight into occupancy levels of the employment building in July 2022 or the specific nature of such activity or use and the noise measured. The noise measurement location is approximately at what would be the house on plot 1, so furthest from the employment building whereas the closest house on plot 4 would be only about 12m from it. There is no evidence that lorries or vans would no longer be able to park and load or unload directly in front of the houses using land not in the site or within the ownership or control of the appellant. The NIA assumes that BBC does not operate after 6pm on any day of the week (so including public or bank holidays) but there is no evidence of this, such as a planning condition restricting hours of use. Nor have I been informed about what type of businesses could occupy the employment building, such as industrial, including under any existing relevant planning permission.
23. It is not clear what influence any of these circumstances has had, or could have, on average (L_{Aeq}) daytime or night-time noise levels recorded at the site. The measurements have otherwise informed the NIA conclusion that no scheme of mitigation is required for the houses, though recommendations are made for window and rear garden fence design (but doesn't include a 2m high acoustic fence along the side of the front garden in plot 4 which would anyway be so close that it would unduly restrict outlook and daylight at this house). Albeit during the daytime, there is also some notably higher recorded average ($L_{Aeq,15min}$) values between approximately 49dB to 52dB that are unexplained in the NIA. The Council's environmental health officer did not object to the proposal but for planning purposes adverse disturbance to residential amenity can occur at noise levels below that which may constitute a statutory noise nuisance. I cannot, therefore, be certain that the NIA fully reflects, or is sufficiently representative of, potential commercial noise or disturbance from or connected with the employment building.
24. Considering all the above, I find that the proposal would not provide satisfactory living conditions for future occupants having regard to the extent

⁵ MRL Acoustics, July 2022.

and arrangement of outdoor private amenity space. Furthermore, I am not satisfied the appellant has demonstrated that there would not be unacceptable levels of noise and disturbance from employment use and activity next to the site. Consequently, it is contrary to CS Policy OSS4(i) and LP Policies DHG7(i) and Policy DEN7. These policies include that development should meet the needs of future occupiers for appropriate or proportionate levels of private external amenity space and for noise-sensitive development (such as housing) users should not likely experience unacceptable adverse effects from noise.

Other Matters

25. The site is in the High Weald Area of Outstanding Natural Beauty (AONB). Its distinctiveness includes the quality of architecture within it. The houses would be similar in overall form and external appearance to the approved office building and this infill site is within a small pocket of existing buildings either side, contained by the trees to the north with a limited visual horizon to the south. As a result, the proposal would have no adverse impact on the wider landscape and scenic beauty of the AONB so conserve the AONB.
26. Subject to planning conditions, the proposal would have no adverse effect on the living conditions of occupants of the existing flats. It would have a satisfactory means of access and provide sufficient car and cycle parking spaces with an acceptable level of traffic generation. There would be no adverse effect on any ecology interest and a landscaping scheme could also secure net gain in bio-diversity. The absence of harm in these regards are neutral factors in my decision.

Planning Balance

27. The Council accepts that it cannot currently demonstrate a 5-year supply of deliverable housing sites. Its most recent published update indicates a 2.79-year supply⁶. The appellant maintains that the Council has failed the Government's most recent published Housing Delivery Test but in any event the development plan policies most important for determining the appeal are out-of-date and National Planning Policy Framework (the Framework) paragraph 11(d) is therefore engaged. The starting point is that planning permission should be granted.
28. The proposal would make effective use of some previously-developed 'brownfield' land to help meet identified needs for housing and small windfall sites can often be built out quickly. This would be aligned with objectives of the Framework to significantly boost the supply of homes. The development would bring about employment at construction stage and generate a Community Infrastructure Levy payment and Council Tax receipts. While notable, and notwithstanding the significant shortfall in the supply of housing, these modest social, economic and environmental benefits from four dwellings have moderate weight in favour of the proposal.
29. On the other hand, the site is fundamentally at odds with the Council's spatial strategy and not a suitable location for the residential development. Given the housing land supply position, reduced weight applies to this conflict with the development plan. Nevertheless, the proposal would not promote walking or

⁶ Rother District Council Housing Land Supply and Housing Trajectory, April 2022 position statement published October 2022.

public transport in a meaningful way or result in a pattern of housing development that supported these aims. While transport opportunities vary between urban and rural areas the houses would not be in a location that is or could be made sustainable by limiting the need to travel or offer a genuine choice of travel modes. It would undermine the Council's objectives in these respects which remain consistent with rural housing and sustainable transport objectives of the Framework.

30. The development plan seeks to achieve effective use of the existing stock of employment land, including opportunity for community use. These aims are broadly consistent with the Framework objectives to support economic growth in rural areas taking account of local business needs and locational requirements to ensure a suitable mix of uses, including to enhance the sustainability of communities through community facilities. Unsubstantiated redevelopment of the site would be at odds with these local and national planning policies. Once taken out of the consented office use the site may never come back into employment use or be in community use and be permanently lost.
31. The proposal would not provide satisfactory private amenity space commensurate with the size, layout and likely family occupation of the houses. There is also significant potential for unacceptable harm to those who would live in the houses by virtue of location next to the employment building. Both outcomes would be at odds with objectives of the Framework to ensure suitable, appropriate land is developed for new homes to promote health and well-being and ensure it functions well over its lifetime with a high standard of amenity for future users.
32. Each of the above social, economic and environmental considerations have significant weight against the proposal.
33. In this appeal the application of policies in the Framework that protect areas or assets of particular importance (the AONB) do not provide a clear reason for refusing the development. However, in my view the adverse impacts of granting planning permission in the circumstances outlined above would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this case.

Conclusion

34. The proposal does not accord with the development plan taken as a whole and conflicts with relevant provisions of the Framework. There are no other material considerations which override these findings. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR