



Appeal Decision

Site visit made on 9 July 2024

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal Ref: APP/Y9507/W/24/3338082

Stocksfield, Borden Lane, Borden, Milland, West Sussex, GU30 7JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Tim Cox against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/23/03950/FUL.
 - The development proposed is demolition of the existing dwellinghouse and the erection of a contemporary replacement dwelling with associated site works in a revised location.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site is in the South Downs National Park (the SDNP). The main parties were given the opportunity to comment on the new duty under s245 of the Levelling-up and Regeneration Act 2023 requiring all relevant authorities to "seek to further" the purposes of National Parks as part of this appeal. The first of these purposes is to conserve and enhance the natural beauty, wildlife and cultural heritage. Comments received have been taken into account.
3. The site is also within the boundary of the Milland Neighbourhood Development Plan 2016 (the NP). Milland is a large rural Parish. Borden is to the south of the main Milland settlement.
4. The appellant considers that, as the SDNP Extensions and Replacement Dwellings Technical Advice Note, 2023 (the TAN) is not mentioned on the Decision Notice, it would amount to new evidence in this appeal. However, the TAN is referred to in the comments of the County Council Landscape Officer and in parts of the appellant's evidence. As a result I consider the advice in the TAN to be a material consideration in this appeal.
5. A complete copy of the Landscape and Visual Appraisal hla 467 R01 rev B (the LVA) has been provided. The date on the drawings in the LVA is earlier than those on which the Authority's Decision was made. The appellant advises the differences are minimal, namely the solar panels on the site plan are shown individually rather than as a block and "draft" was removed from the drawings when submitted to the Authority. For the avoidance of doubt the appellant has provided versions annotated as "Decision dated 21.09.2023" as being the ones the Authority considered.

6. A certificate of lawful use or development (proposed) has been granted¹. This demonstrates that the erection of a single storey rear extension could take place without the need for planning permission². Such an extension could result in at least four bedrooms, a porch and an area of permeable hardstanding. This is a material consideration in this appeal.

Main Issues

7. The main issues are:

- whether the size of the replacement dwelling would be supported by planning policy;
- the effect of the proposal on the character and appearance of the area having regard to the location within the SDNP;
- the effect of the proposal on the living conditions of occupiers of nearby properties; and
- the effect of the proposal on the integrity of the Arun Valley Special Area of Conservation, Special Protection Area, and Ramsar Site (the Arun Valley sites) with regard to groundwater abstraction.

Reasons

Replacement dwelling

8. The appeal site is not within a settlement boundary. Policy SD30 of the SDNP Local Plan 2019 (the LP) allows for replacement dwellings outside settlement boundaries where there is not more than approximately 30% increase in floorspace compared with the gross internal area of the existing dwelling. Supporting text at Paragraph 7.84 of the SDLP explains this is to reduce the loss of needed small homes through replacement by substantially larger ones.
9. Policy H.1 of the NP states replacement dwellings will only be permitted if the works do not result in the loss of a small dwelling i.e. the property will only still contain no more than three bedrooms. The thrust of this Policy, which is to meet local housing needs for smaller dwellings, is the same as that of Policy SD30 of the LP but the assessment method is different. The TAN combines these approaches.
10. I acknowledge that extensions could be built to the existing house without the need for planning permission. However, in my judgement this is not the test in relation to Policy SD30 or Policy H.1. This is because Paragraph 7.85 defines the 'existing dwelling' for this purpose as that which existed on 18 December 2002, which is the date the SDNP was first designated, and Policy H.1 also refers to the loss of an existing dwelling. I therefore give the ability to extend the existing dwelling limited weight in my considerations of this main issue.
11. The evidence as to floor size for the purposes of Policy SD30 is not entirely consistent. The appellant's letter dated 9 September 2023 and the Full Statement of Case state the 'original' dwelling measures 129.2m² and the existing dwelling measures 179.1m². The Design and Access Statement June 2023 (DAS) states the Gross Internal Area of the existing house is 152.8sqm.

¹ SDNP/23/02031/LDP

² Under the Town and Country Planning (General Permitted Development) Order 2015 as amended

It is not clear why this difference occurs but I note the Authority assessed the proposal against the latter figure.

12. The DAS states the proposed floor area to be some 205.9sqm whereas the Authority uses a figure of 232sqm. Comparing these figures to a floor area of 152.8sqm shows a proposed increase of either some 34.7%, according to the appellant, or some 52%, according to the Authority. Both exceed 30%.
13. I have seen no detailed breakdown of the floor area figures with which to assist me to reach a definitive conclusion though I give greater weight to the figures used by the Authority as the DAS calculation seems to exclude the proposed plant/utility room. Moreover, if it is correct that the original dwelling is some 129.2m², then the percentage increase would be greater.
14. Paragraph 7.38 of the LP explains any room in a proposed dwelling that is not a main reception room, kitchen, bathroom or WC, and has dimensions that allow for a single bed, will be counted as a bedroom. This will include studies and additional reception rooms.
15. Plan Ref 911 P005 annotates the existing floor plans as having two bedrooms. I have doubts that the extra rooms shown in the roof space would count as a bedroom due to their shape and restricted head height. However, the dining room amounts to an additional reception room and could therefore count as a bedroom. On this basis I conclude the existing dwelling would be small in terms of Policy H.1 of the NP. The proposed floor plans annotate three bedrooms but there are at least two other rooms which count as bedrooms in terms of Paragraph 7.38 of the LP. The proposal would therefore conflict with Policy H.1 of the NP.
16. The supporting text at Paragraph 7.89 of the LP defines a small dwelling as having a total Gross Internal Area (GIA) of 120m² or less. There is no definition of a medium sized house. However, irrespective of whether the actual useable floor space of the existing dwelling has a GIA of 120m² or not, the proposed increase in terms of floorspace or number of bedrooms would not comply with Policy SD30(a) of the LP or H.1 of the NP. In accordance with *Gill, R (On the Application of) v London Borough of Brent [2021] EWHC 67 (Admin)* (18 January 2021) I have given primacy to the detailed policies over the supporting text.
17. For the above reasons I conclude that the size of the proposed replacement dwelling would not be supported by those parts of Policies SD30 of the LP and H.1 of the NP that seek to retain small dwellings in the SDNP in order to meet local housing need. However, Policy SD27 of the LP, which is also cited on the Decision Notice, appears to relate to a mix of dwelling sizes on larger developments and does not seem to apply to this appeal proposal.

Character and appearance

18. The appeal site area is part of the Greensand Hills Character Area³. The Assessment explains that the Greensand Hills are steep, prominent hills in a horseshoe-shaped escarpment enclosing the Milland Basin. The typical settlement form comprises isolated farmsteads of medieval origin set within areas of early enclosure surrounded by woodland. Later enclosure of the

³ South Downs Landscape Character Assessment 2020 places the site within Landscape Character Type O: Greensand Hills and Landscape Character Area (LCA) O1: Blackdown to Petworth Greensand Hills.

commons created straggling agglomerations of settlement and isolated farmsteads or small holdings around the edges of the former commons. As a small hamlet with mainly two storey dwellings fronting the road, surrounded by woodland, Borden is not atypical. It is some distance from the core village of Milland and is different in character and appearance. According to the LVA landscape sensitivity is medium to high at local, county, regional and national scale. I see no reason to disagree.

19. Stocksfield is a detached property within the appeal site. The dwelling sits behind The Gardeners Cottage in the north-west corner of the site. It is essentially the only "backland" development in Borden. Access is via an unmade driveway to the side and rear of the village hall. The dwelling is a chalet style bungalow of no particular architectural merit with flat roofed dormer rooms in the roof space. It is close to and roughly parallel with the north and west boundaries of its curtilage the remainder of which is predominantly driveway and rough grass. Although it can be glimpsed in some wider views from the public right of way to the south it has a relatively low profile, is at the lower part of the site, and is tucked behind other buildings.
20. The appellant owns or controls a much larger area of land of which the red lined appeal site is part. The appeal site is at a higher level than the road and rises to the south and west. To the south of the appeal site the land rises even more steeply with a difference across the whole of the land of some 11m. In the larger area trees have been cleared partly due to deterioration of the sandy soils and weakening of root structures. Numerous young trees have subsequently been planted. Although young and yet to be fully established this blends into the predominant woodland character behind through which wends the PROW 1172 Serpent Trail.
21. The proposed dwelling would be positioned centrally and further back on the plot compared with the site of the original dwelling. I consider it would be more separated from the original than normally expected by Paragraph 7.88 of the LP in supporting Policy SD30 of the LP although re-positioning that does not have other harmful effects are acceptable. It would be further from the existing buildings and at higher land levels. This would achieve a better outlook for future occupiers, provide more natural light and passive ventilation, and would avoid the root protection zone of the beech tree in the southwest corner of the site.
22. The proposed building would have a large footprint being some 24m wide and 11m deep. At some 6m high it would be about the same height as the ridge of the existing dwelling. It would be of modern, flat-roofed, rectangular block design with many large openings partially broken by louvres. It would have two floors stepped so that the north elevation would be two storey and the south elevation would appear to be single storey with part of the building cut into the hillside. Although the flat roof keeps the overall height lower, the building would be of significantly greater mass particularly at the upper floor level because of its rectangular block form notwithstanding that the roof would in part be sedum covered.
23. Stepping back and variations in materials would create a degree of articulation. However, these are not sufficient to overcome such an overall large mass of solid rectangular form in this location. Nor does the building successfully follow the axis of the site as a greater degree of cutting into the slope would be

required at the north west part of the building. Although part of the building would be parallel with the slope, substantial cut and fill engineering works would be required and it is explained that some 214 m³ of earth would be removed.

24. Approaching up from the drive the ground floor elevation would be the most prominent. This would have a heavier nature stone base with relatively narrow horizontal windows of different sizes and degree of separation. They would appear incongruous and discordant in relation to the full height large paned glazed openings above set behind a long glass balustrade. The fenestration overall would be at odds with the traditional local vernacular where openings tend to be smaller, more regular in shape and disposition, and to have smaller panes with glazing bars. Materials at first floor would be predominantly timber and glazing. Locally timber tends to be used just for out buildings and the extent of glazing is uncharacteristic. The design and materials are intended to simulate the natural openings and variations between the trees that are the backdrop to the house. However, in my judgement this would not appear to be the case given the overall mass and horizontal format of the building.
25. For these reasons, the proposal would not be characteristic of the local area which comprises of pitched roof dwellings relatively modest in form with small apertures. It would not easily integrate with, respect, or sympathetically complement, the local village character. The Design Guide Supplementary Planning Document 2022 (SPD) explains that a landscape led approach needs to include conserving and enhancing the cultural heritage of the area. This is particularly important as cottages of Borden Wood estate and the village hall are recorded as Undesignated Heritage Assets in the NP as the most significant collection of domestic buildings in the local vernacular in Milland Parish.
26. The proposal would therefore be contrary to policy SD5 of the SDLP and Policies HD.1 and HD.3 of the NP which calls for the design of new buildings outside the core village of Milland to have regard to the vernacular character of buildings and materials. Neither the rectangular form, nor choice of materials, can be described as contributing positively, and being sensitive to, the defining characteristics of the local area.
27. Contemporary design that combines vernacular materials and forms with other materials can be appropriate. However, respecting the local distinctiveness of Borden is very important and the proposed design, whilst it might be appropriate in some locations, would appear incongruous and strange in the setting of Borden village. It would not in my judgement embody a sense of belonging in this particular location, even in a contemporary way.
28. I acknowledge that copying form and fenestration of local buildings might not always be appropriate. Earlier buildings were often designed to avoid heat loss whereas modern buildings may well seek to maximise solar gain although, as in this case, overhanging roofs are intended to assist in solar shading as well as to limit light spill. However, it does not follow that an alternative approach with a more sympathetic building could not be designed for the appeal site. The appellant has offered additional planting, which is usually to be welcomed, but well-designed buildings should not require screening as a key component to make them acceptable. The appellant states the existing house is uninhabited, derelict and falling into disrepair and the site and boundaries are not maintained. It is therefore considered to be an eyesore with out of date

ancillary structures such as an oil tank. Even were this to be the case, lack of maintenance would not in itself justify an otherwise unacceptable development.

29. Being at a higher level, positioned more centrally and with a high block like first floor the proposed dwelling will be more prominent in some limited views from surrounding rights of way and from parts of some neighbouring properties. I acknowledge that due to topography, other buildings such as the village hall, and mature woodlands, the building would be unlikely to be visible in its entirety from public vantage points. It would therefore not be excessively intrusive in the wider landscape, particularly at times when trees and hedges are in leaf. However, it would still be harmful in its setting within the site and the lack of wider landscape prominence does not absolve the need to meet with the policy requirements to achieve sensitivity with the local area.
30. Borden is within the Dark Sky Core E0 of the SDNP so another feature of the local area is the dark night skies. The spill of light through windows as well as external lighting can create significant amounts of light pollution reducing sky quality in the immediate area and disrupting the dark sky landscape as seen from the surrounding area. There are some extensive areas of glazing but the appellant calculates this would meet the SDNP size guidance⁴ and I see no reason to disagree with the calculations.
31. There would also be mitigation measures such as louvres, over-hanging roof lines which would help reduce glare and reflection, protruding walls which would funnel light and limit spill, low-transmission glazing and possibly electronic blinds. The DAS says the majority of external lighting will be limited to the south elevation around spaces that require lighting to maximise use. It would be downward facing and recessed beneath the roof overhang and extended walls so the light source would not be directly visible and warmer colour temperature lamps would be used.
32. However, it seems likely there would also be some external lighting that would be required to fully utilise the balcony areas to the north elevation. These could appear as a ribbon of light at a relatively high level in the landscape, even if well-designed and discreet. There is insufficient information before me to clearly establish the extent of mitigation by vegetation or buildings because of the height at which such light would appear. I therefore cannot confidently conclude that the proposal would not have a harmful effect on the dark skies and remote tranquillity of the valley.
33. It seems likely there would also be a need for external lighting to the drive and circulation areas at the front of the building. However, this would be at a lower level and provided of appropriate design, and only lit whilst in use, would not be overly harmful.
34. When in use there would undoubtedly be light spill from the use of the existing house. However the windows there are at a much lower level in the landscape, and are of the standard domestic style and therefore of relatively low impact.
35. The LVA concludes there would be no change/beneficial visual impact as a result of the proposal and the appellant is concerned that a photomontage prepared by a third party is inaccurate and misleading. However, the appellant has not provided a similar photomontage. Whilst there is no right to a private

⁴ Dark Skies Technical Advice Note 2018

view in planning policy terms the effect of a proposal in a landscape is a material consideration. There is little by way of conclusive evidence of the perceivable effect, if any, from the other side of the valley and the "Extended Site Section AA & Site Plan" stamped Decision dated 21.09.2023 ends just beyond the village hall. Moreover, the positioning of the dwelling in that site section appears not to match those on the other plans so I cannot rely on it.

36. For the reasons set out above I conclude that the proposal would have a harmful effect on the character and appearance of the area. I cannot confidently conclude there would be no harmful effects on dark skies. I conclude the proposal would not further the first national park purposes of conserving and enhancing the SDNP, and in terms of the Framework would not conserve and enhance landscape and scenic beauty, a matter to which great weight should be attributed. Consequently, there would be conflict with Policies SD1, SD4, SD5, SD8 and SD30 of the LP and Policies S.1, HD.2 and HD.3 of the NP and SDP and relevant principles of the Framework in these respects.

Living conditions

37. The proposed dwelling would be some 27m from the rear elevation of Standings Cottage. It would be a fair distance from the shared side boundary. In many cases this would be, in planning policy terms, sufficient protection from overlooking and over bearing impacts on the living conditions of occupiers of neighbouring properties.
38. However, the finished floor level at first floor would be at about 81.5m. Detailed levels for Standings Cottage are not provided although the contours within the appeal site dip to about 75.5m on the boundary nearest the rear of the Cottage indicating a levels difference around 6m. In the absence of clear evidence to the contrary it seems to me that those standing near the north-east glass balustrade may well be able to see over the existing planting on the shared boundary and towards the windows and the private garden of Standing Cottage.
39. This angle of view may be oblique and replacement planting is proposed within the appeal site that could ameliorate this overlooking harm to some extent. However, such vegetation would take some time to mature and could be cut back from time to time. I therefore consider there would be undue harm to the living conditions of occupiers of Standings Cottage by overlooking. The spacing between The Gardeners Cottage and The Bothy may not be dissimilar but from what I could observe there is not a similar level of potential overlooking because there is not such levels disparity between these properties.
40. Due to the distance between Standings Cottage and the proposed dwelling I consider it unlikely to cause over shadowing or be overbearing sufficient to warrant refusal in planning terms.
41. I conclude that the proposal would have an unduly harmful effect on the living conditions of occupiers of Standings Cottage by way of overlooking. This would conflict with Policy SD5(h) of the LP which requires developments to have regard to the potential for harmful impact.

Water abstraction

42. The proposed development is within the Sussex North Water Supply Zone. Natural England have advised that the existing water supply in this Zone

cannot be ruled out as contributing to the declines in wildlife within the internationally protected Arun Valley sites. Achieving water neutrality in developments is recognised as a suitable method to rule out potential adverse effects on the integrity of these sites arising from new developments.

43. In addition to the number of fittings in the existing house the proposed scheme would have extra fixtures of two toilets, three wash room basins, and one shower. The appellant suggests that the proposed water useage should be off-set as the new dwelling would be a replacement for the existing one. To do this it is necessary to establish the baseline water consumption rate. Bills have been provided for some two years although usually the requirement is for three years. However, this may not be a good baseline as the property has not been fully occupied for a number of years. Indeed the appellant asserts it is derelict.
44. All the fittings would be more modern, with a specification that would use less water, and grey water would be re-cycled. The Water Neutrality Statement uses average data instead of bills and calculates the total water consumption would be 107.8 litres per person per day compared to 166 for the existing house. This does not appear to take sufficient account of the difference in size, and therefore potential number of occupiers, of the properties.
45. The Council in its Appropriate Assessment concluded that there was insufficient information and/or certainty to rule out adverse effects on the integrity of the Arun Valley sites. Natural England concurs and advises that the per person water consumption figure should then be multiplied by the average occupancy rate and revised Water Neutrality calculations provided. Any offsetting measures required to achieve water neutrality would also need to have their maintenance and management appropriately secured in perpetuity. There is also insufficient certainty to enable the matter to be dealt with by condition. Natural England would require further evidence and consultation on the proposals before it could consider that this matter had been resolved.
46. I consider that I need to take a precautionary approach in respect of the effects of the development on the Arun Valley Sites. There is not the supporting evidence which is precise, robust, and conclusive with no gaps, such as to provide sufficient certainty that the water abstraction impacts would, either alone or in combination with other schemes, not have a likely significant and adverse effect on the integrity of the Arun Valley sites. Consequently I conclude that the proposal would not meet with these legislative requirements of the Conservation of Habitats and Species Regulations 2017. In turn the scheme would not comply with policies SD1, SD9 and SD17 of the LP or the similar principles of the Framework.

Other Matters

47. The appeal site is close enough to the Singleton and Cocking Tunnels Special Area of Conservation; Pulborough Brooks and Amberley Wild Brooks Site of Special Scientific Interest; and the Rindle Wood Local Wildlife Site to have potential impacts on protected species, particularly bats. The Ecological Impact Assessment (September 2022) found the appeal site supports a day roost of soprano pipistrelle; a barbastelle bat was observed passing over the site; and there is a bat movement network to the rear of the site.
48. Potential adverse impacts on these have been identified and mitigation measures proposed. Bat roosting, bird nesting and invertebrate overwintering

features would be provided and post-development no harmful residual or cumulative effects are anticipated. With appropriate mitigation, including a bat-sensitive lighting scheme approved prior to any planning permission being granted, Natural England concludes there would be no impact on bat designated features as a result of the proposal. I find no reason to conclude otherwise.

49. Two previous planning applications have been refused and there has been extensive correspondence with the Authority. The appeal proposal seeks to address the previous reasons for refusal. However, this information and the efforts of the appellant to overcome the reasons for refusal do not lead me to any different conclusion in respect of the appeal before me.
50. The SDNP and the NP are more than five years old and the appellant cites conflict with Paragraphs 60, 70(d), 71, 83 and 231 of the Framework. However, these appear to relate to the provision of additional housing whereas the proposal relates to a replacement dwelling only. The age of the development plan is not the only consideration and I find no material conflict with the Framework in respect of the development plan Policies most relevant for this appeal.
51. The appellant has provided a Woodland Management Plan and commitment to long term stewardship including harvesting of timber. This is highly commendable. However, it does not have a direct bearing on the material considerations in this appeal as such management could take place without the appeal proposal.
52. The Bothy is Grade II Listed because of its architectural interest. Due to the distance between them and intervening buildings the proposal would have a neutral effect on the setting in which the Bothy is experienced.
53. The appellant considers there has been inconsistencies in decision making in the SDNP. Dangstein House is a large new house which has flat roofs and a contemporary design. It has been granted permission fairly recently by the Authority and has been cited in support of this appeal scheme. However, this building appears not to be so closely associated with an historic character area such as Borden. Each site will have its own site specific characteristics and relationship to adjoining properties and the permission at Dangstein House does not lead me to any different conclusions on the impact of the proposal on the area. Consequently, I attach the matter limited weight in influence my considerations in this appeal.
54. The ownership of land along the boundary is a private matter between the Parties. It is the responsibility of the appellant to ensure that works on the site, including movements along the access, do not damage neighbouring properties.
55. The appellant expresses dissatisfaction with the way the Authority has handled the proposal for a replacement dwelling. However, this is not a matter for me when considering the planning merits of the case in terms of the main issues I have outlined above and which I have determined based on the evidence before me.

Planning Balance and Conclusion

56. The proposal would provide a modern dwelling which would provide attractive living accommodation for future occupiers. The proposed building would be constructed using sustainable construction methods, would be energy efficient, and surface water would be managed to reduce flooding and maintain natural permeability. This would accord with Policy SD48 of the LP but is to be expected in all developments so carries neutral weight in this Decision. There would be economic benefits from construction employment.
57. However, a smaller dwelling would be replaced by a larger one contrary to the need to retain smaller dwellings in the SDNP. I have found there would be harm to the character and appearance of the area and to dark skies and harm, to the living conditions of occupiers of Standings Cottage. Even more importantly, I cannot with sufficient certainty conclude that the proposal, alone or in combination with other plans and projects would not have adverse effects on the integrity of the Arun Valley sites by way of water abstraction. In combination these are serious and substantial objections to the scheme and would be such that the proposal would conflict with the development plan when considered as a whole. The harms and policy conflicts would very clearly and substantially outweigh the benefits of the scheme
58. For the reasons given above I find there are no material considerations of such weight that indicate the proposal should be determined otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

S Harley

INSPECTOR