

Appeal Decision

Site visit made on 2 September 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 9th September 2024

Appeal Ref: APP/N1730/W/24/3345247

Clover Lodge, Hook Road, Rotherwick, Hook RG27 9BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant planning permission.
 - The appeal is made by Adam Bealey and Amy Pemberton against the decision of Hart District Council ('HDC').
 - The application ref. is 23/02073/FUL.
 - The development proposed is described in the application form as 'change of use of land to residential garden, extension of driveway and installation of 5 bar gate'.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land as residential garden, extension of driveway and installation of 5 bar gate at Clover Lodge, Hook Road, Rotherwick, Hook RG27 9BY in accordance with the terms of application ref. 23/02073/FUL, subject to the conditions below.

Preliminary matters

Statutory context

2. Various duties apply to my determination of this appeal. Notably, as the site is within the Rotherwick Conservation Area ('RCA'), section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 as amended is relevant. Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended sets out that proposals must be determined in accordance with the development plan unless material considerations indicate otherwise.
3. The development plan here includes policies of the Hart Local Plan Strategy and Sites (adopted April 2020, the 'HLPSS'), of the Rotherwick Neighbourhood Plan (made as part of the development plan in December 2016, the 'RNP') and saved policies of the Hart Local Plan (Replacement) 1996-2006 (adopted originally in December 2002, the 'HLP'). I have had regard to various other material considerations, including the National Planning Policy Framework ('NPPF'), the Planning Practice Guidance ('PPG') and the Hart District Landscape Assessment (April 1997, the 'HDLA').

The site

4. Clover Lodge is a substantial detached property off Hook Road.¹ Close by to the north is the junction of Hook Road with Wedman's Lane heading north, Cowfold Lane heading east, and the Street heading west. There are only 4 properties on the same side of Hook Road as the appeal site between the Lodge and the Street, the latter central to the Village.²
5. The southern boundary of the plot of Clover Lodge is demarcated by a hedge. That also represents the extent of the settlement boundary to Rotherwick here (otherwise drawn principally along and around the Street and Wedman's Lane).³ The site is a parcel of land of about 0.2ha, largely beyond the southern hedge.
6. The appeal site also includes an area for access, across that which already exists serving Clover Lodge, and a gate through the southern hedge. Those elements of the scheme, rationally as they would entail minimal change, are not in dispute. References to the 'site' hereafter, unless stated otherwise, refer to the parcel of land beyond the settlement boundary.

Policy context

7. In policy terms the site is therefore in the countryside. There is no development plan policy specifically relevant to the 'extension' of residential gardens or plots. RNP policy SP02 cross-refers to RNP policy BE03 'Dwellings in the countryside' in relation to potentially acceptable development in the countryside. BE03 does not, however, make express provision in that regard.
8. Amongst other things, and in summary, LPSS policies NBE1, NBE2 and NBE9, along with RNP policies SP02 and NE02, seek to suitably safeguard the character of the landscape and countryside. HLP policy GEN1 is similar, criterion (iv) thereof seeking specifically to guard against 'ribbon or sporadic development unrelated to existing patterns of settlement...'. Broadly, the foregoing are objectives in common with NPPF paragraph 180.b), which sets out how planning should recognise the intrinsic character and beauty of the countryside, a position which connotes a degree of protection.
9. Heading further south is land instead within the ownership of another detached property, the Homestead. To the south of the Homestead, spurring south-westwards off Hook Road, is byway 200/18/1. A policy decision has been taken at some point to exclude the Homestead and land between it and the Lodge from the settlement boundary (acknowledging that there is a more coherent arrangement of development central to Rotherwick). Similar decisions have been taken elsewhere around Rotherwick; for example neither the Scout hut obliquely opposite Clover Lodge, nor Street End Close off Cowfold Lane nearby, appear to be within the settlement boundary.

The function of settlement boundaries

10. Settlement boundaries are not, however, derived solely from landscape characteristics or character areas; the latter inevitably covering significant

¹ For which planning permission was granted via decision dated 13 April 1994 (ref. 94/23465/FUL)

² Heading south to north, the Knapp, Collingswood, Apple Garth and Hitherwood.

³ HLPSS inset map 28.

areas of land including various buildings and settlements. Although the historic development of areas and landscape character are intertwined, settlement boundaries also serve a different function to Conservation Areas. As with the settlement boundary, the RCA is somewhat focussed around listed buildings dotted alongside the Street, but it also extends to encompass Tylney Hall and the settings of various heritage assets.

11. The supporting text to RLP policy 'RUR1' sets out how various judgements have inevitably applied in establishing settlement boundaries in Hart (although it is unclear whether boundaries have altered since the RLP was adopted). The broader purpose of settlement boundaries, as a tool for guiding the distribution of development, is also referred to in the Local Development Framework background Paper before me (January 2010, updated August 2010), reiterating that settlement boundaries and landscape character areas are not one and the same.

Policy absence

12. HDC state that 'as there is no basis in policy terms for the proposal, it is not supportable in principle, however, in the interests of making a thorough assessment of the proposal, the benefits of the scheme may be weighed against the lack of policy provision, in the event that the proposal has sufficient merit to warrant approval as a departure from the development plan.' That is a problematic statement.
13. As above, settlement boundaries serve various purposes and their establishment entails various judgements. Development outside settlement boundaries may, or may not, adversely affect landscape character. As with common law, development plan policies cannot account for each and every scenario that may arise in decision-taking. At its highest, there is instead silence in respect of the development plan's position on the proposal.⁴ There is no policy for the scheme to represent a 'departure' from. The acceptability of the proposal therefore essentially turns on a judgement as to its effects.

Main issue

14. The main issue is the effect of the proposal on character and appearance.

Reasons

Existing character and appearance

15. The site is presently accessed via a narrow raised path crossing the ditch otherwise flanking the western side of Hook Road hereabouts. Land to the east of Hook Road is broadly level with the carriageway (rising slightly eastwards into Street End Copse). That gentle incline from west to east, and also south to north following Hook Road, continues through the appeal site and landscape beyond.
16. Not only associated with the Conservation Area and various heritage assets nearby, Hook Road is itself historic in origin. It has the character of a holloway on account of its setting in the topography, mature tree canopy cover, and the growth of apparently self-seeded vegetation alongside it.

⁴ Noting that NPPF paragraph 11.d) applies where there are 'no relevant development plan policies'.

Several highway trees are dotted between the ditch and post and wire fencing enclosing the appeal site.

17. HDC set out that the site falls within the 'mixed farmland and woodland' landscape character type described in the HDLA.⁵ That characterisation is, however, broad-brush. Mixed farmland and woodland covers an extensive swathe of land; a large proportion of the District being 'a patchwork of farmland and woodland'.⁶ Blocks of woodland and a strong pattern of hedgerows as a backdrop to large fields, often with relatively expansive views,⁷ might describe much of rural and semi-rural England.
18. More specifically the HDLA puts the appeal site as within landscape character area 2 'Tylney' ('LCA2').⁸ In addition to echoing the landscape features set out at a broader level, LCA2 is described in the HDLA as including a dispersed pattern of rural settlements and an historic landscape structure with a network of rural lanes. Those features, along with the gently undulating landform, hedgerows and woodland, serve to create something of a sense of enclosure and remoteness.
19. The area around Hook Road in the vicinity of the appeal site is somewhat consistent with the foregoing landscape characterisation. In the abstract there is logic in HDC's position that the encroachment of domestic character into the countryside could be harmful, including by virtue of maintenance of land to a domestic standard and the likelihood of domestic paraphernalia. If I were to pursue that logic there are, however, three important qualifiers.
20. Firstly, there is no real hedgerow bounding the appeal site by Hook Road. That is in contrast to what the HDLA elsewhere describes as 'a strong structure of hedgerows...'.⁹ Instead, as above, that boundary is characterised by the presence of occasional trees. Whilst they are potentially former standards which have outcompeted lower level cover over time, in that respect there is some divergence from landscape character typical of LCA2.
21. Secondly, notwithstanding the settlement boundary described above, buildings at and around of Rotherwick occasionally peter out into the countryside rather than there being an abrupt change. That is the case, as reflected above, of the Scout Hut and the Homestead. That potentially reflects that Rotherwick is, alongside Mattingley, the largest of the rural settlements within LCA2.¹⁰
22. There are also telegraph poles by the highway edge of the appeal site carrying lines southward (potentially fed by the substation within the north-western corner of the site). It is therefore perhaps not surprising that there is some greater level of nearby development, or susceptibility to change, at the fringes of Rotherwick here than at smaller settlements located within a more staunchly rural context.

⁵ HDLA paragraph 3.17 to 3.19.

⁶ HDLA paragraph 3.17.

⁷ HDLA paragraph 3.18.

⁸ The grade II* registered park and garden of Tylney Hall being a significant influence.

⁹ HDLA, paragraph 5.5.

¹⁰ HDLA, paragraph 5.4.

23. Thirdly, and aligned with the foregoing points, there is a limited sense of remoteness in this location. Approaching Rotherwick from the south, there are glimpsed views across the appeal site towards the elevations of Clover Lodge. From that perspective the site is also seen in conjunction with both the 30mph speed limit and Village signs, all of which are before the existing driveway to the Lodge. Heading away from Rotherwick southwards, there are also glimpsed views of the site in conjunction with the Lodge and its existing plot. Visually there is consequently a transitional feel here, somewhere between Village and countryside.
24. Therefore, if I were to follow HDC's logic set out in paragraph 19 above, in the abstract the effect of some 0.2ha of land peripheral to the Village becoming residential might entail moderate harm to character and appearance. Whilst that degree of harm would nonetheless represent a conflict with the policy context set out in paragraph 8 above, I have avoided addressing the nature of the site specifically (to which I now turn).

The nature of the site

25. At the time of my visit the site was maintained, as lawn, to a domestic standard (rather than, say, having been left to grow wild or become pockmarked as often occurs with the use of land as a paddock). In theory someone may seek to maintain any land in a comparable way, irrespective of whether that would be more than an exercise in futility.
26. Maintenance of land to a domestic standard might entail 'sporadic development' as referred to in HLP policy GEN1, if the consequence thereof is to alter the material use of that land (or the character of the landscape presaging other development). There is nonetheless planning history relevant to the site with an important bearing on its current nature.
27. The land between the Homestead and Clover Lodge was previously owned in conjunction with the former (the 'former area'). The appeal site, now owned in conjunction with Clover Lodge, represents some 0.2ha of that larger former area. The former area extends to around 0.5ha, excluding the current plot of the Homestead itself.¹¹
28. The entirety of the former area is covered by an Established Use Certificate (dated 10 April 1974, the 'EUC'),¹² reproduced in black and white at Appendix C to the appellants' statement of case. The former area is stated to be edged green within the EUC, but appears instead as the thicker edged land on what appears annotated as plan no. D.R.B.1 to it reproduced at page 44 of the appellant's statement of case.¹³

The history to the EUC

29. The history to the EUC is complex, as reflected in the extensive supporting evidence before me. There are some noteworthy points, however, from that information (in particular in the various supporting statutory declarations). They are as follows.

¹¹ Referenced in correspondence on behalf of the appellants to HDC of 11 October 2023.

¹² The legislative predecessor to a certificate of lawfulness of existing use under section 191 of the 1990 Act.

¹³ As clarified by the main parties at appeal.

30. In 1958 Reuben Hunt purchased the site from Nelson Smith, explaining that fairly soon thereafter he 'obtained planning permission for a bungalow' and began building. That bungalow may be the origins of what has become the property named the Homestead, although that appears to have been instead to the 'northern part' of the land (and may therefore have been a precursor to what has become Clover Lodge or another property).
31. A building in the location of what is now a dwelling named the Homestead is shown to the south of the site on the plan reproduced at page 84 of the appellant's statement of case (albeit not apparently on the map at page 44 referenced previously). Even if, at that historic juncture, what is now the Homestead was not a dwelling, permission was nevertheless granted via HDC decision notice of 21 July 2017 for a dwelling.¹⁴
32. That 2017 decision pre-dates the adoption of the HLPSS, and therefore my reasoning in respect of settlement boundaries above holds true whether the Homestead existed as a dwelling historically or not. The EUC, moreover, relates to former land of the Homestead rather than to the dwelling or building itself.¹⁵
33. Before his sale of the former land to Reuben Hunt, Nelson Smith's cousin, George Smith, attested to his having occupied the land for approximately two years during 1956, 1957 and 1958 (and to there having been others residing on the land previously). May Hunt, Reuben Hunt's mother, moved onto the site in 1958 (at which juncture there were said to be 3 caravans on site, apparently associated with pig farming). She said that she also lived there between 1963 and 1967.
34. David Blackman, who then ran a commercial rabbitry, explained how he moved onto the site in September 1972,¹⁶ noting that he understood that Reuben Hunt's brother, Maurice Hunt, had lived on site between October 1967 and July 1972. David Blackman stated that he lived on site at the time of his declaration (31 January 1974).
35. The upshot of that evidence is that since at least 1956 the former area had been occupied more-or-less continually until the EUC was granted on 10 April 1974 by different individuals in different numbers of caravans (in addition to a bungalow having apparently been built somewhere between 1958 and 1961). Whilst that occupation appears to have been in connection with some form of agriculture, whether pigs or rabbits, it was also evidently residential.
36. That is relevant context to the EUC, which certifies as authorised the use of the former area 'as a residential caravan site for one caravan'. That was, importantly, not for the use of the land as ancillary or incidental to the Homestead or another dwelling, nor for a commercial caravan site.

¹⁴ ref. 17/01295/FUL

¹⁵ The EUC itself is addressed as relating to 'The Homestead, Runtens Lane, Rotherwick' Runtens Lane appearing to have been the name of what is now referred to as Green Lane, the route of byway 200/18/1 which leads in short order to Runtens Farmhouse.

¹⁶ The reproduction being poor at that juncture, the date may be 1973.

The implications of the EUC

37. There is no indication that use of the former area has been abandoned or superseded; HDC stating that 'while it is appreciated that the land in question has an Established Use Certificate for the siting of a mobile home, it does not follow that the whole of the site is garden, rather than one mobile home can be stationed on the site covered by the EUC'.¹⁷ As with HDC's position in respect of the policy basis for extensions to residential land referred above, that is also somewhat problematic.
38. HDC's interpretation of the EUC as above does not appear to reflect the terms of the EUC itself, again the use of the land as a 'residential caravan site for one caravan.' It also does not take account of what the underlying evidential history points to having occurred previously, the basis upon which the EUC was issued.
39. On a plain reading, and corroborated by the evidential history, the existing use of the former area is residential and allows for the siting of a single caravan. By consequence, and cross-referring to my reasoning in paragraph 25 above, there is nothing to indicate that the present state of the appeal site is either unauthorised or that it has been maintained as such with a view to making it easier to obtain permission for whatever. It is therefore legitimate to take into account its current nature.
40. I acknowledge that the use of the former area as two or more parcels of 'garden' may increase the propensity for residential paraphernalia. However the site is relatively large and subject to some screening from roadside trees and vegetation. In all likelihood any paraphernalia would fall away from the roadside in any event where there is greater tranquillity and privacy, and probably closer to Clover Lodge for ease of access (thereby limiting visual prominence). Outbuildings are, moreover, capable of being controlled by condition (a point to which I will return).
41. My reasoning in that respect is reinforced by there being no mention of, or apparently restriction on, paraphernalia associated with the EUC of existing use. Arguably some paraphernalia is inevitably envisaged, or inherent encompassed by, the use defined by the EUC (and there are, in any event, powers elsewhere to ensure the proper maintenance of land).¹⁸ In that context the effect of the additional propensity for paraphernalia is likely to have a barely appreciable effect.
42. Consequently the theoretical harm explored in paragraphs 19 and 24 of this decision would not occur in actuality given the existing nature of the site. The scheme would not, in my view, materially detrimentally affect local character and appearance. There would therefore be no conflict with the expectations of statute, provisions of the development plan or elements of the NPPF referenced above.

Other matters

Whether or not development

¹⁷ HDC statement of case, paragraph 5.3.

¹⁸ Section 215 of the 1990 Act.

43. It appears that application ref. 23/020703/FUL, and this appeal, arose by consequence of the legal subdivision of ownership of the former area. That is obliquely summarised by the appellant: 'in essence, the status of the land would not be changing, but the definition of the planning unit would'.¹⁹ Altering the extent or definition of a planning unit does not necessarily amount to development.²⁰ As also noted by the appellants, describing the proposal as for a 'change of use' appears erroneous given the history here.²¹
44. Other than in one respect that is not, however, significant in this decision for three principal reasons. Firstly, planning permissions may legitimately overlay one another. Secondly, the appellant's intention is clear from the evidence supporting the scheme, in respect of which there has been suitable opportunity for all parties to comment on.²² Thirdly, there is an appeal. The one respect in which that is significant, is that I have modified the wording of the development permitted at paragraph 1 of this decision accordingly.

Proportionality

45. HDC are of the view that the garden proposed would be disproportionate large relative to the dwelling it would serve. I accept that the resultant plot of Clover Lodge would become larger than that of its immediate neighbour to the north, the Knapp, and also than various other properties more central to Rotherwick. As established above, however, there is no policy related to this matter. I have also reasoned that, given the particular nature of the site, its history and its surroundings, that neither conflict with relevant planning policies nor planning harm would occur.
46. Moreover I am not of the view that the garden would be disproportionate. As above, the built form of Rotherwick occasionally peters out into its rural surroundings. Larger peripheral plots of comparable size as would result here are not atypical. For example the plots of Collingswood, the Copse, Wyke House and Fingle Cottage, all relatively nearby, appear comparable to the extent of the garden to the Lodge as proposed.

Wider potential implications

47. In the eventuality that permission were to be granted, Rotherwick Parish Council suggest that 3 conditions be applied addressing the use of the site, its boundaries, and the potential for further development. That is a useful structure for addressing potential wider implications. In respect of 'use', the appellants explain how 'allowing this appeal and the change of use does not imply or result in the land being located within the residential curtilage'.²³
48. The incorporation of the site into the 'curtilage' of Clover Lodge, as opposed to its use in planning terms, would be a matter of judgement. Curtilage is used in the Town and County Planning (General Permitted Development)(England) Order 2015 as amended (the 'GPDO'), which

¹⁹ Statement of case, paragraph 1.2.

²⁰ Section 55 of the Town and Country Planning Act 1990.

²¹ Statement of case paragraph 1.5.

²² Noting that section 79(1) of the 1990 Act enables me to deal with an application as if made to me in the first instance (being appointed by the Secretary of State).

²³ Final comments, paragraph 4.3.

specifies that certain types of development do not typically require a specific application for planning permission.

49. GPDO Schedule 2, Part 1, Class E relates to 'buildings etc. incidental to the enjoyment of a dwellinghouse'. Nevertheless in the interests of clarity, for the avoidance of doubt, and aligned with the appellants' position as above, a condition could be imposed disapplying those permitted development rights.
50. Addressing squarely the implications of the scheme before me, no modifications to any boundary features aside from the provision of gated access to the site, are shown on the proposed block plan. As above, trees and vegetation alongside Hook Road by the site are outside the appeal site (and as shown on the location plan).
51. There is no indication as to the ownership or responsibility of boundaries to the south or west of the appeal site. However field boundaries hereabouts tend to be demarcated by established hedgerows. Residential plot boundaries are also commonly characterised by established and mature planting, which is likely to remain the case in respect of amenity and security in any event (regardless of any applicable protections or their absence). Consequently conditions addressing boundary features are unnecessary.
52. Each proposal must be determined on its merits and, following my reasoning in paragraphs 25 and 42 above, there is no indication that the current state of the land is unauthorised or with a view to other development. If other development were to be proposed it would be assessed on its merits.

Conclusion

53. Having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

54. In addition to requirement commencement within the relevant statutory period via condition 1, for clarity and so as to ensure that the scheme is implemented as assessed above, I have imposed condition 2 requiring adherence to the relevant plans. As reasoned in paragraph 49 above, I have also imposed condition 3 withdrawing permitted development rights related to outbuildings (if there were to be any ambiguity in that regard).
55. In imposing conditions I have had regard to relevant elements of the NPPF, the PPG and of statute, and have amended the wording of certain conditions put to me to ensure that all are appropriate, without altering their fundamental aims.

Tom Bristow
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'LOCATION PLAN' (dated September 2023, based on OS Serial No. OI580635, which shows the site edged red), 'BLOCK PLAN' (dated September 2023, based on OS Serial No. OI580635, which includes a blue hatched annotated area), and drawing no. 22-4920-P-05.
- 3) Notwithstanding the provisions of Schedule 2, Part 1, Class E to the Town and County Planning (General Permitted Development)(England) Order 2015 as amended (or any subsequent modification to that Order, or otherwise) no 'buildings etc incidental to the enjoyment of' the dwellinghouse known as Clover Lodge shall be constructed within the site shown red-edged on the approved 'LOCATION PLAN' listed in condition 1.