



Appeal Decision

Site visit made on 22 October 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2024

Appeal Ref: APP/U2235/W/24/3346388

Coldharbour House, Coldharbour Lane, Hucking, Kent ME14 3LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Jack Crossley against the decision of Maidstone Borough Council.
 - The application Ref is 23/504812/FULL.
 - The application sought planning permission to replace existing dwelling with erection of four bedroom dwelling and change of use of agricultural hardstanding to residential use without complying with a condition attached to planning permission Ref 23/50317/FULL, dated 23 August 2023.
 - The condition in dispute is No 16 which states that: "Notwithstanding the provisions of the Town and Country Planning General Permitted Development (Amendment) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), and except for what is shown on the approved plans, no development within Schedule 2, Part 1 Classes A, B, C, D, and E; and Schedule 2, Part 2, Class A, shall be carried out."
 - The reason given for the condition is: "To safeguard the character and appearance of the countryside that falls within the Kent Downs Area of Outstanding Natural Beauty; and in the interests of residential amenity."
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Decision

1. The appeal is allowed and planning permission is granted to replace existing dwelling with erection of four bedroom dwelling and change of use of agricultural hardstanding to residential use at Coldharbour House, Coldharbour Lane, Hucking, Kent ME14 3LS in accordance with the application Ref 23/504812/FULL, without compliance with condition number 16 previously imposed on planning permission Ref 23/50317/FULL dated 23 August 2023 and subject to the conditions set out in the Schedule.

Preliminary Matters

2. In 2023, designated Areas of Outstanding Natural Beauty in England and Wales became "National Landscapes". The appeal site falls within the Kent Downs Area of Outstanding Natural Beauty (the AONB) which has become the Kent Downs National Landscape (KDNL).
3. Section 245 of the Levelling Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of National Landscapes, as set out in Section 85 of the Countryside and Rights of Way Act 2000 (as amended) (CRWA). In so far as it relates to this appeal, the amendment now requires relevant authorities "in exercising or

performing any function in relation to or so as to affect land in an AONB... to seek to further the purpose of conserving and enhancing the natural beauty of the AONB"¹. As such, it is incumbent on me to evidence consideration of ways to further the purpose of conserving and enhancing the natural beauty of the KDNL.

4. Planning Practice Guidance (PPG) refers to the relevance of management plans for National Landscapes for assessing planning applications. Whilst these do not form part of the development plan, they help to set out the strategic context for development and provide evidence of the value and special qualities of these areas. In this case, there is a management plan, The Kent Downs AONB Management Plan 2021-2026 (AONB Management Plan), which is therefore a material consideration.
5. Since the Council issued its decision on the planning application, the Maidstone Local Plan review 2021 - 2038 (MLP) was adopted in March 2024, and I have taken it into account in my decision. The Council have confirmed the new policy references. The appellant has had the opportunity to comment on the new policies and I have taken their response into account in making my decision.
6. The Council's delegated report concedes that the reason for the condition should not have included a reference to being in the interests of residential amenity. I have not therefore addressed this in my reasoning.

Background and Main Issue

7. Permission was granted in August 2023 for the replacement of the existing dwelling on site with a four-bedroom house and change of use of agricultural hardstanding to residential use. The permission included a condition removing permitted development rights under Classes A, B, C, D and E of Part 1, Schedule 2 of the Town and Country Planning General Permitted Development (Amendment) (England) Order 2015 (as amended) (the GPDO), along with Class A, Part 2, Schedule 2 of the GPDO. The appellant seeks to vary the condition to allow permitted development rights under Class E, Part 1, Schedule 2 and Class A, Part 2, Schedule 2. This would allow the appellant to erect outbuildings incidental to the enjoyment of the dwellinghouse in line with the restrictions set out in the GPDO, along with allowing the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
8. The main issue, therefore, is whether the condition removing permitted development rights in relation to i) fences and ii) outbuildings, is reasonable or necessary in the interests of the character and appearance of the surrounding countryside, with particular regard to the KDNL.

Reasons

9. The KDNL in this area is characterised by a plateau sitting atop a south-facing scarp slope with extensive views over the vale to the south. Its outstanding beauty derives from the scarp and vale landscape features, dramatic views and wooded valleys.

¹ AONB and National Landscapes are interchangeable terms.

10. The appeal site comprises a triangular shaped plot to the eastern edge of a loose cluster of farm and residential buildings in an isolated position in open farmland close to the scarp slope. A Public Right of Way runs past the appeal site. The surrounding land on the plateau is an undulating, largely agrarian landscape interspersed with small settlements. There is a residential barn conversion to the south on the other side of an access track, along with another dwelling and a series of farm buildings, caravan and polytunnel to the east and south of the appeal site.
11. The permitted scheme allows a two-storey house which has a slightly larger footprint than the former house, which I noted on my site visit has now been demolished. The proposed house would be in approximately the same position within the plot.

Fences

12. The boundary treatments around the perimeter of the appeal site comprise open post and wire fencing allowing views across the garden and maintaining the sense of openness of the landscape. The permitted scheme shows similar open fencing and I note condition 8 of the planning permission requires the retention of the type of fencing shown on the drawings. The effect of condition 16 is to remove the permitted development right to erect any form of fencing, wall or other means of enclosure up to 2m high.
13. There would therefore be the potential under Schedule 2, Part 2, Class A of the GPDO to erect a 2m solid wall or fence around the boundary of the appeal site and across any part of the plot in addition to the fencing shown on the permitted drawings. This would have the potential to be visually intrusive, harming the openness of the landscape and introducing a more suburban style, solid boundary treatment, at odds with the surrounding rural landscape and the open character of this part of the KDNL.
14. For the reasons set out above, without a restriction in relation to Part 2, Class A, the erection of solid fences or boundaries up to 2m high would potentially be harmful to the KDNL in terms of suburbanising the landscape and unacceptably reducing its sense of openness. In this respect therefore, the proposal would conflict with the aims of MLP Policies LPRSP9, LPRQD4, LPRHOU11 and LPRSP15 insofar as they seek, amongst other things, to preserve and enhance the KDNL, development to be of a high-quality design, retain traditional boundary treatments and be visually acceptable in the countryside.
15. The condition is therefore reasonable and necessary in the interests of the character and appearance of the surrounding countryside, with particular regard to the KDNL.

Outbuildings

16. The Council considers that the introduction of any residential outbuildings constructed pursuant to the GPDO could result in harm to the KDNL and rural landscape due to the potential for the outbuildings to make the scheme more visually intrusive than already approved. The relevant policy regarding replacement dwellings in the countryside is MLP Policy LPRHOU11, which allows the replacement of a dwelling which, amongst other things, individually or cumulatively is visually acceptable in the countryside and the mass and

volume would be no more visually harmful than the original dwelling. I note that the original house, although now demolished, did not have any restrictions on its permitted development rights.

17. As the KDNL falls within the definition of Article 2(3) land for the purposes of the GPDO, there are already additional restrictions over the erection of outbuildings pursuant to Class E, Part 1, Schedule 2. Under these additional restrictions, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools or containers situated more than 20m away from any wall of the dwellinghouse would exceed 10 square metres. Additionally, no part of a building, enclosure, pool or container can be situated on land between a wall forming a side elevation of the dwelling and the boundary of its curtilage. These additional limitations are specifically in place to safeguard the National Landscape.
18. Any outbuildings constructed pursuant to Class E would not be viewed in isolation and would be appreciated in the context of the appeal site's domestic curtilage and the cluster of domestic and agricultural buildings nearby. The presence of outbuildings in this location would not be an incongruous feature; and the extent of the buildings would be unlikely to be read as a continuous built-up feature which would unacceptably harm the surrounding landscape. As such, I find that outbuildings erected pursuant to Class E would not be harmful to the landscape character and appearance, or cause harm to the KDNL in this location.
19. The National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. In this case, given the safeguards for National Landscapes already contained within the provisions of Class E, I find there are no circumstances which would justify the removal of this permitted development right. The proposal in this respect would be in line with the aims of MLP Policies LPRSP9, LPRSP15, LPRQD4 and LPRHOU11 insofar as they seek, amongst other things, development that is high quality design, respecting local, natural and historic character, appropriate to local landscape character and does not have a significant adverse impact on the setting of the KDNL.
20. Therefore, condition 16, insofar as it relates to restricting development pursuant to Class E, Part 1, Schedule 2 of the GPDO is not reasonable or necessary in the interests of the character and appearance of the surrounding countryside with particular regard to the KDNL.

Other Matters

21. My attention has been drawn to an allowed appeal on the site for a replacement dwelling and garage². This decision contains a condition restricting permitted development rights under Classes A, B, C, D and E of Part 1, Schedule 2, and Class A, Part 2, Schedule 2. I note that the replacement house is larger than that in the appeal proposal and also includes a substantial outbuilding/garage. It is materially different to the appeal before me, and I have determined this appeal on its own merits.

² Appeal reference APP/U2235/W/23/3320577 dated 4 June 2024.

22. I note examples referred to in evidence by the appellant where planning permissions for development at Thurnham³ and the Oast, Norton Road⁴, both within the KDNL, where permitted development rights were originally removed, and subsequent permissions have approved various outbuildings and other alterations which would have been permitted development. I do not have any evidence before me regarding the specific considerations at the time these decisions were made. In any event, I note that these decisions were made under a previous development plan and before the LURA was enacted and are not directly comparable therefore to the appeal before me and I have considered this appeal on its own merits.

Conditions

23. Given my findings above, I will vary condition 16 to remove the reference to Class E of Part 1, Schedule 2 of the GPDO.
24. The Council has provided a list of suggested conditions, to which I have had regard. The conditions remain in the order attached to the original permission but are updated to reflect the Council's approval of details pursuant to conditions 3, 4, 5, 7 and 10 of the original permission. References have also been updated to refer to the Preliminary Ecological Appraisal and Arboricultural Report submitted with the original planning permission. I have removed the standard time limit condition as works are underway on site and adjusted the numbering of conditions accordingly. I have also simplified the wording to the lighting condition (13) to remove reference to other policy documents which I do not consider are necessary for the condition to achieve its aim to secure a suitable lighting scheme without undue impact on bats and the wider KDNL.

Conclusion

25. For the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission with a varied condition 16 and reinstating those undisputed conditions that are still subsisting and capable of taking effect.

L Francis

INSPECTOR

³ Reference 16/508605/FULL and 17/501919/FULL

⁴ Reference 23/501375/FULL

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 23/503017: 22201_CLD_410_010_C; 22201_CLD_414B_010; 22201_CLD_414B_040; 22201_CLD_410_100_A; 22201_CLD_414B_110 A; 22201_CLD_414B_111 A; 22201_CLD_414_112 A; 22201_CLD_414B_151 A; 22201_CLD_410_180; 22201_CLD_414B_180 A; and GRS.107.22 (Arboricultural Report)
2. The development hereby permitted shall be carried out in accordance with the archaeological watching brief, as approved under 24/500597/SUB.
3. The development hereby permitted shall be carried out in accordance with the external materials/finishes, as approved under 24/500597/SUB, and shall be maintained as such thereafter.
4. The development hereby permitted shall be carried out in accordance with the hard and soft landscaping, as approved under 24/500597/SUB, and the landscaping of the site and its management thereafter shall be carried out in accordance with the approved details.
5. The approved landscaping shall be in place at the end of the first planting and seeding season following completion of the dwelling. Any trees or plants, which, until a period of 10 years from the completion of the development has passed die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
6. The development hereby permitted shall be carried out in accordance with the ecological enhancements, as approved under 24/500597/SUB, and the development shall be implemented in accordance with the approved details prior to the first occupation of the dwelling and all features shall be maintained as such thereafter.
7. As shown in drawing ref: 22201_CLD_414B_040 submitted under planning permission reference 23/503017, the existing pond, log pile/bug hotel, bee hotel, and open stock fencing shall be retained in perpetuity and the barn owl box shall be in place prior to the first occupation of the dwelling hereby approved and maintained as such thereafter. Any of these features that are removed shall be replaced with a feature of the same type within one month of its removal.
8. The development hereby permitted shall be carried out in accordance with precautionary mitigation measures relating to reptiles, as set out in section 4.4 of the Preliminary Ecological Appraisal (by KB Ecology ref: 2023/03/12 and dated: 13th April 2023), submitted under planning permission reference 23/503017.
9. The development hereby permitted shall be carried out in accordance with the details of decentralised and renewable or low-carbon sources of energy, as approved under 24/500597/SUB, and the approved details shall be installed and operational prior to the first occupation of the dwelling and shall be maintained as such thereafter.

10. The development hereby permitted shall be carried out in accordance with the tree protection measures, as set out in the submitted Arboricultural Report (by GRS Ltd ref: Reference GRS/TS/TCP/AIP/TPP/AIA/107/22), submitted under planning permission reference 23/503017; and nothing shall be stored or placed, nor fires lit, within the tree protection areas. The tree protection measures shall be in place prior to any works commencing and maintained until all construction equipment, machinery and surplus materials have been removed from the site.
11. If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the local planning authority and the remediation has been completed. Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the local planning authority. The closure report shall include details of:
 - (a) Any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology;
 - (b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site;
 - (c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.
12. The development hereby permitted shall not use piling or any other foundation designs using penetrative methods.
13. No external lighting, whether temporary or permanent, shall be installed within the site until details have been submitted to and approved in writing by the local planning authority. Any details to be submitted shall include the following:
 - i) a lighting design for biodiversity that identifies those areas/features on site that, due to their potential for use by bats, are particularly sensitive to lighting impacts (including any biodiversity enhancement features).
 - ii) a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill.

The development shall thereafter be carried out and thereafter maintained in accordance with the approved details.

14. The vehicle parking spaces within the application site shall be completed prior to the first occupation of the approved dwelling and shall be permanently retained for parking thereafter and not used for any other purpose. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them.
15. Notwithstanding the provisions of the Town and Country Planning General Permitted Development (Amendment) (England) Order 2015 (or any order revoking and reenacting that order with or without modification), and except for what is shown on the approved plans, no development permitted by virtue of Classes A, B, C and D of Part 1 of Schedule 2 and Class A of Part 2 of Schedule 2 to the Order shall be undertaken.

END OF SCHEDULE