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## Appeal Decision

Site visit made on 25 February 2025

**by Jane Smith MA MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 April 2025**

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**Appeal Ref: APP/P1425/W/24/3348808**

**Land and buildings adjacent to Ham Cottage, Slugwash Lane, nr. Wivelsfield Green, East Sussex RH17 7RG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr R Fawehimi against Lewes District Council.
  - The application Ref is LW/23/0631.
  - The development proposed is described as 'Erection of two new dwellings, following the partial demolition of stables, demolition of kennels outbuildings and structures; and associated landscaping including remodelling of existing sand school and re-siting adjacent to it of two partially retained stables, reduced in size (alternative to conversion approved for two dwellings under LW/23/0196)'.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of two new dwellings, following the partial demolition of stables, demolition of kennels outbuildings and structures; and associated landscaping including remodelling of existing sand school and re-siting adjacent to it of two partially retained stables, reduced in size at Land and buildings adjacent to Ham Cottage, Slugwash Lane, nr. Wivelsfield Green, East Sussex RH17 7RG in accordance with the terms of the application, Ref LW/23/0631, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for costs was made by the appellant against Lewes District Council. This application is the subject of a separate decision.

### Preliminary Matters

3. In the banner heading and decision above, I have used the description of the development, as given on the planning application form. However, in the decision, I have omitted the words in brackets, which refer to an earlier planning permission rather than the current proposed development. An amended description was used by the Council, however the wording on the application form accurately describes the proposed development and, although amended plans were submitted while the application was before the Council, it remains accurate.
4. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised his right to appeal against the failure of the Council, as the local planning authority, to determine the application.
5. Several weeks after the appeal had been started, the Council provided a decision notice purporting to grant planning permission, along with the associated officer

report, and did not provide a statement of case. Nevertheless, since jurisdiction had transferred to the Planning Inspectorate at that point, the appeal has proceeded, leading to the decision set out above. Any issues regarding the status of the Council's decision would be a matter to be resolved between the parties.

## **Background and Main Issues**

6. Planning permission was granted in July 2023 for the provision of two dwellings on the appeal site by means of change of use and conversion of an existing building formerly used as a kennels and cattery. That permission remains extant. The appeal proposal is presented as an alternative approach, purporting to offer a number of benefits over the approved scheme. The appellant has expressed a clear intention to redevelop the site for residential purposes and I am satisfied that there is a greater than theoretical prospect that the extant planning permission would be implemented in the event that this appeal was dismissed. That being the case, the approved scheme for provision of two dwellings through conversion of an existing building, amounts to a realistic fallback position to which I have attributed considerable weight.
7. Nevertheless, the appeal site is outside the planning boundary of Wivelsfield Green and the proposal does not involve the conversion of existing buildings. While the Council has not contested the appeal, interested parties have expressed objections relating to the suitability of the location for new build dwellings and effects on the character and appearance of the area and the public right of way network. Taking those representations into account, I consider that the main issues are as follows:
  - the suitability of the location for housing, having regard to the development plan and other material considerations,
  - the effect of the proposed development on the character and appearance of the area, and
  - its effect on use and enjoyment of the public right of way network.

## **Reasons**

### *Location*

8. Outside planning boundaries, Policy DM1 of the Lewes District Local Plan Part 2 (LLP2), adopted in 2020, focusses on protecting the distinctive character and quality of the countryside, with new development only being permitted where it is consistent with a specific development plan policy or where the need for a countryside location can be demonstrated. While Policy DM4 of the same plan allows for conversion of redundant agricultural or other rural buildings to residential use, in this case the existing buildings would be replaced and not converted. No argument has been advanced that the proposed development relates to a specific need for a countryside location or is supported by any other relevant development plan policy. It would, therefore, conflict with Policy DM1 as a matter of principle.
9. In order to promote sustainable development in rural areas, the National Planning Policy Framework (the Framework) states that housing should be located where it will enhance or maintain the vitality of rural communities, but isolated housing is to be avoided. The appeal site is part of a cluster of existing buildings, including three existing dwellings and several equestrian buildings, in addition to the former

kennels and cattery. The relationship with the existing dwellings, the road network, and facilities in Wivelsfield Green, was taken into account when the Council concluded that the approved conversion of an existing building would not involve isolated residential development.

10. Since the development now proposed would likewise provide two dwellings in the same location, its relationship with the existing rural community, and the scope for future occupiers to make use of local services and facilities, would be the same. Consequently, when the fallback position is taken into account, no harm would arise in terms of additional travel by future occupiers or the extent to which they would be in a position to contribute to the vitality of the existing rural community. Nor would there be any additional pressure on local services or infrastructure.
11. Considered against that background, notwithstanding the conflict with Policy DM1, in the specific circumstances of this case I conclude that the location would not be unsuitable for housing, having regard to the development plan and other material considerations.

### *Character and Appearance*

12. The existing buildings on the appeal site are single storey structures, constructed using a mix of blockwork, brick and timber, and roofed in lightweight materials such as roofing felt or corrugated sheeting. The former kennels and cattery comprise two buildings within the southern part of the site, adjacent to Ham Lane. There are also outdoor runs around the buildings, both open and partially covered. To the rear are several stable buildings and sheds, as well as a sand school. There are also open fields and paddocks in the same ownership, which extend outside the boundaries of the appeal site. The adjacent dwellings are at the junction of Ham Lane and Slugwash Lane.
13. The larger of the existing kennel buildings is a long, low building, which would be converted to residential use under the fallback scheme, while the smaller one would be demolished. The kennel buildings and associated structures are conspicuous from Ham Lane, which is a public right of way (PROW). The existing dwellings are also close to the lane, which is used for vehicular access to some of the existing properties.
14. The proposed dwellings would have a comparable height and total footprint to the larger kennel building, but they would be set further back. The smaller kennel building would be demolished. Whereas there are currently several separate equestrian buildings, these would be consolidated to provide a single stable building, of smaller overall extent. The sand school would also be reduced in scale. Overall, the level of built development on the site would be reduced and consolidated.
15. Compared to the fallback scheme, the proposed development would reduce the prominence and massing of built development alongside the PROW. Although the dwellings would have a similar height and footprint to the converted building, they would be set further back and there would be two, reasonably compact buildings in place of the existing long structure. There would be greater separation from the tree belt between the appeal site and the PROW, so the integrity of that landscape feature could be more effectively safeguarded during construction and in the longer term. Additional planting is also proposed, notably a block of new woodland planting, as well as hedging along the plot boundaries.

16. The use of weatherboarding is typical of rural buildings and the elevations would have a subdued appearance, limiting the level of visual intrusion. Compared to the approved scheme, there would be fewer openings, offering some limited advantage from reduced light spillage. The relocated stable would be between the proposed dwellings and the sand school, where it would be consistent with the existing equestrian character of that part of the site. Although the proposed plot for Unit 2 would extend slightly further to the east than the existing kennel runs, it would be behind the tree belt and additional boundary planting is proposed. In the context of the established residential and commercial uses on this section of Ham Lane, the extent of the proposed residential curtilages and associated uses such as car parking would not be harmful to the character of the area.
17. Overall, taking into account the previously developed nature of the site, the scale and siting of the existing buildings, and the relationship with the existing cluster of dwellings, the proposed development would not be visually intrusive or otherwise harmful to the character and appearance of its countryside location. It would, furthermore, offer advantages over the approved scheme, in terms of the reduced massing and prominence of built development, the increased separation from the existing tree belt and PROW, and the additional woodland planting.
18. I therefore conclude that the proposal would not have any harmful effect on the character and appearance of the area. There would be no conflict with relevant requirements in Policy CP10 of the Part 1 Local Plan 2016 (LLP1) or Policy DM25 of LLP2, which require amongst other things that locally distinctive landscape qualities are maintained, that development responds sympathetically to the characteristics of the site and its surroundings and that existing tree groups that contribute positively to the area are retained. There would be no conflict with relevant requirements in Policy 5 of the Wivelsfield Neighbourhood Plan 2016 which states amongst other things that development proposals will be supported where factors including scale, height, landscape design, layout and materials reflect and enhance the character and scale of surrounding buildings and distinctive local landscape features. The development would also accord with relevant requirements in the Framework, including that development should be sympathetic to local character, including landscape setting.

### *Public Rights of Way*

19. The PROW along Ham Lane is part of the Sussex Border Path, a long-distance path which follows Slugwash Lane north from Wivelsfield Green, before turning along Ham Lane. Representations on behalf of the Ramblers Association indicate that it is an ancient right of way, with evidence of a path along Ham Lane dating back to the Iron Age.
20. The short section of Ham Lane leading to the appeal site is narrow, with a gravel surface. Beyond that, the lane reduces in width and is unsurfaced as it continues into the woods. The gravelled section provides access to some of the existing dwellings and there is some space for parking to the side. It also provides vehicular access to the appeal site which, as described above, has a history of commercial use. As such, vehicle movements already occur within this section of the PROW and there is no substantive evidence that it is unsuitable for the modest level of traffic likely to arise from two dwellings, or that the safety of walkers would be compromised.

21. The level of proposed parking would be the same as for the fallback scheme, which the officer report for that application confirmed was consistent with the Highways Authority's standing advice. The parking layout would not encroach onto the PROW and facilities for turning would be provided. Although turning movements would occur within the lane, the availability of a turning head would limit the risk of reversing movements along its length.
22. I conclude that the proposal would not adversely affect the use and enjoyment of the public right of way network. There would be no conflict with any relevant policies of the development plan which have been drawn to my attention, including Policy CP13 of LLP1 which requires that the design and layout of development prioritises the needs of pedestrians, or Policy 5 of the Wivelsfield Neighbourhood Plan, which requires that the design and layout of development takes account of distinctive local features including track ways and drove roads. Nor would the proposal conflict with the requirement in the Framework that planning decisions should protect and enhance public rights of way.

### **Other Considerations**

23. The Council acknowledges that there is currently a shortfall in housing land supply. However, since the proposal would provide the same number of dwellings as the extant planning permission, there would be no additional benefit in that regard.
24. Biodiversity enhancements are proposed, including green roofs to the proposed dwellings and an area of new woodland planting. Those particular enhancements would be over and above the scope of the fallback scheme. Other potential enhancements are detailed in the Preliminary Ecological Appraisal (PEA)<sup>1</sup>, but the fallback scheme was informed by the same PEA and was subject to a condition requiring that biodiversity enhancements were included in the details of landscaping. Therefore, these would be common to both schemes.
25. On the basis that new build dwellings are proposed, there may be scope for a higher standard of energy efficiency compared to conversion of the existing building. Indeed, an intention is expressed by the appellant to exceed the requirements of current Building Regulations through use of passive and active approaches, such as high standards of insulation and potential use of heat pumps. However, while such measures could be secured through the conditions imposed below, the level of potential benefit remains relatively undefined.
26. The proposal would bring a currently vacant site back into use, making use of previously developed land, albeit not through conversion of the existing buildings. Occupiers of the neighbouring dwellings express support for new build as being preferable to conversion of the existing buildings, in terms of sustainability and visual appearance, as well as highlighting that any resumed kennel operation would impact the local environment in terms of noise, disruption and traffic.

### **Planning Balance**

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Although the proposed development conflicts to a limited extent with the development plan, as a

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<sup>1</sup> Arborweald Environmental Planning Consultancy Preliminary Ecological Appraisal and Preliminary Roost Assessment dated 28 February 2023 and updated 5 July 2023



result of its location outside the planning boundary, when the fallback position is taken into account there would be no material harm in terms of increased need to travel, access to local services or the relationship with nearby rural communities. There would otherwise be no conflict with the development plan, for the reasons given above.

28. The fallback position is a material consideration carrying considerable weight. Furthermore, benefits would be secured over and above the extant planning permission, mainly in terms of the effect on the character and appearance of the area, but also including some additional biodiversity enhancements and potential for improved energy efficiency. Taken together, these matters are material considerations which outweigh the conflict with Policy DM1. Therefore, the proposal should be supported.

### **Conditions**

29. Both parties provided conditions which should be imposed in the event that the appeal was allowed. Although both sets of conditions covered similar matters, there were several detailed differences. Having considered the evidence from both parties, along with the tests for use of planning conditions in the Framework and Planning Practice Guidance (PPG), I circulated a revised schedule of conditions to the main parties for comment, without prejudice to the outcome of the appeal. Neither party raised any objection to the proposed conditions and the appellant also provided written confirmation of agreement to the inclusion of pre-commencement conditions.
30. I have imposed a condition requiring compliance with the approved plans, in the interests of certainty. The drawing numbers have been clarified with the parties and the condition omits drawings which had been superseded by amendments to the scheme prior to the appeal being lodged. The drawing relating to Building E is numbered as stated on the drawing itself, and not the electronic file name.
31. Conditions 3 and 4 are necessary to secure suitable management of the construction process, to avoid obstruction of the PROW, safeguard living conditions for occupiers of neighbouring properties, avoid harm to protected species, taking account of the recommendations in the PEA, and safeguard existing trees. In both cases, a pre-commencement condition is necessary, to secure effective management of construction and waste from the initial demolition works onwards.
32. Conditions 5 and 6 are necessary, to secure the proposed benefits in terms of biodiversity enhancements and energy efficiency and Condition 7 is necessary to secure suitable landscaping of the site. The required details of boundary treatments would secure the provision of additional hedges, of an appropriate form and species, as is indicated on the application drawings. Conditions 8 and 9 would secure the provision and retention of car parking, bin and cycle storage facilities, clear of the PROW, in the interests of a well-functioning development.
33. Condition 10 is necessary to secure the overall reduction in built form, which is a benefit of the proposed development. It would ensure that, with the exception of the stables which would be relocated, elements of the existing buildings are not retained, contrary to the layout shown on the drawings.

34. I have imposed conditions 11 and 12 to maintain control over any external lighting and to secure use of the external materials specified on the drawings, in the interests of the character and appearance of the area. Taking account of the previously developed nature of the site, Condition 13 would ensure that any unexpected contamination is appropriately remediated.
35. Both parties proposed that permitted development rights should be restricted, while differing as to the necessary scope of such restrictions. However, I am mindful that the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. On the basis that the reasons for allowing the development include the reduced overall scale of built development within the site, control over subsequent extensions or outbuildings is justified by the circumstances of the case, in the interests of the character and appearance of the countryside. I have therefore imposed a condition to that effect.
36. However, there is no clear justification for removing permitted development rights for porches or other minor alterations to the dwellings permitted by Schedule 2, Part 1 of the Order<sup>2</sup>, or the range of minor works set out in Schedule 2, Part 2 of the Order.
37. The evidence does not indicate that the site is at risk of surface water flooding and no condition was imposed on the fallback scheme requiring submission of drainage details. Based on the evidence before me, this matter would be adequately covered by the Building Regulations.

### **Conclusion**

38. The proposal would result in some limited conflict with the development plan, but material considerations indicate that a decision should be taken otherwise than in accordance with the development plan. Therefore, the appeal should be allowed.

*Jane Smith*

INSPECTOR

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<sup>2</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
  - 086-PL-001-B Location Plan
  - 086-PL-002-B Existing Site Plan
  - 086-PL-003-B Demolition Plan
  - 086-PL-102-D Proposed Site Plan
  - 086-PL-103-C Proposed Site Plan
  - 086-PL-104-A Proposed Floor and Roof Plans – Unit 1
  - 086-PL-105-A Proposed Floor and Roof Plans – Unit 2
  - 086-PL-111-B Proposed Elevations – Unit 1
  - 086-PL-112-A Proposed Elevations – Unit 2
  - 086-PL-023-A Building E Proposed Plans and Elevations
- 3) No development shall take place, including any ground works or works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CEMP shall be implemented and adhered to in full throughout the entire construction period. The Plan shall include the following matters:
  - a) the anticipated number, frequency and types of vehicles used during construction,
  - b) the method of access and egress and routeing of vehicles during construction,
  - c) the parking of vehicles by site operatives and visitors,
  - d) the loading and unloading of plant, materials, and waste,
  - e) the storage of plant and materials used in construction of the development,
  - f) the erection and maintenance of security hoarding if required,
  - g) hours of working,
  - h) demonstration that best practicable means have been adopted to mitigate the impact of noise, dust and vibration from construction activities,
  - i) measures to protect habitat and wildlife during construction works, in accordance with the species specific mitigation measures set out in section 6 of the Arborweald Environmental Planning Consultancy Preliminary Ecological Appraisal and Preliminary Roost Assessment (ref: DKS/1086.1 - dated on 28th February 2023 and updated 5th July 2023), including details of any external lighting required for the duration of the construction process.
  - j) details of all trees to be retained on or adjacent to the site and measures for their protection during construction in accordance with paragraphs 5.5



and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced).

- 4) No development (including demolition works) shall commence until a Site Waste Management Plan (SWMP) is submitted to and approved by the Local Planning Authority. The plan shall include details of how all waste is to be reduced and reused and recycled where practicable as well as how any hazardous materials are to be identified and safely disposed of. Details of sourcing of new materials should also be provided.
- 5) Prior to the first occupation of either of the dwellings hereby approved, details of measures to achieve biodiversity net gain within the site shall be submitted to and approved by the Local Planning Authority. The approved measures shall be implemented prior to occupation of either of the dwellings and thereafter retained in accordance with the approved details.
- 6) Prior to the first occupation of either of the dwellings hereby approved details of measures to improve energy efficiency, reduce carbon emissions and increase water efficiency shall be submitted to and approved by the local planning authority. The development shall thereafter be carried out and maintained in accordance with those approved details.
- 7) Prior to the occupation of either of the dwellings hereby approved, a scheme for landscaping shall be submitted to and approved by the Local Planning Authority. The scheme shall include: -
  - a) details of all hard surfacing,
  - b) details of all boundary treatments,
  - c) details of all proposed planting, including quantity, species, and size,
  - d) site levels, groundworks and any retaining wall details.

All soft landscaping shall be carried out, at the latest, during the first planting season following the first occupation of either of the dwellings. Any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of comparable size and species.

- 8) The dwellings hereby approved shall not be occupied until the car parking spaces shown on the approved plans have been surfaced and laid out in accordance with the details provided on the approved plans and shall be maintained in place thereafter for the lifetime of the development.
- 9) Prior to the first occupation of the dwelling hereby approved, bin and cycle storage facilities shall be provided in accordance with details which shall first be submitted to and approved by the Local Planning Authority. These facilities shall thereafter be maintained in place for the lifetime of the development.
- 10) Prior to the first occupation of either of the dwellings hereby permitted, existing buildings A to G inclusive, as identified on drawing 086-PL-003-B (Demolition Plan) shall be demolished and, with the exception of the parts of Buildings E and

F which are identified on that drawing as to be relocated, all materials resulting from the demolition shall be removed from the site.

- 11) No external lighting shall be installed to the dwellings hereby permitted unless details have first been submitted to and approved in writing by the Local Planning Authority. This exclusion shall not prohibit the installation of internal lighting or of sensor-controlled outdoor lighting of 1,000 lumens or less, which shall be designed and shielded to minimize upwards light spillage.
- 12) The external materials and finishes applied to the development hereby approved shall be in accordance with those listed in the application particulars. The development shall thereafter be maintained in accordance with those details.
- 13) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved and a verification report shall be submitted to the Local Planning Authority.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, C or E of Part 1 of Schedule 2 to the Order shall be undertaken.

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