



Appeal Decision

Site visit made on 12 January 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 JANUARY 2022

Appeal Ref: APP/M2270/W/21/3275924

Broadlake, Mill Lane, Frittenden, Cranbrook TN17 2DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Clews against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/00188/FULL, dated 18 January 2021, was refused by notice dated 12 April 2021.
 - The development proposed is to replace the existing barn building with a new barn building to comprise of a 3-bed dwelling with associated car parking and landscaping
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Decision

1. The appeal is allowed, and planning permission is granted to replace the existing barn building with a new barn building to comprise of a 3-bed dwelling with associated car parking and landscaping at Broadlake, Mill Lane, Frittenden, Cranbrook TN17 2DX in accordance with the terms of the application, Ref 21/00188/FULL, dated 18 January 2021, subject to the conditions set out in the attached Schedule.

Main Issue

2. The main issue is whether the appeal proposal would constitute an acceptable form of development in respect of its location.

Reasons

3. The appeal site lies within a rural area characterised by open fields, landscaping, and occasional buildings. The appeal site comprises a former agricultural Dutch barn served by a part tarmac, part unmade driveway to Mill Lane. It is proposed to demolish the existing barn and erect a new dwelling in the same place as set out in the banner heading above.
4. Both parties are in agreement that the appeal site is situated outside the limits to built development as defined within the Tunbridge Wells Borough Local Plan 2006 (Local Plan) and is therefore in the countryside. Core Policies 6 and 14 of the Tunbridge Wells Core Strategy 2010 (Core Strategy), Policy LBD1 of the Local Plan and paragraphs 9 and 174 of the National Planning Policy Framework (the Framework) prioritise development away from the countryside and acknowledge that development within the countryside should be restrained to, amongst other things, promote sustainable development patterns and protect the intrinsic character and beauty of the countryside.
5. The site does not fall within Previously Developed Land (PDL) and the introduction of a new dwelling, in the countryside located away from services,

weighs against the proposal. However, my attention is drawn to a fallback permission 20/00386/PNQCLA for the conversion of the existing Dutch barn into a dwellinghouse (the fallback permission).

6. In fallback cases, the courts¹ have confirmed that there should be a 'real prospect' of a fallback development being implemented. In this case the fallback permission is for the conversion of the existing barn, within the same location, into a dwelling rather than a new dwelling. I am satisfied that there is a demand for housing given the Council cannot demonstrate a five-year housing land supply, furthermore the fallback permission and the current appeal are both for a residential use in the same location. On this basis, there is no evidence before me that the fallback permission is merely a theoretical possibility. As a consequence, any impacts from the current appeal proposal in respect to a residential use away from services or not falling within PDL would create no greater harm than the fallback permission.
7. The demolition of an existing building produces waste. Such waste would not be produced if the existing building was converted. This weighs against the development proposal. However, the appellant argues a new building would be subject to stricter Building Regulations in respect of sustainable design and construction, whereas existing conversions benefit from a more discretionary approach. The appellant also states that it is easier to incorporate sustainable construction techniques and methodologies within a new build than to retrofit such measures into an existing agricultural building not originally designed or constructed for residential occupation. The Council has not challenged this evidence in their statement. I note Policy EN25 of the Plan and the Framework at paragraph 152 support the reuse of existing resources and some waste may be created from the demolition of the existing building. However, the longer-term benefits which arise from a new building, which is required to fully comply with Building Regulations, outweigh the harm derived from demolition in this instance.
8. It is agreed between the parties that the Council is unable to demonstrate a 5-year housing land supply, and paragraph 11d ii) is therefore engaged. Having had regard to the benefits and the fallback permission set out in paragraphs above, I have found that there are no adverse impacts which would significantly and demonstrably outweigh the benefits. Additionally, a driveway would be required for both the fallback and appeal proposal and while the appeal site extends beyond the location of the proposed dwelling, conditions can be imposed to ensure hard and soft landscaping is submitted for approval to the Council.
9. The Council have referred to Policies EN1, H10 and TP5 of the Local Plan and Core Policies 1, 4 and 5 of the Core Strategy. While I have considered these policies, they do not alter my findings.
10. Given the location, I have found some conflict with Local Plan Policies LBD1 and EN25 of the Local Plan, Core Policies 6 and 14 of the Core Strategy and paragraphs 9, 152 and 174 of the Framework. However, I have found that the appeal before me would be no more harmful than the fallback permission. This is a material consideration which balances the conflict with the development plan and the Framework justifying a grant of planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.

¹ *Mansell v Tonbridge and Malling BC & others* [2017]

Conditions

11. The Council has provided a list of suggested conditions and I have assessed these regarding the advice provided in the Planning Practice Guidance². I have amended the wording of some conditions for clarity. Conditions 1 and 2 are required in the interests of certainty. Conditions 3, 4, 8 and 11 are also necessary to ensure that the development is in keeping with the character and appearance of the area. Condition 5 is necessary in the interests of biodiversity and condition 6 is required to ensure that the development is in keeping with the character and appearance of the area and in the interests of biodiversity. Condition 7 is necessary in respect to avoiding pollution and condition 9 to ensure availability of parking.
12. While not included in the Council's suggested schedule of conditions, the County Council's archaeological adviser recommended a condition on archaeology at application stage. It is apparent from the evidence before me that the site lies within a 16th century farm complex which may have medieval manorial roots with potential for surviving remains associated with the earliest uses of this site. Therefore, in the interests of ensuring that features of archaeological interest are properly examined and recorded, condition 10 is also necessary.

Conclusion

13. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant considerations, the appeal is allowed.

N Praine

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: Site Location Plan 20/30/100 Revision B; Proposed Site Plan 20/30 201 Revision D; and Proposed Elevations and Plans 20/30/202 Revision C.
- 3) No above-ground development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in accordance with the approved details/ samples.

² Paragraph: 21a-003-20190723

- 4) No above-ground construction work shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
 - i) Details of all surfacing materials for areas of hard surfacing;
 - ii) Details of all proposed fencing.Once approved, the development shall be carried out in accordance with the approved details.
- 5) The development shall be carried out in accordance with the recommendations in the submitted Preliminary Ecological Appraisal. Additionally, and prior to the first occupation of the dwelling hereby permitted, a scheme of proposed ecological enhancement works to include a timetable for implementation and how the agreed works will be maintained / retained shall be submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in accordance with the approved details and retained thereafter.
- 6) Prior to the first occupation of the dwelling hereby permitted, details of any external lighting to be installed shall be submitted to and approved in writing by the Local Planning Authority. External lighting shall be installed and retained thereafter in accordance with the approved details.
- 7) Prior to the first occupation of the dwelling hereby permitted, details of the proposed method of foul sewage treatment shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out and retained thereafter in accordance with the approved details.
- 8) Prior to the first occupation of the dwelling hereby permitted a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show any existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall fully detail all new planting, and shall include a planting specification, a programme of implementation, and a 5-year management plan. Once approved, the development shall be carried out in accordance with the approved details. Any existing trees or hedges retained or planted on site which, within a period of five years from the first occupation of a property, commencement of use or adoption of land, die or become, so seriously damaged or diseased that their long term amenity value has been adversely affected, shall be replaced in the same location during the next planting season (October to February), with plants of an appropriate species and size to mitigate the impact of the loss as agreed in writing by the Local Planning Authority.
- 9) Prior to the first occupation of the dwelling hereby permitted, the area shown on the approved plans as vehicle parking shall be provided. It shall be retained for the use of the occupiers of, and visitors to, Broadlake Farm. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this parking provision.

- 10) No excavation shall take place until the appellant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed, and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority prior to any excavation.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within Classes A-E of Part 1 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior planning permission.