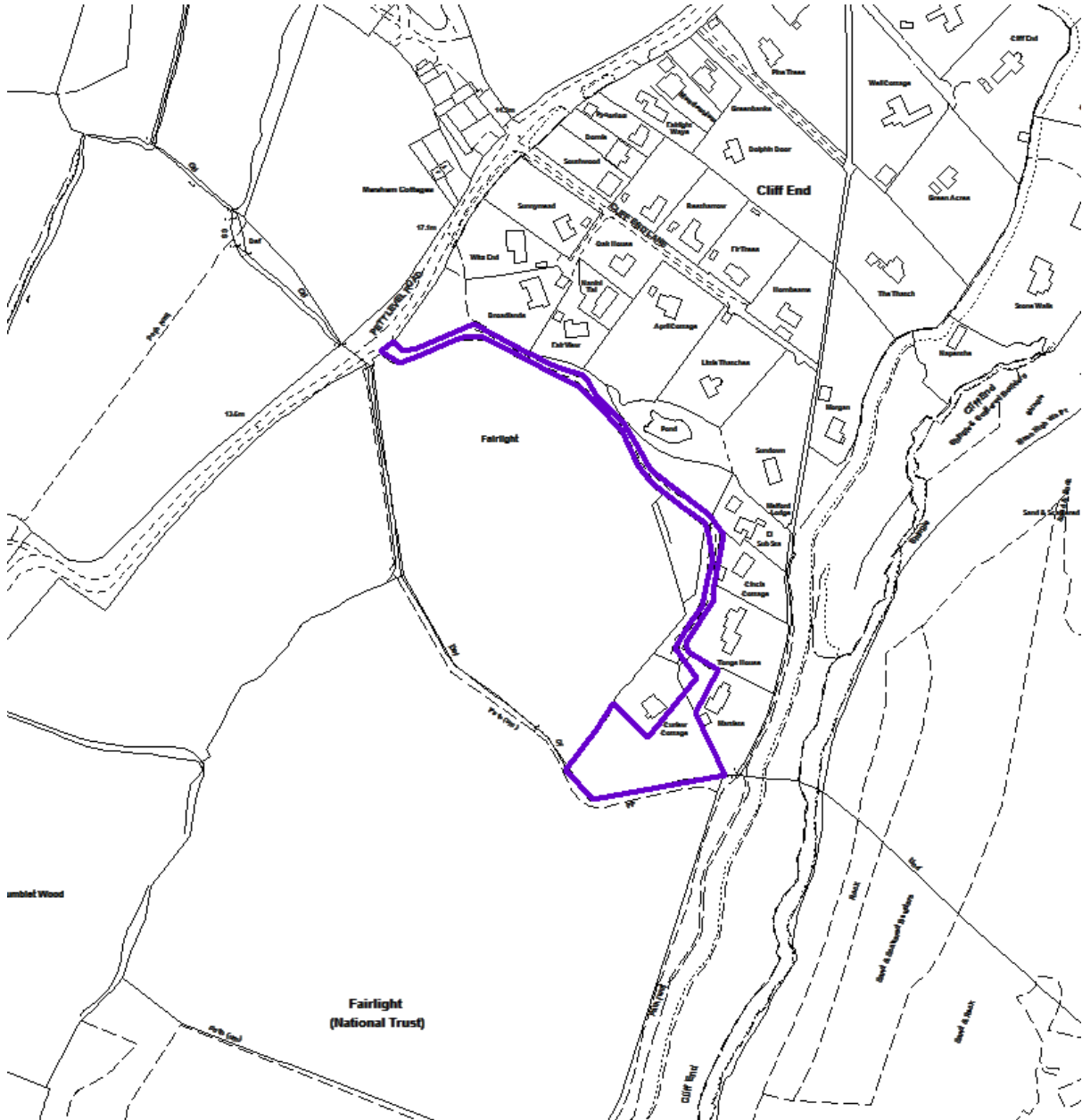


SITE PLAN

RR/2020/1826/P

PETT / FAIRLIGHT

CURLEW COTTAGE – LAND ADJ,
PETT LEVEL ROAD



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Not to Scale

Rother District Council

Report to - Planning Committee
Date - 14 April 2022
Report of the - Director – Place and Climate Change
Subject - RR/2020/1826/P
Address - Curlew Cottage - land adjacent
Pett Level Road
Pett Level
Pett/Fairlight, TN35 4EE
Proposal - Erection of a new single detached dwelling and detached garage and, associated works.

[View application/correspondence](#)

RECOMMENDATION: It be **RESOLVED** to **REFUSE FULL PLANNING PERMISSION**

Director: Ben Hook

Applicant: Mr & Mrs M. Rampling
Agent: Mr D. Blackwell – Oakland Vale Ltd
Case Officer: Mark Simmonds
(Email: mark.simmonds@rother.gov.uk)

Parish: PETT/FAIRLIGHT

Ward Members: Councillors R.K. Bird and A.S. Mier

Reason for Committee consideration: Councillor Call-In.

Statutory 8-week date: 13 January 2021

This application is included in the Committee site inspection list.

1.0 SUMMARY

1.1 This is an additional report to Planning Committee following a third party legal challenge to the Planning Committee Decision on 11 November 2021 to not follow the officer recommendation to refuse planning permission and instead to grant planning permission subject to conditions.

2.0 THE CHALLENGE

2.1 The decision was challenged on four grounds:

- Ground 1: Procedural impropriety: The Defendant has failed to provide any, or any sufficient reasons in respect of the decision to grant planning permission contrary to the officer's recommendation.
- Ground 2: Procedural impropriety and/or error of law: The Defendant's exclusion of Members who had not conducted a site visit from voting in respect of the proposed development amounted to an error of law, in that the Defendant considered itself bound to apply its policy in this way when it was not, or else amounted to procedural impropriety by applying a legally erroneous procedure to its consideration of the application.
- Ground 3: Consideration of irrelevant considerations: the consideration of the pre-application discussions between the Applicant and the Defendant in respect of the application prior to the adoption of the Development and Site Allocations Local Plan (DaSA) was not a material planning consideration in the course of this application but was nevertheless considered by the Defendant.
- Ground 4: Error of law: the Planning Committee adopted a legally erroneous understanding of what comprised 'sustainable development'.

2.2 After taking legal advice, the Council considered that the challenge had merit in that it accepted that Grounds 1 and 3 are of significant substance. To that end, the Council decided to concede that the decision should be quashed on application to the Court. It is agreed that the reasons given for the decision to grant permission were insufficient and that an error of law occurred in the consideration of factors that were not material to the decision.

2.3 Further legal advice was sought with regard to the second ground of legal challenge. Legal advice was that Members who did not/could not attend site visit in relation to a planning application should not be precluded from voting on that said application when it came before them at Planning Committee.

2.4 The matter appeared before the High Court on 4 March 2022 and the grant of planning permission was quashed, decision notice was quashed.

3.0 MEMBER TRAINING

3.1 On 13 January 2022, Member training was undertaken which referred to the Planning Advisory Service (PAS) publication 'Probity in Planning' and this looked at sections relevant to the relevant sections below:

Impartiality and Avoiding Bias

3.2 Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision-making process must be seen to be fair and impartial from the perspective of an external observer.

Officer reports

- 3.3 Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.

Decisions which differ from a recommendation

- 3.4 The law requires that decisions should be taken in accordance with the DaSA, unless material considerations (which specifically include the National Planning Policy Framework) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).
- 3.5 This applies to all planning decisions. Any reasons for refusal must be justified against the DaSA and other material considerations.
- 3.6 The Courts have expressed the view that the Committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non-material considerations which might cause local controversy, will rarely satisfy the relevant tests.
- 3.7 Planning committees can, and do, make decisions which are different from the officer recommendation. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 3.8 Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:
- If a Councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.
 - Recording the detailed reasons as part of the mover's motion.
 - Adjourning for a few minutes for those reasons to be discussed and then agreed by the Committee.
 - Where there is concern about the validity of reasons, considering deferring to another meeting to have the reasons tested and discussed.
- 3.9 If the Planning Committee makes a decision contrary to the officers' recommendation a detailed minute of the Committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the DaSA or the National Planning Policy Framework. The decision is ultimately the Committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.
- 3.10 All applications that are clearly contrary to the DaSA must be advertised as such and are known as 'departures' from the DaSA. If it is intended to

approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the DaSA must be clearly demonstrated.

- 3.11 The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.
 - 3.12 It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.
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4.0 APPRAISAL

- 4.1 The proposal is for one dwelling on a part of the garden of Curlew Cottage. On 16 December 2019, the Council adopted the DaSA. One of the results of this is that Pett Level does not have a defined settlement boundary within the recently adopted DaSA. For the purposes of planning policy, the appeal site therefore lies within the open countryside and a proposal for a residential development must be assessed on that basis. The policies within the Rother District Local Plan Core Strategy, 2014 that address development in the countryside are therefore relevant to my assessment.
- 4.2 Pett Level is a settlement with a limited range of services. It is not identified as a Rural Service Centre or a Local Service Village. Existing and future residents will need to travel to Hastings or Rye to access the facilities that they need. On this basis, unless there are benefits to outweigh the unsustainability of the site, the application should be refused.
- 4.3 The site is surrounded by the High Weald Area of Outstanding Natural Beauty (AONB); the Dungeness, Romney Marsh and Rye Bay Special Protection Area (SPA) and Ramsar site; the Hastings Cliffs to Pett Beach and Dungeness, and Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI).
- 4.4 There is no recent relative site history to the site itself but of note is a nearby site which resulted in the dismissal on appeal which is of note and is considered in detail in the report as a material planning consideration. RR/2018/1644/P, APP/U1430/W/19/3243501 Warren Cottage, Pett Level Road, Pett Level TN35 4EE, proposed is erection of two detached houses together with detached garages and associated works. Dismissed on appeal.
- 4.5 Paragraph 3 of the appeal decision letter dated 20 March 2020 stated:

“On 16 December 2019, after this application was determined, the Council adopted the Development and Site Allocations Local Plan (DaSA). The appellant and other interested parties have had an opportunity to comment on the implications of these recently adopted policies on the appeal proposal. I have taken these into account in reaching my decision which must be made having regard to the current development plan as a whole”.
- 4.6 Paragraphs 6-10 of this appeal decision note that:

- Pett Level does not have a defined settlement boundary within the recently adopted DaSA. For the purposes of planning policy the appeal site therefore lies within the countryside and the proposal for a residential development must be assessed on that basis.
- Policy RA2 sets out the overarching strategy for the countryside which is to support rural businesses and strictly limit new development to that which support local agriculture, economic or tourists needs and maintains or improves rural character. Policy RA3(iii) states that the creation of new dwellings will only be permitted in extremely limited circumstances of which there was no evidence submitted.
- Pett Level is a settlement with a limited range of services.
- Although there is a bus stop within walking distance of the site, services from it are limited.
- Pett Level Road is an unlit, rural road with no footways that is subject to the national speed limited.
- Walking along it for any distance is potentially dangerous. All these factors mean that future residents are likely to find that the most practical and convenient means of travel is the private car.
- For all these reasons, Inspector concluded that the appeal site is not a suitable location for a residential development.

4.7 The main issues are considered to be:

- (a) whether or not the site is suitable for a residential development having regard to local and national planning policy for the location of housing;
- (b) the impact on the character and appearance of the locality; and
- (c) other matters.

4.8 Officers advise that Pett Level does not have a defined settlement boundary within the adopted DaSA. For the purposes of planning policy the site therefore lies within the countryside and the proposal for a residential development must be assessed on that basis. The policies within the Rother Local Plan Core Strategy, 2014 that address development in the countryside are therefore relevant to my assessment.

4.9 It is acknowledged that the Applicants received some pre-application advice which was considered positive, however this is considered to be historical and since that advice was given there has been a change in local plan policy. The application therefore must be assessed in line with this change in policy and the site therefore falls within the open countryside.

4.10 As the site is adjacent to but not in AONB. The 'tilted balance' does apply as the Council cannot demonstrate a five year housing land supply.

4.11 Para 11 of the National Planning Policy Framework 2021 advises that:

- (d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date granting permission unless:*
 - (i) *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 4.12 In appraising the proposal it is recognised that it does not accord with the development plan taken as a whole. Officer would advise that the Committee report attached demonstrates that paragraph 11(d)(ii) is engaged and that the recommendation to refuse planning permission remains.
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5.0 CONCLUSION

- 5.1 Planning committees can, and do, make decisions which are different from the officer recommendation. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.
- 5.2 The legal challenge to the Planning Committee's decision with regard to Curlew Cottage was on four grounds. The Council concerned that at least on Grounds 1 to 3 that the challenge was sufficient not to be contested. Accordingly, the Planning Committee decision was quashed in the High Court.
- 5.3 Correspondingly, the matter has been returned to Planning Committee for determination.
- 5.4 Further legal advice sought had held that the second reason for challenge with regard to Members attending site visits and voting had merit and accordingly all members present should have the right to vote regardless of attendance or not at site.
- 5.5 The law requires that decisions should be taken in accordance with the DaSA, unless material considerations (which specifically include the National Planning Policy Framework) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).
- 5.6 This applies to all planning decisions. Any reasons for refusal must be justified against the DaSA and other material considerations.
- 5.7 The Courts have expressed the view that the Committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non-material considerations which might cause local controversy, will rarely satisfy the relevant tests.
- 5.8 The main issues in appraising this application are considered to be:
- (a) whether or not the site is suitable for a residential development having regard to local and national planning policy for the location of housing;
 - (b) the impact on the character and appearance of the locality; and
 - (c) other matters.

However, the scheme is considered to be an overdevelopment of the site and out of keeping with the characteristics of the area resulting in a development

which would adversely affect the countryside location which is contrary to local and national policy requirements.

- 5.9. Fundamentally, Pett Level no longer has a settlement boundary. The proposal would conflict with the spatial strategy set out in the Rother Local Plan Core Strategy which seeks to strictly control residential development in the countryside. These adverse impacts significantly and demonstrably outweigh the very limited social and economic benefits associated with the provision of dwelling. The presumption in favour of sustainable development therefore does not apply in this case and on balance the proposal is not acceptable in planning terms.
- 5.10 This recommendation is supported by the 2020 Appeal decision at Warren Cottage and the officer's report refers to this in significant detail as well as that outlined above. The appeal decision holds that inter alia Pett Level is not a sustainable location.
- 5.11 That in conclusion the reasons for refusal in the officer's report attached is sound and therefore unchanged.

List of Appendices

- Appendix 1 APP/U1430/W/19/3243501 Appeal Decision Letter for Warren Cottage, Pett Level Road, Pett Level TN35 4EE, proposed is erection of two detached houses together with detached garages and associated works (RDC Ref. RR/2018/1644/P,
- Appendix 2 Planning Committee Report by Mark Simmonds for Curlew Cottage recommending refusal of planning permission on 11 November 2021.