The Planning Inspectorate

Appeal Decision

Hearing held on 6 September 2016
Site visit made on 6 September 2016

by L Gibbons BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Appeal Ref: APP/U2235/W/16/3149542
Land South of Orchard End, Maidstone Road, Warmlake, Sutton Valence, Kent ME17 3LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Mr P Williams against Maidstone Borough Council.
- The application Ref 15/510306/OUT, is dated 7 December 2015.
- The development proposed is the erection of 14 detached and semi-detached dwellings with new access, garaging, parking provision and other associated works (outline planning application with means of access and layout for approval).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application seeks outline planning permission with access and layout to be determined at this stage. Appearance, scale and landscaping are reserved matters to be considered in the future.

3. The Council indicate that had it been in a position to determine the application, it would have refused planning permission for reasons relating to the effect on the character and appearance of the area, biodiversity and ecology and a lack of affordable housing and infrastructure contributions.

4. After the close of the hearing the appellant submitted copies of two signed Unilateral Undertakings (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). These are dated 26 September 2016. The first UU is in relation to primary education and library contributions. A second UU relates to the provision of affordable housing within the appeal scheme. I return to this matter below.

Main Issues

5. The main issues are:

   i) Whether there is a five year supply of housing land within the area and the policy implications;
   ii) The effect of the proposed development on the character and appearance of the area;
   iii) The effect of the proposed development on ecology and biodiversity;

iv) Whether the proposal would make adequate provision for affordable housing and infrastructure contributions; and,

v) Whether the proposal would be sustainable development.

Reasons

Five year supply and policy implications

6. The National Planning Policy Framework (the Framework) establishes that sustainable development should be seen as a golden thread running through both plan-making and decision taking. Paragraph 47 of the Framework indicates that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed housing needs for market and affordable housing. At the Hearing, the Council confirmed that it considered it could demonstrate a five year supply of housing land at just over 5 years. The appellant does not agree and indicates that the Council can only show a 2.76 years supply.

7. For the purposes of this appeal, the parties agree that the housing requirement for the area should be based on an objectively assessed housing need (OAN) figure of 18,560[1] and also on the subsequent requirement for the five year period. In terms of the application of a buffer, the appellant considers that based on the new housing requirement the Council have a persistent record of under delivery of housing sites. I accept that the retrospective application of the OAN requirement to housing delivery would mean that the Council failed to meet that target between 2011 and 2016. However, the Council met targets against the South East Plan housing requirement which was the development plan until 2013. On this basis and taking account of a longer term view which would incorporate peaks and troughs in the housing market, I consider the figures do not demonstrate a persistent record of under delivery. A 5% buffer is both reasonable and justified.

8. However, the Council rely on a number of housing sites which are proposed allocations[2] in the Maidstone Local Plan (the Publication Plan). Some of these allocations have planning permission subject to s106 agreements and I consider it would be reasonable to include these within the supply. Other sites are described as pending a decision in relation to the Publication Plan. I note that these sites have been considered by the planning committee and that some sites have been the subject of planning applications.

9. The Council indicate that these would account for around 2,000 homes within the 5 year period representing a considerable proportion of the supply. However, there was no information provided by the Council at the Hearing that would indicate that these were clearly deliverable within the relevant time period. The allocations have yet to be tested through the Examination in Public and I cannot be certain that all the allocations with the pending status would come forward. On this basis, I therefore consider that the Council are currently unable to demonstrate a five year supply of housing land.

10. The Framework sets out that in the absence of a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up to date. The appeal site is outside of the defined settlement

[1] Based on the Strategic Housing Market Assessment Addendum June 2015
[2] Housing Topic Paper 2016

boundaries and is within the countryside. Saved Policy ENV28 of the Maidstone Boroughwide Local Plan (MBLP) 2000 seeks to restrict development to certain uses, none of which apply in this case. Policy SP17 of the Publication Plan is similar although it refers to circumstances where small scale residential development to meet local needs may be acceptable. I consider that these are relevant policies for the supply of housing and would therefore be out of date. In the light of the above, I conclude that little weight should be attributed solely to the site being located in the countryside.

11. In these circumstances, paragraph 14 of the Framework sets out how the presumption in favour of sustainable development should be applied and indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

Character and appearance

12. The appeal site is a mainly flat grassed field with the A274 Maidstone Road to the west. Although there is a tall hedge to the boundary of the appeal site with the A274, the site itself is open and it has a strong rural character which closely reflects that of the wider countryside. To the northeast and east of the site are fields of soft fruit crops which at times of the year would be under cover and whilst fairly intensive in use, the overall character is still rural.

13. To the north of the site are rows of houses and some commercial development in a mainly linear pattern of development along the A274. There is also development around the crossroads of Chartway Street, Warmlake Road and the A274. On the west side of the road there is also frontage development but with some breaks of open countryside. There is some development in depth for example at Warmlake business estate but generally a ribbon form of development is predominant with a resulting semi-rural character to the A274.

14. The proposal would provide 14 detached and semi-detached houses along a cul-de-sac. I accept that there would be the opportunity to replace some of the hedge and for landscaping including street trees and additional site boundary hedgerows within the appeal site. I also note that the dwellings closest to the A274 would be set back slightly within the site and that the plots sizes would be large. There would be the potential for the design of the houses to reflect the local vernacular.

15. However, the need for a new access to the development would require the removal of a proportion of the tall hedgerow on the west boundary of the appeal site. The access would result in an obvious break and would be a significant feature along the road in this location altering the street scene to a considerable degree.

16. Even with landscaping in place the row of houses and garages to the rear of the site would be highly visible along the access road as seen from the A274. The effect of landscaping would also be reduced in winter when trees and hedges would not be in leaf. Hard standing and driveways would be visible along the length of the access road. Development would be clearly seen extending much further back than the dwellings to the north and would protrude into the countryside. The combination of the general layout of the site and the scale of development would lead to a significantly suburban appearance with little clear association with the pattern of built development to

the north and the semi-rural character of the A274. In this way, the proposal would fail to respect the context of its surroundings and would fail to sit comfortably within the landscape.

17. I accept that planning permission has been granted on appeal for land to the south of the appeal site at The Oaks and also at Appleacres on the opposite side of the A274[3]. However, in the case of The Oaks I note that the proposal would utilise the existing access and retain the current western boundary. I accept that the Inspector in that case refers to development in depth including along Warmlake Road. Notwithstanding that conclusion, I consider that the linear nature of development is readily discernible close to the appeal site and is a more predominant feature than was identified by the Inspector. The Oaks is also a different shape to the appeal site and tapers towards the east. This would appear to me to be a limiting factor on the numbers of homes which could be accommodated to the rear of that site. In contrast, the scheme before me would utilise a significant proportion of the land to the east and to my mind would obviously protrude into the countryside to a detrimental degree. The amount of dwellings proposed at The Oaks is also less than the scheme before me.

18. In respect of Appleacres, the Inspector in that case indicated that development would relate to the development in depth close to the appeal site including at the adjacent business park and that the scheme would maintain the sense of open character of that site. Therefore, the circumstances of that case also differ to the one before me.

19. For the reasons given above, I conclude that the proposed development would cause harm to the character and appearance of the area. It would be in conflict with Policy ENV28 of the MBLP and emerging Policy SP17 of the Publication Plan. It would be contrary to the Framework where it relates to the need for high quality design, taking account of the different roles and character of different areas and recognising the intrinsic character and beauty of the countryside.

Ecology and biodiversity

20. The Council considered that the lack of information submitted with the planning application meant it was not possible to ascertain that the proposal would not have a harmful effect on biodiversity and ecology. As part of the appeal the appellant produced an Extended Phase 1 Habitat Survey Report[4]. This assessed the potential for protected species within the appeal site and indicated that in terms of bats, reptiles, amphibians and dormice there was very little potential for these species to be present.

21. At the Hearing the Council indicated they had no dispute with the contents of the Survey. A series of recommendations were included as part of the Survey in relation to hedgerows, soft landscaping and nesting birds. Were other matters acceptable, I am satisfied that a condition relating to the submission of an additional survey and recommendations for mitigation and enhancement would be sufficient to address potential impacts on biodiversity and ecology.

[3] APP/U2235/A/14/2228989 & APP/U2235/W/16/3146765
[4] Corylus Ecology August 2016

Affordable housing and infrastructure contributions

22. I have considered the UUs in the light of the statutory tests contained in Regulations 122 and 123 of the Community Infrastructure Levy Regulations (CIL) and the tests at paragraph 204 of the Framework. The provision for 6 affordable houses would be in accordance with the Council's Affordable Housing Development Plan Document 2006. The contributions towards primary education and libraries would also be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

23. During the Hearing, the Parish Council raised the potential for a contribution towards improvements for the pavilion at the War Memorial Play Area in Sutton Valence. No planning obligation is provided in this respect. However, based on the information before me I cannot be certain the amount requested by the Parish Council would relate in scale and kind to the proposed development. I also note that that NHS West Kent are seeking a contribution towards improvements at three local doctors surgeries and the methodology for the calculations has been provided. I note the willingness of the landowner to provide a contribution towards the surgeries although I have not been provided with an obligation. That said, I have not been provided with information on whether other planning obligations have contributed to these facilities, therefore I cannot be certain that the contribution would meet the test set out in Regulation 123 of the CIL Regulations. The absence of contributions in relation to these matters does not therefore weigh against the scheme.

Whether sustainable development

24. The Framework identifies three dimensions to sustainable development – economic, social and environmental. The Framework makes it clear that the three roles the planning system is required to perform in respect of sustainable development should not be undertaken in isolation because they are mutually dependent.

25. The proposal would provide construction jobs for a temporary period. There are businesses close by with the potential for local jobs and residents would also make use of the services and facilities in the surrounding area. The appeal proposal would contribute to meeting housing need within the area, including affordable homes and these factors weigh positively in favour of the appeal scheme.

26. The appeal site is in a sustainable location and is not isolated. There are bus stops to the north of the site on the A274 which provide access to Sutton Valence and Maidstone. Sutton Valence is also accessible on foot and the village has a number of services and facilities.

27. I accept that local residents have concerns about the effect of the proposal on highway safety. I have been supplied with a crash report for a period of time between 2012 and 2015. A number of the accidents recorded relate to the crossroads some distance to the north and south of the appeal site. The Highways Authority and the Council do not object to the proposal subject to suitable conditions. There would be suitable visibility when leaving the site and I consider that the proposal would not lead to harm in terms of highway safety. However, this would have a neutral effect in the overall balance.

28. In terms of the environmental role the proposal would provide a small positive benefit in terms of ecology and biodiversity, particularly in relation to improvements to the southern hedgerow. However, I have found that there would harm caused to the character and appearance of the area. In accordance with paragraph 14 of the Framework when the three dimensions of sustainable development are considered together, the proposal would not be sustainable development to which the presumption in favour applies.

Other matters

29. The Council do not raise any concerns in relation to the effect of the proposal on the living conditions of nearby residents and based on the evidence before me and observations on my visit, I see no reason to disagree. I also note that the proposed dwellings would be provided with sufficient internal and external space. Parking and garage arrangements would also be acceptable. However, these matters are not sufficient to justify the proposal before me.

30. As well as the appeal decisions specifically referred to in my decision, my attention has been drawn to a number of others within the area and elsewhere. Consistency between decision makers is important. Some of these decisions have some features in common with the appeal proposal and refer to housing land supply amongst other things. However, each of these cases also has different considerations which affect the nature of the development and the Inspector's conclusions. In any event, I have considered the proposal before me on the specific circumstances and evidence which has been provided by the parties.

Conclusion and balance

31. There are benefits of the proposal particularly the contribution that it would bring to meeting the shortfall in housing land supply and affordable housing in the wider area. However, I have concluded that the proposal would cause considerable harm to the character and appearance of the area and therefore the adverse effects would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework as a whole.

32. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR

APPEARANCES

FOR THE APPELLANT

P Williams	Appellant
S Williams	
A Street MRTPI	Consilium Town Planning Services Limited
D Pares MRICS	Sibley Pares

FOR THE LOCAL PLANNING AUTHORITY

A Jolly	Maidstone Borough Council

INTERESTED PERSONS

E Ridon	Chair, Sutton Valence Parish Council
J Burnett	Clerk, Sutton Valence Parish Council
K Lancaster	Local resident
V Woodcock	Local resident

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1 Singed Statement of Common Ground
2 Draft Unilateral Undertaking Primary Education and Libraries
3 Draft Unilateral Undertaking Affordable Housing
4 Email from A Gilbert to A Street dated 5 September 2016
5 Maidstone Five Year Supply of Land on behalf of the Appellant
6 APP/U2235/W/15/3131945
7 APP/U2235/W/16/3146765
8 APP/U2235/W/15/3139288
9 Extended Phase 1 Habitat Survey, Corylus Ecology, August 2016
10 Copy of statement read out by E Riden
11 Letter on behalf of Sutton Valence Parish Council requesting contributions towards renovation of the War Memorial Playing Field pavilion dated 6 September 2016
12 Crash Print Report A274 Maidstone Road (25 February 2012 to 24 February 2015)
13 List of proposed conditions