
Appeal Decision

Site visit made on 21 December 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 31st January 2017

Appeal Ref: APP/J2210/W/16/3156861

Linden Lea, 2 Blean Common, Blean, Kent CT2 9ES

- 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 planning permission.
 - The appeal is made by Mr John McPhie against Canterbury City Council.
 - The application Ref CA/16/00464/FUL, validated on 26 February 2016.
 - The development proposed was originally described as the "demolition of existing 2 storey dwelling and out-buildings, and the construction of six 4-bedroom houses for sale on the open market together with three 2- & 3-bedroom affordable units".
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Decision

1. The appeal is dismissed and planning permission for demolition of existing 2 storey dwelling and out-buildings, and the construction of 9 dwellings.

Preliminary Matters

2. The declaration date on the copy of the planning application provided was 24 August 2016. The date of the application on the appellant's appeal form is 26 February 2016. The Council's evidence indicates the application was made valid on 26 February 2016. For the avoidance of doubt, it is this date that I have used in the header above.
3. The Council have indicated that had they been in a position to determine the application, they would have refused it for five reasons. The first is that they consider the development would result in unsustainable development outside a settlement and the urbanisation of the countryside. The second relates to concerns over the impact on the character and appearance of the area, including the Blean Conservation Area (BCA) within which the appeal site is located. The third relates to issues of highway safety, congestion and the convenience of highway users as a result of parking and vehicle manoeuvring arrangements. The fourth relates to concerns that insufficient information has been provided in relation to protected species and the fifth is the assertion that the appellant has not secured measures to mitigate the impacts on the North Kent Marshes Special Protection Area (SPA) and the Thanet Coast and Sandwich Bay SPA.
4. The planning application description includes reference to the provision of 3 affordable dwellings. The appellant has indicated that following changes to the Planning Practice Guidance¹ (PPG) the intention would be to develop all 9 dwellings for market housing. The Council has made no reference to this in

¹ 031 Reference ID: 23b-031-20160519 - Revision date: 19 05 2016

their evidence and have not referred me to any policies requiring affordable housing as part of the development. I have therefore considered the appeal on the basis of 9 market dwellings and amended the description of the development in the formal decision above accordingly.

5. The adopted Development Plan is the saved Canterbury District Local Plan (2006) (ACDLP). The plan pre-dates the publication of the National Planning Policy Framework (the Framework). Paragraph 215 of this states that due weight can be given to policies in such plans subject to their degree of consistency with the Framework's policies.
6. The emerging Local Plan² (ECDLP) is currently undergoing 'stage 2' of their Examination and is thus at an advanced stage of preparation. I have not been provided with information about timescales or outcomes of this. Paragraph 216 of the Framework states that from the day of publication, decision-takers can give weight to relevant policies in emerging plans according to the stage the plan is at in its preparation, the extent to which there are unresolved objections to policies and the degree of consistency between relevant policies and the Framework.
7. Having regard to the Framework's requirements, I shall address the weight given to policies quoted from both plans at relevant points in my decision.

Main Issues

8. Based on the above, the main issues are:
 - (a) The effect of the development on the character and appearance of the area, including the BCA;
 - (b) The effect of the development on the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site and the North Kent Marshes SPA;
 - (c) The effect of the development on on-site protected species; and
 - (d) The effect of the development on highway safety and the efficient operation of the highway network, with particular regard to parking and manoeuvring.

Reasons

Status of the site

9. For the purposes of interpreting both ACDLP and ECDLP policy, there is some dispute between the parties as to whether the appeal site should be considered within the settlement or the open countryside. Neither plan identifies specific settlement boundaries. Therefore, the status of the site must be open to some interpretation and this should be established before the main issues are considered.
10. The appeal site comprises a large detached dwelling in a spacious and verdant plot on the periphery of the village of Blean. The existing dwelling is set well back from the roadside behind a driveway. There are a large number of trees within and around the edge of the site, particularly along its boundary with Blean Common and along the edge of Vicarage Lane. Hedgerows and other mature landscaping provide the boundary treatment for much of the site.

² Canterbury District Local Plan – Publication Draft 2014

11. The site would be accessed off Vicarage Lane, which also provides access to a small number of other dwellings. These differ from the appeal site insofar as they are a short linear row of relatively modern dwellings either side of the lane. The site includes the last house in an unbroken area of residential development to the north which clearly forms part of the built settlement. To the south of the site, there is a relatively large gap to the next dwelling which includes open paddocks and small wooded areas. Beyond this is the start of a more sporadic scattering of large detached dwellings on the eastern side of the road. To the east of the site lies another small wooded area directly on part of the boundary and open fields beyond. On the opposite side of the road to the site, the ribbon of development stretching out along Blean Common remains unbroken and it would be reasonable to assume is considered part of the settlement.
12. The existing dwelling and outbuildings are set well back from the main road and are well screened by mature landscaping. The size and nature of both the dwelling and garden clearly sets it apart from other dwellings on Vicarage Lane and those on the opposite side of the road. However, the site is not so sufficiently detached from housing on Vicarage Lane to be seen as something distinct from the village. There is no significant physical break between the site and the dwellings on Vicarage Lane. While the curtilage of the site adjoins open fields the site retains a clearly domestic character, albeit one that is large and extensively landscaped. The site represents a transition between the more dense built form of the village and the open countryside, and this is an important characteristic of the site.
13. However, for the purposes of considering the development against local and national policy, I conclude from the evidence provided and my own observations of the area, that the appeal site forms part of the settlement.

Character and appearance

14. Being identified as being within Blean does not mean that the impact on the character or appearance of the area is not an important consideration. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is also reflected in Paragraph 131 of the National Planning Policy Framework (the Framework) which states that in determining planning applications, the desirability of sustaining and enhancing the significance of heritage assets should be taken into account.
15. The evidence suggests that the significance of the BCA lies in the remaining historic buildings and churches within the area. The development in the vicinity of the site is more modern in character and their contribution to the significance of the BCA has been questioned. While there appears to be no specific mention of the appeal site in relation to the adoption of the BCA, this does not mean that the site offers nothing of value to either the general character and appearance of the area or the significance of the BCA.
16. The site still remains a predominantly open and verdant part of village character. The redevelopment of the site to incorporate 9 dwellings would change this significantly, resulting in a far more intense use of the site. One of the consequences of this would be the removal of a large number of mature trees.

17. These add significantly to the character and appearance of the area. The majority of trees to be removed have been identified as 'class C' but nonetheless, they create an attractive element to the area which helps to reinforce the semi-rural character of the village. While the trees nearest to the access on Vicarage Road are not as prominent, they still represent an important element of the street scene and have significant visual amenity value to the area. The appellant has indicated an intention to replace many of the lost trees. However, any replacements would take considerable time to reach the same level of maturity and coverage as those that would be lost and thus the impact on the appearance of the area would be a long term issue. This aspect of the development would cause significant material harm to the environmental quality of the area.
18. The appellant has made much of the screening that which would remain in place, and that the development would be seen in the context of the existing relatively modern suburban. Irrespective of whether the site is within or outside the defined settlement, the open nature of the site and the transition between the built form and open countryside are important characteristics that would be diminished. The development would have a detrimental urbanising effect that would significantly reduce the contrast between the settlement and the countryside and create a harder edge to the village. The development would unacceptably erode the existing openness and have a detrimental effect on views into, out of and across the BCA. In this regard I do not accept the appellant's view that the visual impact of this would be modest. I have had regard to the levels of screening that would remain in place, but am not convinced that this would be sufficient to mitigate the harm identified. The dwellings would still be visible to one extent or other and the change in the character of the area and resulting street scene would be obvious.
19. The layout of the site would also not reflect that of Vicarage Lane or the development I observed near to the site. This is largely linear in nature with a strong relationship with the highway. The development would be more akin to a loose knit cul-de-sac with houses spread across the site in the midst of relatively large areas of parking and hard standing. The existing dwelling already has a different character to that of the immediate area. Nonetheless, the intensification of development on the site in a layout uncharacteristic and poorly related to the prevailing urban form would appear somewhat disconnected from the houses on Vicarage Lane and consequently, the village itself.
20. The Council have suggested that the more traditional design of the dwellings would be pastiche and not reflect the more modern character of nearby housing. However, the individual dwellings would be of a good quality of design and relate well to one another. As such, I do not consider the architectural style of dwellings would offend the character and appearance of the area in their own right any material degree.
21. Nonetheless, as a result of the intensification of a low density and largely open site, the significant loss of trees and the uncharacteristic layout of the dwellings, the development would cause material harm to the character and appearance of the area. As a result, it would also fail to preserve the character and appearance of the BCA. Accordingly, there would be conflict with saved ACDLP policies BE1 which seeks high standards of design which have regard to the visual impact on the area and the conservation and integration of natural

features. There would also be conflict with policies BE7 and BE8 which expects development to preserve and enhance features which contribute positively to the area's character or appearance. This includes the protection of trees. Policy BE8 seeks to resist the demolition of buildings in a Conservation Area unless their replacement would preserve or enhance its character or appearance. There would be conflict with policy NE5, which states that development should be designed to retain trees that make an important contribution to the amenity of the site and surrounding area.

22. These policies are broadly consistent with the requirements of the Framework and thus continue to carry significant weight. As such, the development would also conflict with paragraph 17 and sections 7 and 12 of the Framework, which highlight the importance of good design that takes the opportunity to improve the character of an area and the desirability of preserving or enhancing the significance of heritage assets. I consider the harm to the significance of the BCA to be 'less than substantial' in the context of paragraph 134 of the Framework. This requires the harm to be weighed against the public benefits of the proposal. This shall be addressed after the other main issues have been considered.
23. The policies quoted from the ECDLP all appear to have a high degree of consistency with the Framework and thus I have given them significant weight. The development would conflict with policies DBE3, HE1, HE6 and LB10 which seek, amongst other things, to promote high quality design that has regard to the character and setting of a site and the way it is integrated into the landscape, conserve or enhance heritage assets, including conservation areas and to retain trees that are important to the amenity of a site.
24. I have noted the Council's reference to conflict with paragraph 53 of the Framework in their statement. I have given little weight to this. This paragraph relates only to the preparation of the development plan. It does not imply any presumption against development in gardens where no specific policy exists.

Effect on the SPAs

25. The site lies within the identified zones of influence for the Thanet Coast and Sandwich Bay SPA and Ramsar site, and The Swale SPA and Ramsar site. These are also designed as Sites of Special Scientific Interest (SSSI) for The Swale, Tankerton Slopes and Thanet Coast. The SPAs are afforded protection under the Conservation of Habitats and Species Regulations 2010 (Habitat Regulations). The occupiers of the dwellings would have the potential to visit the SPAs and their activities could cause disturbance to the important bird species identified. The net increase of eight dwellings on the site would see an increase in risk to these habitats.
26. To mitigate the potential for such disturbance, the Council have prepared Strategic Access Management and Monitoring (SAMM) strategies for the Thanet Coast and Sandwich Bay SPA and Thames, Medway and Swale Estuaries. These have been prepared in partnership with Natural England and promote the collection of developer contributions to fund the SAMM strategies within the SPAs. It is noted that Natural England has no objection to the development subject to appropriate financial contributions being made.

27. The appellant has indicated a willingness to provide a contribution and has indicated in their appeal statement that a Unilateral Undertaking has been submitted with the appeal. However, this has not been received by the Planning Inspectorate. Therefore, without a satisfactory mechanism for securing the contributions, I cannot be satisfied that the development would provide adequate measures to mitigate the potential adverse effects on the SPAs. This would be contrary to the requirements of ACDLP policy NE1 and paragraphs 17, 109 and 118 of the Framework, which seek to ensure that development that could have a significant impact on protected species is not permitted where adequate mitigation is not provided. In this regard, policy NE1 maintains a high consistency with the Framework.
28. Emerging ECDLP policies SP1, SP7, LB5 and LB9 have also been identified by the Council. These reflect the statutory requirements of the Habitats Regulations and have a high degree of consistency with the Framework. As such, I have given these policies some weight in my decision. There would be conflict with these policies which seek, amongst other things, to resist development that may have an adverse effect on sites protected by the Habitat Regulations.

On-site protected species

29. The appellant's Preliminary Ecological Appraisal (January 2016) concludes that the development would have potential for some impact on protected species, including great crested newts (GCN), reptiles, bats and birds. The report recommends certain mitigation measures, but also that further survey work would be required. Kent County Council's comments also note that additional survey work, particularly in relation to bats, newts, reptiles and hedgehogs would be required before any permission was granted.
30. Reptile, bat and newt surveys have been submitted with the appeal. These postdate the original comments from Kent County Council. However, there have been no additional comments on this evidence from the local planning authority, the County Council, Natural England or the appellant.
31. In brief, the latest assessments identified a small population of slow worm on site and GCN were found to be present in nearby water bodies. The development would have the potential to impact on their habitats with potential medium and long term effects. In terms of bats, the study concluded that there was no evidence of current or recent use of the existing buildings and that bats would not be impacted upon by their demolition. However, some evidence of limited foraging and commuting by bats through the site was identified.
32. There is nothing to suggest that these assessments are not robust. With particular regard to reptiles and GCN, they demonstrate there would be some risk to protected species from the development. The other assessments also show that there would be risks associated with bats and birds that would need careful mitigation. While such measures have been suggested in the reports, I am concerned about the lack of specificity to this development and whether they would be provide the mitigation required.
33. Both the reptile and GCN report conclude that the layout of the develop offers limited scope for terrestrial mitigation or compensation. They recommend that off-site receptor areas are identified to relocate and compensate for any loss of habitat. No information has been provided about the availability, location or

suitability of any off-site receptor area and no mechanism for securing or implementing these has been suggested or provided.

34. Reference has been made in the appellant's evidence to addressing the mitigation strategy by condition. However, while conditions can be imposed which restrict development until a specified action has been implemented, the lack of certainty over whether a satisfactory receptor site(s) can be identified leads me to conclude that such an approach would not be reasonable or effective in this case. In addition, the fact that there are multiple species involved and some uncertainty about specific measures, suggests that the mitigation strategy should not be addressed by a planning condition. In particular, there is no certainty that satisfactory mitigation can be provided within the current layout of the development.
35. As such, the development would conflict with ACDLP policy NE1 which states that permission will not be granted where the Council is not satisfied the mitigation measures represent an appropriate response to the habitat or specific interest in the site. This is consistent with paragraph 118 of the Framework which states that if significant harm cannot be adequately mitigated, it should be refused. There would also be conflict with ECDLP policy LB9 which seeks to ensure adequate mitigation and compensation when damage to biodiversity interests is unavoidable. This also states that mitigation measures must be in the control of the developer.

Highway safety and parking

36. The Council's concern here relates primarily to the number, type and location of parking spaces provided. Reference here is made in Kent County Council's (the highway authority) response to minimum parking standards. The development would provide two spaces for six of the dwellings and one and a half spaces for what was originally described as the 'affordable housing'. From the evidence provided, this would appear to meet the minimum requirements. I have noted that the highway authority wished to see the minimum standards exceeded and two spaces per dwelling provided across the site. This is as a result of their assertion that there would be an over reliance on the car.
37. ECDLP policy SP4 suggests that small-scale development in service centres, which includes Blean, would be permitted subject to other considerations. The evidence from the appellant leads me to conclude that the village contains a range of facilities that can meet daily needs, including a village store, primary school and healthcare facilities. There is also evidence of access to regular bus services to Canterbury and Whitstable and proximity to a defined cycle route. This would not support the Council's premise that there would be an over reliance on the car. Moreover, any alleged shortfall in provision would not be significant and is unlikely to create a material risk to highway or pedestrian safety as a result of the number of spaces provided.
38. The concern that some of the parking bays would be so inconvenient so as not to be used is not accepted. Some of the spaces provided would not be in the most convenient location, but the risk that people would not use them in favour of parking on the street is quite low. It is unlikely that this would give rise to an unacceptable impact on highway users, pedestrian safety or the convenience of local residents.

39. The Council have also suggested that some of the spaces would not be wide enough. Again, I do not consider that sufficient evidence has been provided that adequately demonstrates the spaces provided could not be used safely or that any policy requirement or standards have been breached.
40. The highway authority's comments also indicated concern over whether refuse vehicles could access and egress the site in a forward gear. A swept path diagram has been submitted with the appeal which illustrates that this would be possible, albeit it only if there were no on-street parking taking place. The Council have not commented on this information and there is nothing to suggest that it should not be accepted as robust.
41. As such, there is no substantive evidence to suggest that the parking provision would be sub-standard in terms of the number, size or location of the spaces. Moreover, there is nothing to suggest that there would be insufficient manoeuvring space. As a result, I do not consider that the development would have a materially adverse effect on highway or pedestrian safety or the efficient operation of the highway network. Accordingly, there would be no conflict with ACDLP policies C1 or C9 which seek to control the impact of traffic and apply adopted parking standards. Emerging ECDLP policies T1 and T9 seek to achieve similar aims, and thus there would also be no conflict with these policies.

Other matters and planning balance

42. There is some dispute between the parties as to whether the Council can demonstrate a five year supply of deliverable housing sites. This is not, however, necessarily a determinative factor in this case. The provision of 8 additional dwellings would be considered a benefit of the development in any event, as it would help meet the Framework's objective of boosting the supply of housing.
43. The weight given to this benefit would clearly be greater if a five year supply did not exist. However, the ECDLP is at a late stage in its preparation and the evidence is quite strong that the Council is taking all necessary measures to address any previously identified shortfall. In line with another appeal decision³ the Council has drawn to my attention, in these circumstances the weight given to the benefits of the additional dwellings would be less than if the plan were at an earlier stage of preparation with a more significant shortfall.
44. In addition, even if a five year supply does not exist, paragraph 14 of the Framework states that planning permission should be granted unless specific policies in the Framework indicate development should be restricted. Sites protected under the Birds and Habitats Directives and policies relating to the heritage assets are given as examples of such policies. My concerns over the impact on biodiversity are addressed above.
45. Paragraph 134 of the Framework requires the 'less than substantial harm' be balanced against the public benefits of the development. Over and above the housing provision, there would be limited economic benefits relating to the construction of the dwellings and additional expenditure potential in nearby facilities. In addition, the ability of the development to provide some support to nearby facilities and take advantage of more sustainable transport modes,

³ APP/J3320/A/2227624

adds an environmental and social benefit. In this respect, the location of the development within the settlement would broadly meet the locational requirements of ACDLP policy H1, albeit on a greenfield site, and ECDLP policy SP4. This would also weigh in favour of the development in terms of sustainability to a degree.

46. Furthermore, the proposed improvements to the public highway and visibility around the junction between Vicarage Lane and Blean Common would provide some public benefits in terms of highway safety. However, while I saw that the junction was tight and visibility relatively poor, I have no evidence of any accidents relating to this junction. As such, the public benefits of altering the junction would garner only limited weight.
47. The Council did not raise any significant concerns over the impact of the development on the living conditions of neighbouring properties, drainage, or archaeology. I saw nothing that would lead me to disagree with the conclusions on these matters or that any issues which did exist could not be dealt with by condition. However, the lack of harm in these respects does not constitute a public benefit to weigh against the harm to the significance of the BCA. Neither do these factors outweigh my concerns associated with the SPA and other protected species. As such, the public benefits of the scheme would not outweigh the harm identified to the BCA, there would be conflict with paragraph 134 and, consequently, the Framework indicates that development be restricted.
48. Therefore, even if a five year supply does not exist, both in terms of heritage and biodiversity, the application of paragraph 14 of the Framework would not indicate that permission should be granted. Moreover, the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. In both circumstances, the proposal would not represent sustainable development.

Conclusion

49. Notwithstanding my conclusions on the site being within the settlement and on highway matters, I have found that the development would conflict with both the development plan and national policy in relation to the impact on the character and appearance of the area and both on-site and off-site biodiversity interests. In the circumstances of this appeal, therefore, the material considerations considered above do not justify making a decision other than in accordance with the development plan. For this reason, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR