
Appeal Decision

Hearing held on 15 November 2016

Site visit made on 15 November 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/Z2260/W/16/3151686

Westwood Lodge, Poorhole Lane, Broadstairs, Kent C10 2PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jonathan Watts (Westwood Cross Developments Limited) against the decision of Thanet District Council.
 - The application Ref OL/TH/15/0788, dated 17 August 2015, was refused by notice dated 17 December 2015.
 - The development proposed is described in the application as "outline planning application with reserved matters, comprising 156 no. new build/altered residential (C3) and 3 no. existing units and associated landscape amenity; on 8.3 ha of land adjacent to the Westwood Cross Retail Park".
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Decision

1. The appeal is allowed and planning permission is granted for 153 new build/altered residential (C3) and 3 no. existing units and associated landscape amenity at Westwood Lodge, Poorhole Lane, Broadstairs, Kent C10 2PP in accordance with the terms of the application, Ref OL/TH/15/0788, dated 17 August 2015, subject to the conditions in the schedule attached to this decision.

Procedural Matters

2. The site address was given as Sloe Lane, Margate on the application form but the parties now agree the address is as set out in the banner heading above. Although the application form and appeal form referred to 156 new/altered units and 3 existing units, the parties agreed that the maximum number of dwellings proposed should be 153, as set out within the submitted signed and executed unilateral undertaking. As it would reduce the number of units I do not consider that anyone would be prejudiced by this change. I have also removed reference in the formal decision to the site address and size of site.
3. It was confirmed at the Hearing that although the application form stated all matters were for consideration, all matters are reserved for future consideration, and an updated version of the landscape masterplan¹ was provided. Furthermore, the submitted Parameter Plan has been superseded.

¹ Landscape Masterplan version 4B

Background and Main Issues

4. The parties are in agreement that the Council is unable to demonstrate a five year supply of deliverable housing sites. As a consequence, relevant policies for the supply of housing should not be considered up-to-date, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework (the Framework) as a whole, or where specific policies in the Framework indicate development should be restricted².
5. A unilateral undertaking (UU) has been submitted by the appellant, agreeing to provide affordable housing on site and to make financial contributions towards social infrastructure and transport improvements. The Council considers the submitted UU would address the second, third and fourth reasons for refusal, and I deal with the provisions in the UU in more detail below. Consequently, the main issues in the appeal are:
 - The effect of the proposal on the aims, character and appearance of the Green Wedge;
 - If there is any harm, whether that harm would be outweighed by the benefits of the proposal, having regard to paragraph 14 of the Framework.

Reasons

Background and Planning Policy

6. The appeal site forms part of a Green Wedge between the settlements of Margate and Broadstairs. This designation is covered by Policy CC5 of the Thanet Local Plan (LP) (2006). This states that development within Green Wedges will not be permitted unless it is not detrimental or contrary to the aims of the policy, or is essential for the development to be located within a Green Wedge. Four aims of the policy, set out in paragraph 10.50 to the LP, are broadly to retain the separate physical identities of the towns; to prevent the consolidation of development on the boundaries between the built up areas and open countryside of the Green Wedges, including the extension of isolated groups of houses or other development; to conserve and protect the essentially rural and unspoilt character and distinctive landscape qualities of the countryside separating urban areas; and to prohibit all but essential development and other development which does not detract from the character and appearance of the area.
7. The Council maintains that the LP Policy CC5 is not out-of-date for purposes of paragraph 49 of the Framework, as it is an assessment policy. The appellant has submitted a legal opinion asserting the contrary, in light of the Hopkins Homes³ case, which found that 'counter policies' setting out where housing was not permitted may also be policies for the supply of housing.

² In accordance with paragraphs 49 and 14 of the National Planning Policy Framework

³ Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168 paragraphs 46 and 47

8. In coming to a view on this matter, I have had regard to the Secretary of State decision at Land west of Hamble Lane,⁴ supplied by the Council. In that appeal, the aim of Policy 3C.O was to protect Local Gaps separating smaller settlements, thus preventing their coalescence. Whilst the Inspector considered the policy was not relevant for the supply of housing, the Inquiry was held before the Hopkins Homes Judgement and the Secretary of State subsequently concluded that the Inspector's comments reflected uncertainty around the interpretation of paragraph 49 at that time, and concluded that it was out-of-date. Nonetheless, taking into account the role of the Local Gap, the consistency of the policy with the Framework, and the limited shortfall in housing land supply, the Secretary of State afforded significant weight to the policy.
9. LP Policy CC5, in directing housing away from Green Wedges is a relevant policy for the supply of housing, and therefore it follows that Policy CC5 is out-of-date. However, the policy is consistent with paragraph 17 of the Framework, which requires decision makers to take account of the different roles and character of different areas. It also accords with the requirement in paragraph 157 of the Framework for local plans to identify land where development would be inappropriate.
10. I have also considered the housing land supply position in considering the weight to be attached to LP Policy CC5. The Framework seeks to boost significantly the supply of housing, and it is common ground that the District has only about 2 years housing land supply. The preparation of the new local plan is at an early stage and the Council agrees that very little weight can be attached to it. However it has advised that outline planning permission has been granted for about 1,000 dwellings in the last 12 months, including on sites identified in the draft local plan, none of which are in Green Wedges, and some are within the open countryside. Taking all of the above into account, and recognising the substantial shortfall in housing supply, LP Policy CC5 continues to have an important role in maintaining the separate physical identities of different settlements in the District, and I have therefore attached significant weight to it.

Effect on the aims, character and appearance of the Green Wedge

11. The Green Wedge between Margate and Broadstairs was designated in the early 1980's, and has been retained in its current form more or less since then. The Green Wedge comprises 482 hectares, and the proposal would result in loss of 8.4 ha of land within it.
12. The appeal site lies outside of the settlement boundaries of Broadstairs and Margate. The village of Westwood has grown over time, particularly with recent major retail and leisure development at Westwood Cross. The difference between Margate and Broadstairs in this location is now almost imperceptible as there is continuous development along southern road frontage and only limited gaps along the northern frontage. By contrast, open countryside to the north and west of the appeal site provides a clear break between built up areas, and can be seen from both Poorhole Lane and Ramsgate Road beyond the site frontage. As a result, the contribution that the

⁴ Appeal by Hallam Land Management Ltd, Land west of Hamble Lane, Application ref O/13/73479 and Appeal Ref APP/W1715/A/14/2228566 – paragraphs 14-17 of Secretary of State's letter.

site itself makes to the maintenance of a physical separation between Broadstairs and Margate is relatively limited.

13. The site boundaries, edged by hedgerows and mature trees, are visible in views across open farmland, although the dense nature of the boundaries means that the site is well screened. The Landscape Appraisal submitted by the appellant⁵ considered the visual impact of the proposed development from a number of short and longer range viewpoints agreed with the Council, and concludes that there would be only limited views of the proposed development from Ramsgate Road and Poorhole Lane. It would be barely perceptible from a longer distance from public footpaths and roads in the locality to the north, east and west, due to the extensive tree cover along the site's boundaries and gradually rising ground levels towards the south. Furthermore, the site is not subject to any specific landscape designation.
14. The northern two thirds of the site comprises woodland and some open fields. The southern third contain several buildings of various sizes. Westwood Lodge, a large detached dwelling is set well back from the road frontage, and two other residential properties are accessed by a short drive way from Poorhole Lane and are partially visible from the road. Together with a gateway and walls also within the site, these buildings are non-designated heritage assets. A warehouse occupied by a glazing company is situated a few metres from the front site boundary, and a single storey building occupied by a pet crematorium is set slightly further back into the site.
15. Poorhole Lane has recently been widened with the provision of an improved footway and a 1.8m timber fence along the appeal site boundary. As part of these highway improvements, some of the trees along the southern frontage of the site were removed, resulting a greater visibility of some of the existing buildings. Nonetheless, the remaining trees within the site provide relief from the built up area and make a positive contribution to its character and appearance.
16. Although much Green Wedge land is open and undeveloped in nature, LP Policy CC5 recognises that the character of Green Wedges is not homogenous and seeks to protect their distinctive landscape qualities. The wooded nature of the site contrasts with the open character of the surrounding farmland and therefore the site contributes to one of the four aims of LP Policy CC5 in protecting the essentially rural and unspoilt character and distinctive landscape qualities of the countryside separating urban areas.
17. Approximately 150 Category C sycamore trees would be removed as a result of the development. The British Standard⁶ recognises that Category C includes low quality trees with estimated safe life expectancies of 10 to 20 years, but also includes young trees with stem diameters of less than 150mm. Mr La Dell pointed out that the aforementioned trees are mostly self-seeded and are not a native species, and the tree survey indicates that some are diseased or in poor condition. Nevertheless, some of these are mature specimens of up to 50 years old and have a group amenity value, as the woodland can be seen from the road and from the rear gardens of adjacent properties. This was

⁵ Landscape Appraisal Drawing No. 2253/16/B/2B

⁶ British Standard 5837: Trees in relation to design, demolition and construction: Recommendations (2012)

recognised in the Tree Preservation Order confirmed in 1988 covering the southern part of the site⁷.

18. 450 trees of native species are proposed to be planted, including semi-mature specimens, as set out in the submitted enhancement and mitigation scheme. It would take some years for these new trees to reach maturity and some of the proposed dwellings, whilst well screened, would still be at least partially visible from the road due to the quantum of development. This would be particularly apparent along Poorhole Lane where trees have already been removed along the boundary to facilitate the road widening. However, because of the retention of the most of the tree cover along the northern and eastern site boundaries in combination with additional planting the proposal would not intrude into the rural or unspoilt character of the Green Wedge.
19. To conclude, the proposal would result in the loss of a small part of the Green Wedge, but as it would not significantly increase the coalescence of Broadstairs and Margate the separate identities of the two settlements would not be adversely affected. This would not materially compromise this aim of the Green Wedge. There would be some localised adverse impact on the character and appearance of the Green Wedge along the Ramsgate Road and Poorhole Lane frontage due to the further loss of trees within the site, and the introduction of additional dwellings that would be partially visible. However, as the woodland visible along the northern and eastern site boundaries would be largely retained its distinctive landscape qualities would not be prejudiced. Taken as a whole I consider that there would be moderate harm to the Green Wedge, contrary to LP Policy CC5.

Other considerations

20. The proposal would provide up to 153 new dwellings, 30% of which would be affordable housing. This would be a significant benefit. The appellant has estimated that the development would generate between £17m and £21m GVA and provide approximately 90 indirect jobs. Whilst such benefits might arise from any large housing development, there is likely to be moderate economic benefits both in the short term from construction activity on the site and in the longer term through spending by future occupiers in the local area if the appeal were allowed⁸. Furthermore, the site is situated conveniently for nearby shopping, leisure, employment, health and education facilities, and is well connected by the local bus network. As such it is an accessible location.
21. The refurbishment and improvement of the non-designated heritage assets within the site, comprising three dwellings, courtyard and driveway, walls and a gateway deriving from the Victorian period, and the removal of an unsympathetic modern addition to Westwood Lodge would also be a modest benefit of the scheme, albeit it is unclear whether this might occur in the future regardless of this particular scheme.
22. Finally there is currently no public access to the site and the appeal proposal would enable such access to new play facilities and local open space. These are to be provided to serve the new residents but could also be used by others living nearby. The planting of 450 trees to replace about 150 trees proposed to

⁷ Tree Preservation Order No. 19 (1988)

⁸ Economic Benefits Statement – Barton Wilmore May 2016 (Appendix 43 of appellant submission)

be removed would be a net benefit, providing a more healthy and diverse woodland, although it would take some years for this to be fully realised.

Other Matters

23. The submitted unilateral undertaking provides for 30% affordable housing on site. This would meet the requirements of LP Policy H14. Local residents have highlighted concerns with the capacity of existing social infrastructure, including primary and acute care and education, to accommodate new residents. The unilateral undertaking makes provision for financial contributions towards improvements to the Broadstairs Memorial Hall adult education centre, refurbishment of the Quarterdeck Youth Hub, Thanet, Broadstairs Library, primary and secondary education (phase 1 expansion of Hartsdown Technology College), and a Changing Places facility at Westwood Cross shopping centre.
24. Furthermore, whilst there are concerns in relation to the traffic impact of the appeal proposal, Poorhole Lane, a main route between Margate and Broadstairs has been recently widened and the submitted transport assessment indicates that the existing pedestrian, cycle and public transport networks provide opportunities for travel by non-car modes. The unilateral undertaking would also secure a financial contribution for local transport improvements including a toucan crossing at Star Lane, and enhanced pedestrian and cycle connectivity from the site to the new primary school and other local facilities. Details of the access, parking and layout can be secured by condition.
25. I am satisfied that future residents would place a demand on these local services and infrastructure and so the contributions would meet the tests set out in Regulation 122 (2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). In addition the Council and Kent County Council (KCC) also confirmed that the contributions would not offend the restrictions on pooling set out in the CIL Regulations.
26. Concerns have also been expressed regarding the impact of the development on the local bird population and other wildlife, but KCC's biodiversity officer⁹ has confirmed that the surveys undertaken by the appellant are acceptable and I am satisfied that an ecological enhancement and mitigation scheme can be required by condition to ensure no adverse effects on biodiversity.
27. I also acknowledge perceived failures in consultation during the determination of the application expressed by local residents, including apparent problems with the distribution of a letter drop. Nonetheless, residents attended the Hearing and I heard a full range of views on the proposal, which I have taken into account in reaching my decision.

Conclusion and Planning Balance

28. I have found that the proposal would conflict with LP policy CC5, as it would detract from the character and appearance of the area. Whilst this policy is out-of-date, it still has significant weight for the reasons I have set out above. It is therefore necessary to consider whether there are any other material considerations which indicate that planning permission should be granted for development which is not in accordance with the development plan.

⁹ Letter from Kent County Council Biodiversity Officer dated 5 October 2015

29. The 153 dwellings and on-site affordable housing would be a significant benefit in a District with a substantial shortfall of housing. The site is in an accessible location and would support local business and services. There would also be some modest benefits arising from the enhancement of the non-designated heritage assets. Although contributions to social and transport infrastructure would be secured by the development this is not a benefit as they are necessary to adequately mitigate the impacts of the scheme.
30. The Council has stated that whilst limited development has been permitted within Green Wedges, it has been to address a particular need, for example a primary school built within the grounds of the local secondary school and an extension to the Queen Elizabeth and Queen Mary Hospital. I also note that although a 7m high commercial building was permitted to the east of the appeal site, this lies outside the Green Wedge. Moreover, although I have had regard to the appeal decision at Land west of Hamble Lane, that scheme is materially different to the proposal before me in terms of its openness¹⁰ and I have determined this appeal with regard to the particular physical characteristics of the appeal site.
31. I have found that there would be no harm to three of the aims of the Green Wedge, but there would be moderate harm its character and appearance arising from the visual impact of the new residential development along Poorhole Lane, and to a lesser extent, along Ramsgate Road. These adverse effects do not significantly and demonstrably outweigh the benefits of the proposal that I have identified especially the provision of extra housing in a District where housing delivery through the plan-making process is some way off. As such, the proposal would constitute sustainable development, and material considerations, including paragraph 14 of the Framework, indicate that planning permission should be granted for development which is not in accordance with the development plan.
32. I have considered the need for conditions, having regard to the Planning Practice Guidance and the Framework. I shall attach conditions requiring the submission of reserved matters and commencement of the development within 2 years of the last reserved matters to be approved, in order for the development to have a satisfactory appearance and in the interests of highway safety.
33. I shall also impose a condition limiting the number of new dwellings to 153 as set out in the unilateral undertaking and as agreed with the principal parties at the Hearing.
34. Limits on the hours of construction, a construction management plan and noise mitigation measures are required to safeguard the amenities of neighbouring occupiers. Details of footways, cycle parking spaces, and car parking spaces are required, again in the interests of highway safety. However I shall not require the provision of electric car charging points as the Council has not set out why this is necessary for the development to be acceptable in planning terms. Furthermore, a condition requiring compliance with Crime Prevention through Environmental Design is not necessary as this matter is covered by other regulatory powers.

¹⁰ Appeal Ref. APP/W1715/A/14/2228566 - Paragraph 104 of Inspector's report and paragraph 18 of Secretary of State decision.

35. Archaeological investigations and building recording are required to protect the heritage interests on site. An ecological management plan and a restriction on works to or removal of trees during bird nesting season necessary to protect biodiversity interests.
36. Foul and surface water drainage details are required to ensure adequate foul sewerage capacity and to prevent surface water run-off beyond the site. Land contamination investigations are required to address any previously unidentified contamination given the sensitive end users of the site.
37. For the reasons set out above I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

APPEARANCES

For the Appellant:

Mike Goddard	Planning Consultant, Goddard Planning
Wayne Murray	Westwood Cross Developments Ltd
Jonathan Watts	Appellant, Westwood Cross Developments Ltd
William Upton	Pump Court, Temple, London
Mark Davies	Pump Court, Temple, London
Tom La Dell	Landscape Architect, La Dell Wood

For the Council:

Gillian Richardson	Development Control, Thanet District Council
Emma Fibbens	Development Control, Thanet District Council
Adrian Verrall	Planning Policy, Thanet District Council

Interested Parties:

Mrs A Jackson	Local resident
Mr M Jackson	Local resident
Ms Lesley Peeling	Local resident
Mr Ray Polle	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Ward boundaries map supplied by the Council
- 2 Secretary of State decision – Land West of Hamble Lane, supplied by the Council
- 3 Council appeal notification letter
- 4 Landscape Masterplan –version 4B

Schedule of Conditions

- 1) Approval of the details of the access, layout, scale, appearance of the buildings and landscaping of the site (hereinafter called the 'reserved matters') shall be obtained from the local planning authority in writing before any development is commenced.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Plans and particulars of the reserved matters referred to in Condition 1 above shall be submitted to the local planning authority in writing and shall be carried out as approved.
- 5) The scale of the development submitted as reserved matters pursuant to condition 1 shall not exceed 153 additional dwellings.
- 6) The working hours for all construction activities shall be limited to between 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays and not at all on a Sunday or Public Holidays.
- 7) Prior to the first occupation of a dwelling, works between that dwelling and the adopted highway as detailed below shall have been completed; i) footways and footpaths, with the exception of the wearing course; ii) carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
- 8) Details pursuant to condition 1 shall include details of any proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhung margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out and constructed in accordance with details to be submitted to and approved by the local planning authority prior to occupation of the development.
- 9) No dwelling shall be occupied until covered and secure cycle parking spaces, associated with that dwelling, have been provided in accordance with plans and details submitted to and approved in writing by the local planning authority. The development shall only be constructed in accordance with the approved details.
- 10) No dwelling shall first be occupied until the car parking spaces, associated with that dwelling, have been constructed in accordance with plans and details submitted to and approved in writing by the local planning authority. These spaces shall be retained for their designated use thereafter.
- 11) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved plan shall be implemented and adhered to throughout the entire construction period. The plan shall provide details of the following matters: the routing of construction and delivery vehicles to and from site during construction; the parking and turning areas for construction and delivery

- vehicles and site personnel; the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway.
- 12) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of: archaeological field evaluation works in accordance with a specification and written timetable which has first been submitted to and approved in writing by the local planning authority; and following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the local planning authority.
- 13) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the local planning authority.
- 14) Details pursuant to condition 1 shall include an ecological management plan for the site. The document shall include details of how the management plan will be implemented (including funding), details of monitoring and details of ecological enhancements to be incorporated into the whole site. The development shall be carried out in accordance with those details as submitted to, and approved by, the local planning authority prior to occupation of any part of the development.
- 15) No removal of any tree, shrub, hedgerow or other potential bird nesting sites shall be carried out on site between March to August inclusive in any year, unless otherwise approved in writing by the local planning authority. Where vegetation is cleared in accordance with such approval during the bird breeding season a check for nesting birds by a suitably qualified ecologist shall be undertaken and any vegetation containing occupied nests shall be retained until the young have fledged. Compensatory nesting provision shall be made in accordance with details including of timing submitted to and approved in writing by the local planning authority.
- 16) No development shall commence until full details of the foul drainage arrangements for the site have been submitted to and approved in writing by the local planning authority. The drainage details shall be constructed as approved before any part of the development hereby permitted is brought into use.
- 17) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of on-site within suitable SUDs and infiltration features. No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which

shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

- 18) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority; this will be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 19) No development above foundation level shall take place on site until a scheme to protect the dwellings from road traffic noise has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before any of the dwellings are occupied.
- 20) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved by the local planning authority detailing how this shall be dealt with. The remediation strategy shall be implemented as approved.