The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 24th February 2017

Appeal Ref: APP/H2265/W/16/3157366
Land North of Robin Hood Lane, Blue Bell Hill, Chatham, ME5 9JY

- 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 J Greenfield against the decision of Tonbridge & Malling Borough Council.
- The application Ref TM/16/00797/OA, dated 7 March 2016, was refused by notice dated 18 July 2016.
- The development proposed is the erection of 5 dwelling houses and 5 detached garages with associated access parking and turning areas and landscaping.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr J Greenfield against of Tonbridge & Malling Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal is an outline application with all matters reserved for future determination. The Appellant submitted a plans showing how the development might be accommodated, but the plan is for illustrative purposes only and there could be alternative layouts for the site. These plans nevertheless provide a useful guide when considering the proposal before me.

4. The appeal is accompanied by a signed and dated unilateral undertaking. This covenants to make a financial contribution to the Council in order to mitigate the increased demand for public open space and facilities arising from the proposal. This obligation is addressed below.

Main Issues

5. I consider the main issues to be:

   - The effect of the proposal on the character of the local area;
   - Whether the proposal is acceptable having regard to the location of the appeal site within the designated countryside; and
   - The effect of the proposal on protected species and their habitats.

Reasons

Background

6. The appeal site has a long and complex planning history. In May 1988 planning permission was granted at appeal for the erection of 57 houses and garages with an access road.[1] Subsequently planning permission was granted in July 1988 and September 1990 for 33 dwellings and 57 dwellings respectively.

7. A further application for 66 dwellings was submitted in 1992. The Department of Transport directed that the application be refused on the basis that the development might prejudice the scheme for widening the M2 motorway. In addition, the Council considered that the proposal would result in an over-intensive development out of character with the locality, and also that in the absence of an acoustic appraisal it was unable to fully consider the proposal. As a consequence of the road scheme the area of the site was reduced by about 2 acres, and at the remaining site is about 5 acres in area.

Policy Context

8. The development plan includes the Tonbridge and Malling Local Development Framework Core Strategy (adopted 2007). Policy CP11 aims to concentrate the majority of development within urban areas where there is the greatest potential for the re-use of previously developed land, and better access to transport and services. Within specified rural settlements, including Blue Bell Hill, policy CP13 allows minor development appropriate to the scale and character of the settlement in which it is located. With the exception of the access way, the appeal site falls outside of the confines of Blue Bell Hill village. For the purposes of policy CP14 it lies within the countryside where development is restricted to specified categories, none of which apply to the appeal proposal.

9. The consultation draft of the emerging Local Plan *Tonbridge and Malling Borough Local Plan The Way Forward Regulation 18 Consultations* was published in September 2016. However, the plan is at a very early stage and I have not been referred to any particular policies within it.

Character and Appearance

10. The site is situated to the rear of 230 -260 Robin Hood Lane (Upper) and adjoins the Blue Bell Hill village settlement boundary. The access to the site is located between numbers 232 and 238 Robin Hood Lane. The appellant also owns the adjacent area of ancient woodland known as Taddington Wood, which extends to the west of the appeal site, as well as the open land to the north of the site.

11. Robin Hood Lane extends from Blue Bell Hill village towards Walderslade. It is bisected by the A2045 and the road terminates adjacent to the appeal site and a footbridge links the two parts of Robin Hood Lane. The appeal site is bounded by the A2045 to the east and its intersection with the M2 and is elevated above the adjacent road network. The land to the eastern side of the site falls away down a steep embankment to the A2045.

[1] Reference: T/APP/H2265/A/87/83006/P3

12. Part of the site is covered by blanket Tree Preservation Orders in addition to individual TPO's. The appellant describes the site as previously developed land. I understand that it was previously occupied by buildings and structures and a shooting range. At the time of my visit the site had been cleared of buildings and structures, but remnants of the previous structures on the site were noticeable.

13. The part of Robin Hood Lane in which the appeal site is located has a spacious suburban character. The trees adjacent to the footbridge provide a backdrop for the road and separates this part of Robin Hood Lane from that on the other side of the A2045. The dwellings are varied in terms of their size and appearance and include two storey houses, chalet houses and bungalows. The trees behind the dwellings, together with the street trees, combine to provide an attractive sylvan quality.

14. It is proposed to use the existing access, which would terminate in a turning head at the rear of No. 254 Robin Hood Lane. The access road would be separated from the rear of the frontage properties by a wooded landscaped area. The majority of the existing mature trees would be retained and to some additional planting would be provided. Based on the indicative plans there would be a generous separation between the proposed dwellings and the boundaries of the properties in Robin Hood Lane.

15. There is a large oak tree adjacent to the access, in the front garden of 232 Robin Hood Lane. This tree makes a significant positive contribution to the street scene. There are two further trees in the rear garden of this property adjacent to the access road. The submitted tree report suggests that the ground around these trees is severely compacted and it may be necessary to de-compact it. The access will encroach upon the root protection area (rpa) of this tree and it is proposed to lay a no dig permeable surface in the rpas of these trees. Subject to these measures, and the protection of the rpa during the construction process, there should be no significant adverse effect on the health of these trees.

16. The illustrative plans show the removal of three oak trees (T22, T23 & T24), which are subject to a TPO. Given the size and position of these trees, subject to appropriate replacement trees, their removal would not have a significant effect on the character of the area.

17. The proposed dwellings would be situated to the rear of the frontage properties. Due to their considerable distance from Robin Hood Lane, the screening provided by Taddington Wood, and the trees on and adjacent to the appeal site, views of the proposed dwellings would be mainly confined to views along the access road. These views would be filtered by the existing trees adjacent to the access. Although this part of Robin Hood Lane is characterised by predominantly frontage development, due to the location of the appeal site towards the end of this part of Robin Hood Lane and the limited views of the appeal site I am satisfied that the proposal would maintain the spacious sylvan character of the locality and be appropriate in scale and character to Blue Bell Hill village.

18. I conclude that the proposal would maintain the distinctive character of this part of Robin Hood Lane and would integrate with the surrounding dwellings. It would therefore comply with policy CP24 of the Core Strategy which promotes high quality design and requires development to integrate with is surroundings

and policy SQ1 of the *Managing Development and the Environment Development Plan Document 2010* which requires proposals to reflect local distinctiveness.

Countryside

19. The appellant acknowledges that the proposal would not comply with Core Strategy policy CP14, due to its location within the countryside, but that other material considerations weigh in favour of the proposal.

20. I understand that the site was allocated for housing development in the Medway Towns Local Plan (the previous development plan), but was subsequently removed from the village envelope. The appellant suggests that this was because the land was needed for highway improvements. He considers the designation of the site as countryside to be unjustified, and states that there is no evidence that the allocation of the land was reconsidered in the context of the Core Strategy. Notwithstanding this, the Core Strategy is part of the current development plan and proposals must be determined in accordance with it unless material circumstances indicate otherwise. I see no justification for reliance on the land use allocations within the previous development plan.

21. The National Planning Policy Framework sets out government planning policy for England. Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

22. Paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area. The settlement boundaries on which policies CP11, CP12, CP13 and CP14 are predicated were fixed having regard to the need to accommodate the housing requirements of the Core Strategy[2] rather than the considerably higher OAN of 673dpa within the emerging Local Plan. Therefore it is probable that land beyond the existing settlement boundaries will be required to meet future housing needs and for this reason policies CP11,CP12, CP13 and CP14 cannot be considered up to date.

23. Nevertheless, the overall spatial strategy within the Core Strategy, seeks to make best use of previously developed land, direct development to the most sustainable locations and safeguard the countryside from encroachment. These objectives of the Core Strategy are consistent with the aims of the NPPF.

24. The suitability of various sites, including the appeal site, and their potential to delivery the necessary housing is currently being assessed in the context of the emerging Local Plan. The Strategic Land Availability Assessment (SLAA) describes the appeal site as being in a relatively sustainable location adjacent to the confines of Bluebell Hill Village. It states that part of the site is suitable for up to 24 dwellings and concluded that it was both suitable and deliverable. I am conscious that the emerging Local Plan is at an at early stage in the plan making process, and not all identified sites within the SLAA will be suitable or ultimately acceptable for development. Notwithstanding this, the fact that the

[2] 450 dwellings per year

appeal site has been assessed as being in a sustainable location, as well as suitable and deliverable, adds weight in favour of the proposal.

25. The appeal site is designated as open countryside, but is located adjacent to the boundary of the village. It lies between the two parts of Robin Hood Lane which are linked by the footbridge and is effectively sandwiched between the existing village to the south, and a major road network to the north and east. As noted by the inspector at the time of the previous appeal, the road network forms a finite boundary and renders the site of limited use for any other purpose. As a consequence the appeal scheme would not give rise to any significant harm to the wider countryside.

26. The site is conveniently located in terms of public transport. The local shopping centre in Walderslade is about 1.15km away and within reasonable walking and cycling distance. It benefits from a library and church, a public house, a garage and a range of other shops and services. Buses stop close to the footbridge and provide access to Walderslade shopping centre, Chatham and the railway station. Some residents suggest that the village has insufficient amenities to support an additional five dwellings. However, there is no substantive evidence before me to suggest that this is the case.

27. Whilst the proposal would conflict with policy CP14, it would be consistent with the aims of policies CP11 and CP13 which generally seek to locate housing where there is access to public transport and services, as well as safeguarding the scale and character of the settlement in which it is located. I conclude that although the appeal site is situated within the designated countryside that the principle of residential development is acceptable.

Protected Species

28. The scoping survey submitted by the appellant found evidence of reptiles close to the appeal site and considered that the site had good potential for hibernating, resting/sheltering, basking and foraging reptiles. The scoping survey recommended that a reptile survey should be undertaken and that the proposal could potentially result in theloss of reptile habitat and the killing or injuring of individuals during ground clearance. The appellant does not dispute the need for a futher survey, but considers that this is a matter that coud be adressed by way of a condition, particualry given that the proposal is an outline application.

29. Some species of reptile are European protected species, and others are protected by UK law. The presence of a protected species is a material consideration when considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Circular 06/2005: *Biodiversity And Geological Conservation – Statutory Obligations And Their Impact Within The Planning System* states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development is established before the planning permission is granted. It advises that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

30. In the case of the appeal site, there is credible evidence that reptiles, including adders, maybe present on the site. In the absence of a survey to indicate

whether protected species are present and how they use the site, it is not possible to mitigate against any potential harm.

31. Although Natural England did not object to the proposal, its response was clear that this did not imply that there would be no impacts on the natural environment but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes.

32. I have had regard to the advice in PPG paragraphs ID: 8-008-20140306 and ID: 8-016-20140612. This advice confirms that where there is a reasonable likelihood of a protected species being present on a site an ecological survey is justified. The appellant submitted examples of planning decisions where the local planning authority has imposed a condition in requiring a survey. I am not aware of the full circumstances of these decisions, but such an approach can be justified in some circumstances. Nonetheless, in the case of the appeal site where is credible evidence to suggest that there may be protected species may be present such an approach would be contrary to government advice.

33. I am therefore unable to conclude that the proposal would not have a significant adverse effect on protected species and their habitats.

Other Matters

34. The appeal is accompanied by a signed and dated unilateral undertaking. This covenants to make a financial contribution to the Council in order to mitigate the increased demand for public open space and facilities arising from the proposal. The contribution will be used towards the enhancement of the Taddington Valley Open Space.

35. In the case of developments for five or more dwellings policy OS3 of the Managing Development and the Environment DPD requires the provision of open space. Where this cannot be provided on site, it states that a contribution will be sought to enhance existing off-site public open space. The committee report at the time of the application states that Officers are continuing to establish whether on site provision could be made or, in the event it cannot, whether a contribution is necessary.

36. The appellant states that he would be willing to allow public access to the land in his ownership, which includes an area of ancient woodland, so that it functions as a small local woodland park with pedestrian access only. In the absence of any information to the contrary, it seems to me that this area would meet the open space requirement of policy OS3 and could be secured by way of a suitable condition.

37. Accordingly on the basis of the submitted evidence, I cannot be certain that the contribution provided by the submitted obligation is necessary to make the development acceptable, or that it would be directly related to the development and fairly and reasonably related in scale and kind. Consequently the obligation would not comply with the statutory tests at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and I am therefore unable to take it into account in reaching my decision.

38. Some local residents are concerned that the proposal would add to traffic congestion within the village. The crematorium is situated close to the appeal site and as a consequence there can sometimes be heavy traffic within Robin

Hood Lane. The Highway Authority considers that the additional traffic associated with proposed dwellings would not have a significant adverse impact on the highway network. On the basis of the submitted evidence I have no reason to reach a different conclusion.

39. Some residents are concerned that the proposal could adversely affect the security and privacy of the neighbouring properties due to the height and size of the dwellings proposed. The proposal is an outline scheme and the detailed layout of the site and appearance of the dwellings, including their overall height and the position of windows would need to be submitted for the Council's approval. Nevertheless on the basis of the submitted information I am satisfied that the appeal site could accommodate five dwellings without adversely affecting the amenities or security of adjoining residents.

40. A number of residents have suggested that the appellant has previously removed trees protected by the TPO without the necessary consent. This is not a matter raised by the Council and I have determined the appeal on the basis of the information shown on the tree survey plan and my observations at the time of my visit. Evidence submitted by the appellant would indicate that any alleged breaches of the TPOs have been previously addressed by the Council.

41. Residents suggest that should the appeal succeed, the appellant intends to submit an application for a greater number of dwellings on the site in the future. The appellant states that this is not his intention. I have determined the appeal on the basis of the scheme before me and any subsequent scheme would need to be considered in the context of the prevailing development plan and any other relevant material considerations.

Overall Planning Balance

42. The National Planning Policy Framework sets out government planning policy for England. Amongst other matters it seeks to significantly boost the supply of housing. It states that the relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

43. The Council states that it has a 5.3 year housing land supply as measured against the Objectively Assessed Need (OAN), in accordance with the requirements of paragraph 49 of the NPPF. Although the appellant has expressed doubt that this is the case, there no substantive evidence has been submitted for me to conclude otherwise. The housing trajectory indicates that in recent years housing completions have fallen short of the annualised housing targets, however, when over-delivery in previous years is taken into account the Council is continuing to exceed its housing targets.

44. Paragraph 49 states that applications for housing should be considered in the context of the presumption in favour of sustainable development. Sustainable development has three dimensions social, economic, and environmental. The proposal would deliver housing to meet the needs of present and future generations. It would also deliver economic benefits in terms of jobs during the construction period and would make a modest contribution towards spending in the local area.

45. The proposal would be contrary to policy CP14, but for the reasons given above policy CP14 is out-of-date and I afford it limited weight. The appeal site is

situated in an accessible location and would not harm the character and appearance of the locality. It also has the potential to deliver public benefits through the provision of access to the woodland in the appellant's ownership. Whilst the proposal would result in the loss of an area of land designated as countryside, due to the significant physical intervention of the road network, together with the location of the appeal site immediately adjacent to the settlement boundary for Blue Bell Hill Village, any harm arising would be limited. Balanced against these considerations, there would be a significant risk of harm to protected species and their habitat. Guidance suggests that on that ground alone, the proposal should not proceed.

46. On balance, I find that the proposal's adverse environmental impacts in terms of protected species would significantly outweigh the benefits of the proposal. Therefore the proposal would not be a sustainable form of development and would fail to comply with the development plan as a whole.

Conclusion

47. For the reasons given above I conclude that the appeal should be dismissed.

Lesley Coffey

INSPECTOR