

Appeal Decision

Site visit made on 20 February 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 02 March 2017

Appeal Ref: APP/J2210/W/16/3158018

79 New House Lane, Canterbury, Kent CT4 7BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Langmaid against the decision of Canterbury City Council.
 - The application Ref 16/01345, dated 12 April 2016, was refused by notice dated 8 August 2016.
 - The development proposed is to construct a 4 bedroom, 2 storey detached dwelling and ancillary site works on land adjacent to 79 New House Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Canterbury District Local Plan¹ (ELP) is at examination and two stages of hearings have taken place. It is therefore at a very advanced stage of preparation. However, I have not been provided with any significant evidence of the on-going timetable or the extent to which there remain any unresolved objections to specific policies and the degree of consistency with the National Planning Policy Framework (the Framework). The saved policies of the adopted Canterbury District Local Plan 2006 (CDLP) pre-date the publication of the Framework. I have therefore given weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning on the main issues, having regard to Paragraphs 215 and 216 of the Framework.
3. The Council advises that it can demonstrate 5.39 years supply of deliverable land for housing, which is not contested by the appellant, and on the evidence before me I see no reason to disagree. For the purposes of this appeal, I therefore consider relevant policies for the supply of housing up to date having regard to Paragraph 49 of the Framework.
4. The Council advises that the planning history for the appeal site includes two previous refusals for the erection of a dwelling. Outline consent² has been granted at land off Cockering Road for a mixed use development including up to 750 homes, B1 floorspace. The Council advises that this development relates to a strategic site allocation in the ELP, and that the boundary would be approximately 350m from the appeal site.

¹ Canterbury District Local plan – Publication Draft 2014

² CA/15/01479/OUT

Main Issues

5. The main issues are:

- i) Whether the proposal would result in an acceptable pattern of development, with particular regard to settlement strategy and accessibility to services;
- ii) The effect of the development on the character and appearance of the area, including the Area of High Landscape Value; and
- iii) The effect of the development on the health of future occupiers, with particular regard to the contamination of land.

Reasons

6. 79 New House Lane (No 79) is a semi-detached house, possibly dating from the late 19th Century, which has been extended. It is set in a good sized garden, which extends to the side and rear of the house. New House Lane has a generally rural character with a ribbon of established low-key development, consisting mainly of a variety of dwellings, set along the opposite side of the lane to the appeal property. No 79 and its attached neighbour are surrounded by agricultural fields, with no nearby built development on either side or to the rear. The locality, known as Thanington Without, is situated outside the defined urban area of Canterbury. It is proposed to erect one detached house on garden land to the side of No 79, which would share the existing vehicular access from New House Lane.

Pattern of development

7. The proposed overarching emerging strategy for the delivery of housing in the district is primarily focused on the urban centres, with limited new development in rural settlements, as set out in emerging Policies SP2 and SP3 of the ELP. The strategy is led by a number of proposed strategic site allocations, together with delivery on previously developed land in suitable locations in accordance with the district's settlement hierarchy. Thanington Without is not identified in the settlement hierarchy set out in emerging Policy SP4 of the ELP and the site therefore lies within the open countryside for the purposes of that policy. This strategic approach is advanced in preparation and is generally consistent with the Framework and I therefore give significant weight to it for the purposes of this appeal.
8. Emerging Policy HD4 of the ELP sets out the circumstances in which new dwellings in the countryside will be permitted, including meeting an essential need for a rural worker that cannot be met by existing connected accommodation, securing the future of a heritage asset, re-using redundant or disused buildings, or being of exceptional or innovative design or quality. No significant evidence has been provided to demonstrate that the proposed dwelling would meet any of the specified circumstances. Saved Policy BE1 of the CDLP principally relates to high quality design but also requires that regard should be had to the need for the development.
9. I note that the site lies approximately 0.6 miles from the edge of the urban area of Canterbury, but somewhat further from the town centre. However, there are no significant services or facilities available in Thanington Without and principal access from the site to the city is via unlit roads, largely without

pedestrian footways. While I noted during my site visit a number of public footpaths in the vicinity, these are generally unlit and unmade. I therefore consider it likely that occupiers of the proposal would be principally reliant on the private car to access services. The location of the proposal would therefore be inconsistent with saved Policy C1 of the CDLP and emerging Policy T1 of the ELP, which among other things seek to provide alternative choices of transport to the car.

10. I note that the existing use of the site as residential garden is established however this does not in itself justify an additional separate dwelling, even where the site may be considered previously developed land as defined in Annex 2 of the Framework. Emerging Policy DBE9 of the ELP sets out the circumstances whereby the principle of residential intensification will be acceptable. It is clear that the appeal site is not subject to an existing or emerging allocation for housing, and that the proposal would conflict with other policies. Furthermore, while the Council considers that the principle of infill development could be acceptable in this location, the proposal would lie adjacent to open fields, and therefore would not constitute infilling, including as defined in the ELP³, as it would not complete an otherwise substantially built up frontage by the filling of a narrow gap.
11. I therefore conclude that the proposal would not result in an acceptable pattern of development, with particular regard to settlement strategy and accessibility to services. It would therefore conflict with saved Policies C1 and BE1 of the CDLP and with emerging Policies HD4, DBE9 and T1 of the ELP, the requirements of which are noted above. These policies are generally consistent with the aims of the Framework and the emerging policies are well advanced. I have therefore afforded substantial weight to the saved policies and also significant weight to the emerging policies.

Character and appearance

12. The proposal would result in additional built form in this generally rural location. It would be set in an elevated and open position, clearly visible from New House Lane and across the generally open countryside from nearby public footpaths from where the existing boundary hedge would only partially screen the additional building.
13. The site lies within a designated Area of High Landscape Value (AHLV), by reason of save Policy R7 of the CDLP. The AHLV relates to the valley of the River Stour around Canterbury and is defined as having local importance in terms of the quality of the landscape and/or the special landscape role it performs and includes a number of features of archaeological heritage. This AHLV is carried through in Policy LB2 of the ELP with the purpose of protecting the historic and landscape setting of the city of Canterbury and the World Heritage Site there, which is has 'greater than local' importance.
14. While the proposed design and materials would be generally consistent with the varied nature of nearby houses, particularly on the opposite side of the lane, the generally open location and the scale of the detached house would fail to protect the landscape character of the generally rural setting or enhance the future appearance of the designated landscape. It would therefore be

³ Paragraph 1.61 of the Canterbury District Local plan – Publication Draft 2014

detrimental to the character and appearance of the area, including the wider AHLV.

15. I note that the outline consent granted in relation to the emerging allocation at Cockering Road is located within the AHLV. However, the allocation of that land has been subject to separate consideration and does not alter my findings in relation to the appeal proposal, which would be significantly separated from the allocation and, due to its scale and relationship to the urban area, would be read in a different context in the wider landscape.
16. I conclude that the proposal would be detrimental to the character and appearance of the area, including the Area of High Landscape Value. It would therefore conflict with saved Policy R7 of the CDLP and with emerging Policy LB2 of the ELP, the requirements of which are noted above. It would also conflict with saved Policy BE1 of the CDLP and emerging Policy DBE3 of the ELP, which together seek high quality design, including with regard to the character, setting and context of the site and the way the development is integrated into the landscape. These policies are generally consistent with the Framework, including the AHLV in terms of protecting and enhancing valued landscapes, and the emerging policies are well advanced. I have therefore afforded substantial weight to the saved policies and also significant weight to the emerging policies.

Health of future occupiers

17. The site abuts fields currently in arable use on two sides. I am advised that the site was formerly farmland prior to its change of use to residential garden circa 2001. The Council is concerned that there is a potential for land contamination arising from the use of land in the area for farming and considers that a desk top study should have been undertaken to assess the effects on human health. Paragraph 109 of the Framework expects the remediation and mitigation of contaminated land, where relevant, and Paragraph 120 expects the effects of pollution on health, amongst other things, to be taken into account.
18. While I note the former farmland use and accept that contamination cannot be ruled out on the evidence before me, there is no significant evidence before me that the appeal site is particularly likely to be contaminated. Nonetheless, given the sensitive use proposed, it would be reasonable and appropriate to carry out investigation to establish whether there is contamination at the site. The Planning Practice Guidance (the PPG) sets out that such investigations should be proportionate, and I consider that this matter could have been appropriately addressed by condition, in accordance with the PPG, had the appeal been allowed. Furthermore, the Building Regulations also require reasonable precautions to avoid danger to health and safety caused by contaminants in the ground.
19. I therefore conclude that the proposal would not pose an unacceptable risk to the health of future occupiers, with particular regard to the contamination of land. It would therefore accord with saved policy BE1 of the CDLP and emerging Policy DBE3 of the ELP, which respectively seek to ensure the safety of the development and the amenity of future occupiers. These policies are generally consistent with the aims of the Framework, including in terms of seeking a good standard of amenity for future occupants, and I have again

afforded substantial weight to the saved policies and also significant weight to the emerging policies.

Other Matters

20. I note the appellant's view that the proposal would not set a precedent for similar development because adjacent farmland is not allocated for development. Notwithstanding that there is no significant evidence before me that this scenario is particularly likely to occur, I must anyway determine the appeal on the merits of the proposal and evidence before me. I also note the appellant's view that the proposal is significantly different to previous schemes considered by the Council, including because the ridge height and mass of the house have been reduced. However, this does not alter my principal concerns with the scheme before me in relation to the main issues above.
21. I have also considered that a number of infill developments have taken place on the opposite side of the lane. It seems likely that such development would have represented 'infill' by virtue of occupying gaps in existing development. However, the specific circumstances of those cases and the prevailing policy context at the time are not clear.
22. I conclude that these other matters do not add materially to the case for or against the appeal.

Conclusion

23. While I have found that the proposed development would not be likely to pose an unacceptable risk to the health of future occupiers, I have identified that it would result in an unacceptable pattern of development and that it would be harmful to the character and appearance of the area. Therefore, for the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR