

Appeal Decision

Site visit made on 7 February 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 20 March 2017

Appeal Ref: APP/U2235/W/16/3163309

Bearsted Golf Club, Thurnham Lane, Thurnham, Bearsted, Kent ME14 4PL

- 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 Bearsted Golf Club (Mr S Turner) against the decision of Maidstone Borough Council.
 - The application, Ref 16/504256/FULL, is dated 9 May 2016.
 - The development is the proposed erection of four dwellings, garaging, new highway access plus other associated works.
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Decision

1. The appeal is dismissed and planning permission for the erection of four dwellings, garaging, new highway access plus other associated works is refused.

Application for Costs

2. An application for costs was made by Maidstone Borough Council against Bearsted Golf Club (Mr S Turner). This application is the subject of a separate Decision.

Preliminary Matter

3. The appeal follows the failure of the Council to determine the application within the statutory time limit. The Council's statement confirms that, had it been in a position to do so, the application would have been refused due to the impact of the proposal on the character and appearance of the area and the lack of information on the effect of the development on existing trees and the biodiversity of the site. I have framed the main issues accordingly.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the area and whether adequate information has been provided to enable its effect on existing planting and the biodiversity value of the site to be assessed.

Reasons

Character and Appearance

5. The appeal site is located on the west site of Thurnham Lane some distance from the main built up area of Bearsted. Notwithstanding an area of soil tipping associated with the adjoining golf course, the site is free from built development and is characterised by substantial planting, including a number of mature trees. Opposite the site, the east side of Thurnham Lane contains a loose knit row of
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properties. However, whilst there are somewhat isolated properties to the north and south, west side of the lane has rural character, to which the open and undeveloped appeal site makes a positive contribution.

6. As such, the site has a countryside location where saved Policy EV28 of the Maidstone Borough-Wide Local Plan 2000 (LP) presumes against development which would harm the character and appearance of the area. The policy goes on to identify the types of development which may be appropriate in countryside locations, but there is nothing to indicate that the appeal proposal would fall within any of those categories.
7. The site also falls within a Special Landscape Area where LP Policy ENV34 requires particular attention to be given to the protection and conservation of the scenic quality and distinctive character of the landscape. The site is omitted from any landscape protection designation in the submission version of the Maidstone Local Plan (ELP). Nevertheless, the policies of the ELP cannot be afforded full weight and, until it is adopted, LP Policy ENV34 remains in force.
8. The proposed dwellings would be set back from the Thurnham Lane frontage and the layout would appear to allow the retention of some of the existing planting along that part of the site (however, I return to this matter in the second main issue below). The appellant's statement also refers to planting a new native hedge along the roadside boundary. With these measures in place, the new dwellings would not be prominent in views along the lane, although the depth of planting achievable would be unlikely to screen views of the two storey buildings entirely. Furthermore, the introduction of four new detached dwellings, separate garages, a new access and hard standings as well as boundary enclosures and domestic paraphernalia would have a significantly urbanising effect on the character of the site. The new access and visibility splay would also interrupt the unbroken planting along the lane which contributes to its rural character. It would also allow views into the built development in the southern part of the site.
9. The appellant has drawn my attention to two appeal decisions for new dwellings on the east side of Thurnham Lane¹. However, in both cases, the Council accepted that, at the time of the decision, it could not demonstrate a five year supply of housing land and therefore that LP Policy ENV28 was considered out of date. For the reasons set out below, I consider that weight can now be attached to this policy. Moreover, both sites consider in the cited appeals form part of the row of properties on that side of the lane, rather than the undeveloped countryside which characterises the appeal site. Consequently, both decisions can be readily distinguished from the current appeal.
10. Therefore, I consider that the proposal would have a significantly harmful effect on the rural and undeveloped character and appearance of the area. As such, it would conflict with LP Policies ENV28 and ENV34. It would also run counter to ELP Policies SP17 and DM34 to the extent that they have similar aims and ELP Policy DM1 insofar as it requires development to respond positively, and where possible enhance, the local or natural character of the area. Nor would the proposal accord with National Planning Policy Framework (the Framework) paragraphs 17, 56, 58 and 109 inasmuch as they seek to ensure that development respects local character.

¹ Appeal references APP/U2235/W/14/3001076 and APP/U2235/A/14/2223129

Existing Planting and Biodiversity

11. I have already concluded that the existing planting on the site contributes to the character of the area and that its retention would help to ameliorate the visual impact of the proposal. A Preliminary Ecological Appraisal (PEA)² has been submitted with the appeal. However, no arboricultural information has been submitted and it is not clear that the proposal has had regard to accurate information on the size, crown spread, root protection areas or condition of the existing trees on the site. In the absence of this information, or any proposals to protect retained trees, it is not possible to assess the extent to which the proposal would allow for the retention of this planting. A significant loss of this planting would increase the harm to the character and appearance of the area.
12. Such loss may also lead to harm to the bio-diversity value of the site. The PEA finds that the existing trees provide suitable bat and bird roosts and advises that woodland is a Kent and UK Biodiversity Action Plan Priority Habitat. Moreover, the PEA finds that there is a record of great crested newts in close proximity as well as a pond on the site, and others within the area, with potential to support this species. It, therefore, recommends further surveys before the grant of planning permission. This advice accords with paragraph 99 of Circular 06/2005 Biodiversity and geological conservation. The PEA also recommends surveys for reptiles and dormice. As such, the information submitted does not satisfactorily demonstrate that the proposal would conserve or enhance biodiversity.
13. The proposal would, therefore, conflict with Circular 06/2005 and, based on the information available, would not comply with Framework paragraphs 17 and 118 inasmuch as they require proposals to conserve and enhance the natural environment. Nor would it accord with ELP Policies DM1 and DM3 which, among other things, require proposals to sensitively incorporate natural features such as trees and hedges worthy of retention within the site and to avoid development considered likely to have significant adverse effects on local Biodiversity Action Plan priority habitats.

Other Matters

14. The Council and the appellant disagree over whether the Council can demonstrate a five year supply of housing land as required by paragraph 47 of the Framework. Paragraphs 14 and 49 advise that relevant policies for the supply of housing should be considered out of date where there is not a five year supply. Policy ENV28 of the LP is a restrictive policy which seeks to limit housing development in the countryside. As such, it has the effect of constraining the supply of housing land and so, for the purposes of this appeal, should be regarded as a relevant policy for the supply of housing.
15. The appellant's position is largely based on the findings of a number of appeal decisions³ which call into question whether a five year supply has been demonstrated based on the Council's Housing Topic Paper which was published in May 2016 and updated in September 2016. Only the decision for the site at Yalding takes into account the Interim Findings of the Inspector examining the emerging Maidstone Borough Local Plan (dated December 2016). In respect of housing land the examining Inspector found, among other things, that a 20% buffer to take account of historic under-delivery is not justified; that the

² KB Ecology reference 2016/03/08

³ Appeal references APP/U2235W/15/3131945, APP/U2235/W/15/3139288 APP/U2235/W/15/3140679 and APP/U2235/W/16/3151289

objectively assessed housing need of 18,560 units set out in the Housing Topic Paper should be reduced by 900 units and that the trajectory of delivery should be smoothed over a 10 year period.

16. The appellant make the point that the Council's housing land supply position relies on allocations in the emerging Local Plan. However, the Interim Findings also reviewed the South East Maidstone Strategic Allocation, other South Maidstone allocations and other broad housing locations. As a result, the Inspector suggested adjustments to a number of the draft allocations. He nevertheless concluded that smoothing the trajectory of delivery over 10 years should strengthen the five year supply position at 1 April 2016 and that the position should also be strong in April 2017.
17. Therefore, although as the Inspector in the Yalding decision notes, the Interim Findings do not state conclusively that there is a five year supply, if there is currently a shortfall, it is unlikely to be large. In these circumstances Policy ENV28 may still carry weight. Indeed, the underlying aim of the policy is consistent with Framework paragraph 17 which recognises the intrinsic beauty and character of the countryside as a core planning principle. Consequently, I consider that it should be afforded moderate weight.
18. I recognise that previous appeal decisions have found this part of Thurnham Lane to be a sustainable location with regard to access to local services and facilities and that the highway authority has not objected to the proposal. However the absence of further harms does not amount to a positive point in favour of the proposal.
19. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

20. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. The construction of the development would bring minor, short-term, economic benefits and future occupiers would contribute to the Council tax base and support local facilities. The provision of four dwellings would also make a small, but positive contribution to the social dimension of sustainability. The uncertainty regarding housing land supply position adds a limited amount of weight to this consideration.
21. However, I have found that the proposal would be harmful to the character and appearance of the area contrary to LP Policies ENV28 and ENV34 and the aims of the Framework. Further, it has not been adequately shown that the proposal would conserve the biodiversity value of the site contrary to the aims of the Framework. The proposal would, therefore, be significantly harmful to the environmental role of sustainability. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the proposal would not represent sustainable development and the application of paragraph 14 of the Framework does not indicate that permission should be granted.
22. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR