The Planning Inspectorate

Appeal Decision

Site visit made on 11 April 2017

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 9 May 2017

Appeal Ref: APP/U2235/W/16/3164561
Land at Forge Lane, Bredhurst, Kent ME7 3JY

- 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 M Brett-Chaponnel, Classicus Estates against Maidstone Borough Council.
- The application Ref 16/504798/FULL, is dated 3 June 2016.
- The development proposed is the construction of six detached dwellings and associated parking, access and landscape works alongside the conversion of the existing barn to provide a community use.

Decision

1. The appeal is allowed and permission is granted for the construction of six detached dwellings and associated parking, access and landscape works alongside the conversion of the existing barn to provide a community use on Land at Forge Lane, Bredhurst, Kent ME7 3JY, in accordance with the terms of the application, Ref 16/504798/FULL, dated 3 June 2016, subject to the attached schedule of conditions.

Main Issue

2. Although the decision notice was not issued within the prescribed period, the Council have provided the officer report on the application to Planning Committee and a statement including the agreed reason for refusal.

3. The main issue in this case is the effect of the proposal on the character and appearance of the area, including the effect of the proposal on the Kent Downs Area of Outstanding Natural Beauty (AONB), the Kent Downs Special Landscape Area (SLA) and the Maidstone/Medway Strategic Gap.

Reasons

Background

4. The proposal is for a group of six large detached houses, each with an attached or detached double garage, arranged informally around the head of a private drive off Forge Lane in the centre of the village. The scheme would also include the conversion of an existing single storey barn at the entrance to the site into a small community building with associated parking spaces.

5. The front part of the site, where the barn is located, lies within the settlement boundary of Bredhurst as defined in the Maidstone Borough Wide Local Plan

2000 (MBWLP). The larger rear portion, where the houses would be sited, lies outside the settlement boundary. In this area Policy ENV28 applies, which seeks to resist development except in certain limited circumstances, none of which apply in this case. In addition, Policies ENV31 and ENV34 apply to the whole of the village and its surroundings; these define the Maidstone/Medway Strategic Gap and Kent Downs SLA respectively. These two policies seek in turn to resist any expansion of the built up extent of any settlement and to protect scenic quality, giving priority to the landscape over other planning concerns. Finally, the whole of the area south of the M2 lies within the Kent Downs AONB where the statutory purpose of designation is to conserve and enhance natural beauty and Policy ENV33 seeks to conserve natural beauty.

6. The emerging Maidstone Borough Local Plan does not change the status of the appeal site. On the basis of the new plan the Council claim a five year supply of deliverable housing sites but the appellant disputes this as the examination of the plan is not yet completed. If there is no five year supply, policies for the supply of housing should not be considered up to date and Policies ENV28, ENV31 and ENV34 of the MBWLP can only be given limited weight. However, the current position is unclear. Whilst interim findings of the examining Inspector issued on 22 December 2016 recommended changes to the plan that "should strengthen the 5 year supply position as at 1 April 2016" and which the Council calculate would give a 6.11 years supply, an Inspector who heard evidence during an Inquiry in January 2017 was only able to conclude that there was "substantially more than.. 3.58 years supply" [1]. It is not possible to resolve the matter as part of this appeal but, as explained under planning balance, this is not necessary to determine the case.

Character and appearance

7. The irregular shaped appeal site has some frontage onto Forge Lane, where it lies between the residential properties of Forge Lodge on one side and the large Grade II listed building Green Court, which is set behind The Old Post Office, on the other. This is the only direction from which it is publicly visible. The bulk of the site, which originally formed part of the extensive grounds of Green Court, lies hidden to the rear, well screened on all sides by tall vegetation, trees on the boundaries and on one side by close boarded fencing.

8. In addition, the site is almost surrounded by development with the substantial property Condor House set in a large garden to the north, what appears to be a builders yard to the north west, an outbuilding and gardens behind Forge Lodge to the west, Green Court to the south and the car park behind The Bell public house to the east. The only open countryside nearby lies to the north east, but this is physically and visually separated from the site by an access track with close boarded fences and tall hedgerows on both sides.

9. As a result of the boundary screening and surrounding development the officer report accurately states that the site is "an inward looking and self-contained area screened from Forge Lane and nearby public vantage points" also that "the part of the site to be developed for housing has an inward looking and enclosed character severed from open countryside" [on three sides with the track on the fourth]. The site consequently lies wholly within the physical built up area of the village, albeit not within the settlement boundary defined in the

[1] Paragraph 98, Interim Findings from the Examination of the Local Plan and Inquiry APP/U2235/W/16/3148213.

MBWLP, and as such does not form part of the surrounding countryside or make a contribution to its rural setting.

10. It follows that development of the site would not involve the expansion of the built up extent of the village and would not therefore conflict with Policy ENV31 which aims to protect the Maidstone/Medway Strategic Gap. For the same reason, other than its role within the village of which it forms an integral part, the site does not contribute to the wider Kent Downs landscape where Policy ENV34 seeks to protect scenic quality, Policy ENV33 seeks to conserve natural beauty and paragraph 115 of the National Planning Policy Framework (NPPF) places great weight on the conservation of landscape and scenic beauty[2]. The site does not contribute any scenic quality, natural beauty or landscape and scenic beauty to the area as a whole and thus the proposal would not conflict with any of these policies.

11. For these reasons the proposal would not cause any material harm to the character and appearance of the area, nor the landscape or scenic/natural beauty of the Kent Downs AONB, the scenic quality of the Kent Downs SLA or prejudice the Maidstone/Medway Strategic Gap. The proposal would not therefore conflict with the various policies for these designations. There would be conflict with Policy ENV28 which seeks to resist development outside defined settlement boundaries, but the lack of harm arising from this is an important material consideration in the determination of this case.

Other matters

12. Much of the undergrowth on the site has been cleared but the arboricultural report submitted by the appellant identifies 40 individual trees and 17 groups of trees remaining on the site, some of which are subject to a tree preservation order. The proposed layout would retain all the high value trees on the site together with 32 out of 37 trees of moderate value. Only two protected trees would be lost, both in poor condition. Given the number of trees to be retained and additional planting proposed along the boundary with Green Court the officer report correctly concludes that an acceptable balance has been struck between the maintenance of tree cover and development of the site.

13. The reason for refusal agreed by the Planning Committee included concern that the proposed houses would be likely to lead to pressure to fell trees or carry out inappropriate tree works harmful to visual amenity. However, this concern was not included in the officer report and no justification for it is included in the Council's statement.

14. The site lies to the side and rear of the Grade II listed Green Court, a large 18th century house with later additions set in a large garden. The new houses to the rear would be screened by an existing tree belt which would be supplemented by further planting whilst a 2.1 m high brick and flint wall would screen the access drive from the side garden and the south west elevation of the property. As a result of these measures the officer report concludes that there would be no material impact on the character or setting of Green Court and there is no reason to disagree with this assessment.

15. The proposal includes the conversion of the former coach house to Green Court at the front of the site into a small community meeting room to supplement the

[2] In relation to the SLA, AONB and AONB respectively.

facilities offered by the existing village hall. This is too large and expensive for many small meetings and events. The conversion is supported locally and would make good use of an historic asset. The Council agree that this would be a benefit of the scheme but claim that it could come forward without the housing element. How this would happen in practice is not explained.

16. All the other objections that have been raised have been carefully considered. Some argue that smaller dwellings would meet local housing needs more effectively, but the application must be determined as presented. The site is well screened and this, together with the orientation of the houses, would ensure the privacy of adjoining residents would be adequately protected. The site access satisfies the requirements of the local highway authority and the parking provision, both for the houses and the community building, would meet the necessary standard. There is no evidence that local schools and other facilities have inadequate capacity to cope with additional demand and ecological enhancements would be incorporated into the scheme to offset any wildlife losses. Finally, the disruption caused during construction would only be temporary. None of these objections therefore, even in combination, are sufficient to outweigh the conclusion in relation to the main issue.

17. The appellants draw attention to the recent planning permissions which have been granted for a small number of houses to the north west of Blind Lane to the west of the village[3]. These sites are similarly outside the settlement boundary and in the Maidstone/Medway Strategic Gap, Kent Downs SLA and Kent Downs AONB. Unlike the appeal proposal these sites involve part of the open countryside surrounding the village, albeit a relatively narrow and firmly bounded site, arguably already compromised, between the existing built up area and the M2. Whilst these schemes may have been permitted when the Council could not demonstrate five years housing land supply, they do amount to a precedent in support of the current scheme which would have significantly less impact on the character and appearance of the area.

Planning Balance

18. The proposal would provide six additional dwellings in a relatively sustainable location[4] which would be a useful contribution to housing supply and would have important social and economic benefits for the village. The Parish Council are supportive. There would be no conflict with policies to protect the AONB, SLA or Strategic Gap designations. The development would conflict with Policy ENV28 but there are three material considerations that indicate this policy should not prevail. Firstly, the scheme would not harm the character or appearance of the area or involve an actual extension of the built up area into the countryside. Secondly, the proposal would have the benefit of providing an additional community facility for the village. Thirdly, a precedent has recently been set for housing outside the settlement boundary on a more intrusive site at Blind Lane. These three material considerations together justify a departure from development plan Policy ENV28 in this instance even if there is a five year supply of housing land in the district.

19. It is appreciated that this conclusion differs from that of the Inspector who dismissed an appeal for two pairs of semi-detached houses on the adjacent

[3] Including one where permission for two dwellings was increased to six on appeal.
[4] The village has a primary school, village hall, church, public house, recreation facilities and regular bus services.

rear garden behind Forge Lodge in 2011[5]. However, that decision was taken prior to the NPPF which seeks to boost significantly the supply of housing and in the absence of two of the material considerations that apply in this case.

Conditions

20. The Council has suggested a number of conditions should the appeal be allowed and these have been assessed against the relevant tests making minor adjustments as necessary. In addition to the standard implementation time limit it is necessary to define the plans which have been approved in the interests of certainty and to control boundary treatments and the materials to be used in order to ensure the satisfactory appearance of the development. An Arboricultural Method Statement is necessary to protect retained trees and a landscaping scheme and its ongoing maintenance to ensure a satisfactory development. Conditions are necessary to require parking/turning/unloading space and wheel washing during construction, to require the provision of parking, access and turning areas within the scheme when built and to avoid water discharge onto the highway, all in the interests of highway safety.

21. Further conditions are necessary to require renewable energy generation, an updated ecological survey, to ensure the ecological strategy is included in the scheme and to require any contamination is addressed in order to ensure a fully sustainable development. A sustainable surface water drainage scheme is also necessary to prevent flooding. In relation to the community building, conditions are required to ensure the satisfactory conversion of the building and to preclude any amplified music or speech in order to protect the living conditions of nearby residents. Within this constraint the wording is clarified slightly to include social events as well as meetings and if necessary to allow its management by a suitable body other than the Parish Council.

22. Although omitted from the Council's list, in accordance with the officer report further conditions are necessary to revisit the design of the access road and community building parking as requested by the local highway authority, to control the details of the wall alongside Green Court as requested by the heritage advisor, to control foul water drainage to prevent pollution and to ensure the first floor side facing window of plot 4 is obscure glazed/non opening to protect the privacy of the occupiers of Condor House. Finally, it is necessary to ensure the community building is made available for use as an integral part of the scheme.

23. A number of these conditions need to be discharged before work commences on site as these are fundamental to a satisfactory scheme.

Conclusion

24. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

[5] APP/U2235/A/11/2153337

Schedule of conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16/10/01, 16/10/02 rev E, 16/10/03 rev D, 16/10/04, 16/10/05 rev B, 16/10/06 rev B, 16/10/07 rev B, 16/10/08 rev B, 16/10/09 rev B, 16/10/10 rev C, 16/10/11 rev C, CGI drawings 16/10/12 and 16/10/14

3) Notwithstanding the submitted plans, no development shall take place until full details of the access road and car parking for the community building have been submitted to and approved in writing by the local planning authority. The development shall then be carried out strictly in accordance with the approved plans.

4) No development above slab level shall take place until full details (and samples if necessary) of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted, also roadways and paved areas, have been submitted to and approved in writing by the local planning authority. The development shall then be carried out strictly in accordance with the approved details.

5) Prior to first occupation of the dwellings hereby permitted fencing, walling or other boundary treatments relating to that dwelling shall be erected in accordance with details to be submitted to and approved in writing by the local planning authority and shall be retained at all times thereafter.

6) Prior to first occupation of the dwellings hereby permitted the new wall along the south western boundary of Green Court shall be erected in accordance with details to be submitted to and approved in writing by the local planning authority and shall be retained at all times thereafter.

7) None of the dwellings hereby permitted shall be first occupied or the barn used for community purposes until the parking, access and turning areas shown on the approved plans have been brought into use. These areas shall then be retained at all times thereafter with no impediment to their intended use.

8) No development shall take place until space for construction vehicle loading/unloading and facilities for site personnel and visitor parking and turning and wheel washing arrangements have been provided. These measures shall then be maintained on site throughout the construction phase of the development.

9) No surface water shall discharge onto the public highway.

10) No development shall take place, including site preparation works, until an Arboricultural Method Statement (AMS) and Tree Protection Plan including details of any tree works that would be necessary to implement the proposal, details of all trees to be retained and proposed protection measures, undertaken in accordance with BS 5837:2012 "Trees in relation to design, demolition and construction - Recommendations" has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of any areas of hard surfacing within the root

protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design for all buildings within root protection areas, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority.

11) None of the dwellings hereby permitted shall be first occupied until full details of a landscaping scheme (including its long term management) have been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall then be implemented in the first available planting season after completion of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

12) No development shall take place until a detailed surface water drainage strategy for the site based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The development shall then be carried out strictly in accordance with the approved details.

13) No development shall take place until a foul water drainage strategy for the site has been submitted to and approved in writing by the local planning authority. The development shall then be carried out strictly in accordance with the approved details.

14) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority for its prior approval in writing. The remediation strategy shall then be implemented as approved.

15) No development above slab level shall take place until a scheme detailing decentralised and renewable or low-carbon sources of energy and how they will be incorporated into the development to provide at least 10% of the total annual energy requirements of the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall then be in place before first occupation of any part of the development hereby permitted and shall be maintained at all times thereafter.

16) No development shall take place, including works of site preparation, until an updated ecological survey including any necessary mitigation and enhancement strategies has been submitted to and approved in writing by the local planning authority. The development shall then be carried out

strictly in accordance with the details of the approved updated ecological survey.

17) The barn to be used for community purposes shall only be used for meeting rooms and social events organised or approved by Bredhurst Parish Council or other managing body approved in writing by the local planning authority and for no other purpose falling within Class D1 of The Town and Country Planning (Use Classes) Order 1987 (as amended). In addition it shall not be used for any purpose involving the use of amplified music, playing of acoustic instruments nor amplified speech.

18) None of the dwellings hereby permitted shall be first occupied until the barn to be used for community purposes has been converted and handed over for use in accordance with a detailed structural/condition survey of the building and schedule of works to be submitted to and approved in writing by the local planning authority. Any asbestos within the building should only be removed by a licensed contractor. The conversion work shall then be carried out strictly in accordance with the approved details.

19) Prior to first occupation of the dwelling on plot 4 the first floor window on the north west elevation shall be fitted with obscure glass and made non-opening (except for a top light no lower than 1.7 m above finished floor level) and shall be retained as such at all times thereafter.