

Appeal Decision

Site visit made on 30 May 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 13 July 2017

Appeal Ref: APP/U2235/W/17/3170588

Appleacres, Maidstone Road, Sutton Valence ME17 3LR

- 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 Brian Matthews against the decision of Maidstone Borough Council.
 - The application Ref 16/507761/OUT, dated 31 October 2016, was refused by notice dated 6 February 2017.
 - The development proposed is described as outline planning application (with access and layout for approval) for nine detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with access and layout to be determined at this stage. I have dealt with the appeal on that basis.
3. A signed and dated unilateral undertaking in accordance with Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the course of the appeal. This contains obligations in respect of contributions towards libraries and education. I return to the obligations later in my decision.
4. Though not yet adopted, the emerging Local Plan (ELP) has completed its consultation on main modifications. In accordance with paragraph 216 of the National Planning Policy Framework (the Framework) I therefore accord its policies substantial weight.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposal would make adequate provision for affordable housing; and,
 - whether the proposal would make adequate infrastructure contributions.
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Reasons

Character and appearance of the area

6. The appeal site is located beyond any settlement boundary in which policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 (LP) applies. It seeks to prevent development in the countryside which would harm the character and appearance of the area, and it limits development to a number of exceptions within which the proposal does not fall. In so far as it takes account of the different roles and character of different areas, and recognises the intrinsic character and beauty of the countryside, it is consistent with the Framework.
7. The site is part of an old, unproductive apple orchard. It stands between the development along the Maidstone Road and the open agricultural fields of the countryside to its north and west. I have considered the Council's representations about development in the countryside. However, the appellant draws my attention to a permission for 6 houses in the same orchard, and another for 8 houses a few metres to the south. I also saw 10 houses being built on the opposite side of the road. In these circumstances, housing here would not be out of character.
8. Given the arrangement of houses around the road in the scheme consented on the site to the south, the relationship between houses 7B, 8A, and 9A and this access road would not be out of character. The front building line of house 7B would be beyond the line of its neighbours, but this is not unusual in cul-de-sacs. It would retain a substantial open aspect in front, which would offset its oblique siting. In respect of the second reason for refusal, there would be no harm to the character or appearance of the development, or indeed the wider area.
9. However, unlike the consented layout in this orchard, this scheme would occupy a substantial area which acts as a buffer between the buildings along Maidstone Road and the wider countryside beyond. The proximity of houses 3B and 4B and their garages to the western boundary would compress the breathing space around the field hedgerow. This would undermine the spatial setting of the distinctive hedgerow enclosing the adjoining field, which is an intrinsic part of the landscape character of the countryside. This would harm the character of the area, which would place the development in conflict with policy ENV28.
10. Its siting behind the houses on the Maidstone Road would limit its conspicuity in views from Maidstone Road; however, the effects identified above would be visible from within the development and from further afield. I have taken into account the appeal decision¹ for 6 houses in this orchard wherein the Inspector found no harm to character and appearance; however this proposal would extend the built form further from the Maidstone Road into the countryside. I have also had regard to the consent for 8 houses on the site to the south but note that it concerns previously developed land.
11. In conclusion on this issue, while I find no harm from the siting of the houses in relation to one another or to the access road, the proposal would extend the footprint of development further into the countryside and unacceptably close to the field hedgerow which would harm the character of the surrounding area.

¹ Appeal Ref: APP/U2235/W/16/3146765

The proposed development would conflict with LP Policy ENV28, and policies SP17, DM1, DM3, and DM34 of the ELP, which seek high quality design in the countryside and to protect positive landscape character.

12. It would also run against one of the core planning principles of the Framework; that planning should recognise the intrinsic character and beauty of the countryside. It would be at odds too with the Planning Practice Guidance² (PPG) which says that development should seek to promote character in landscape by reinforcing local man-made and natural heritage and that the successful integration of development with its surrounding context is an important design objective.

Affordable housing

13. Policy AH1 in the Affordable Housing Development Plan Document 2006 (DPD), which replaced policy H24 of the LP, says that the Council will seek a minimum of 40% affordable housing on sites of 15 units or more, or 0.5ha or greater.
14. The appellant gives the site area in the application form as 0.49ha and therefore considers that the proposal should not be required to provide affordable housing, whereas the Council measures the site area as 0.6ha. The appellant describes the difference between the two measures being whether or not the access road, the landscape area alongside it, and the site access are included. While the DPD does not define the measure of site area or refer to other definitions, I have read the policy at face value. Therefore, unless there are factors which indicate otherwise, I consider its measure should encompass the area within the red line around the site. In any event, even excluding the access road, the Council calculates the site area as approximately 0.55ha, which would still trigger the requirement.
15. I note that policy DM13 of the ELP sets the threshold as 11 units or 1,000m² of floor space. Furthermore, the PPG says that contributions to affordable housing should not be sought from developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1,000m² (gross internal area). As it is agreed between the parties that the floor space of the dwellings is in excess of 1,000m², I consider that the proposal triggers the requirement to provide affordable housing.
16. The appellant refers to a consent at Hubbard's Lane where landscaping was excluded from the site area, however, the Council accepts that this resulted from a drawing error at the outline stage. While the site area of the scheme at the Warmlake Business Centre site was greater than 0.5ha, the area included the access road which was already in place, without which the site area fell below 0.5ha. The appellant refers to other consents with site areas greater than 0.5ha where affordable housing has not been required, however, without the details of those consents or the circumstances which led to their approval I am unable to draw any parallel to this scheme.
17. On the evidence before me, I conclude on this issue that the proposed development should provide a financial contribution to affordable housing, the absence of which would place it in conflict with LP policy AH1 and ELP policy DM13.

² PPG paragraph: 007 Reference ID: 26-007-20140306

Infrastructure contributions

18. The appellant's undertaking to make financial contributions to the enhancement of teaching space at Sutton Valence Primary School and to the provision of additional library books has been accepted by the County Council. While the PPG states that tariff-style contributions should not be sought from developments of 10 dwellings or less, as the gross floor space of the proposed development would be greater than 1,000m², the criteria for seeking contributions would be met.
19. I am satisfied that the contributions are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. They would be in accordance with Policy CF1 of the Local Plan which indicates that residential development which would generate a need for new community facilities will not be permitted unless the provision of new, extended or improved facilities or a contribution towards such provision is secured by planning obligation.
20. The contributions are also in line with pooling restrictions as set out in Regulation 123 which require obligations to relate to projects where fewer than five contributions have already been provided. On this basis, I find the contributions to be acceptable, and conclude that the proposal would make adequate infrastructure contributions in accordance with LP Policy CF1 and policies ID1 and DM23 of the ELP.

Other Matters

21. The Council is concerned that the implementation of both schemes in the orchard would result in conflict where they overlap. While the appellant has offered to be bound by a unilateral undertaking to prevent the implementation of both consents in the event of this scheme's approval, no such undertaking is before me. As I am dismissing the appeal for other reasons, I have not pursued this matter further.
22. To the south of the site, on the opposite side of the tall hedge enclosing the orchard stands a Grade II listed oast house. While the Council does not object in terms of the impact on its setting, I have nevertheless undertaken my statutory duty pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting, or any features of architectural or historic interest which it possesses. In view of the access drive and the density of the hedge on the orchard boundary, and the scale and location of the proposed houses, I consider that the setting of the listed building would be unaffected and therefore preserved.
23. At the time the planning application was refused, based on its annual monitoring on 1 April 2016 the Council considered it had a 5.12 years supply of deliverable housing sites. The appellant contends that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, and refers to numerous appeal decisions supporting his claim. However, whilst I have had regard to their conclusions, since the majority of them were issued, the Inspector examining the emerging Local Plan published his Interim Findings.
24. He concluded that a smoothing of the housing trajectory, by addressing the backlog of housing over 10 years from 2016 to 2026, and that the identification

of additional site allocations in the latter part of the Plan period by an early review, should strengthen the 5-year housing land supply position at 1 April 2016. He noted that additional planning permissions granted since that date would further strengthen the position.

25. I appreciate that the Examination has not ended, however the Interim Findings lend significant support to the Council's 5-year supply position and supersede the earlier decisions regarding supply. I also note the appeal decision which concluded that the Interim Findings do not confirm that there is a 5-year supply as of April 2016. However, during the course of this appeal, the Council's annual monitoring at 1 April 2017 has been published. This indicates that the position has indeed strengthened, and that the Council has a 6.3 years supply of deliverable housing sites.
26. On the evidence before me, I conclude that the Council can demonstrate a 5-year supply of deliverable housing sites. Relevant policies for the supply of housing are therefore up-to-date and paragraph 14 is not engaged. However, even if I were to conclude there were a shortfall in the 5-year supply and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Conclusion

27. The development would provide a benefit of 9 houses to local housing supply in accordance with paragraph 47 of the Framework which anticipates a significant boost to the supply of housing, and it would provide adequate infrastructure contributions. However, this is outweighed by the harm it would cause to the character of the area and the lack of provision for affordable housing, which would be in conflict with the development plan. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR