The Planning Inspectorate

Appeal Decision

Site visit made on 2 May 2018

by G Rollings BA(Hons) MA(UD) MRTPI

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

Decision date: 15th June 2018

Appeal Ref: APP/J2210/W/17/3186829
Land on Canterbury Road, opposite Canterbury Garden Centre, Herne

- 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 Peter McCabe (E Goody Properties Ltd) against the decision of Canterbury City Council.
- The application Ref 17/00134, dated 17 January 2017, was refused by notice dated 12 May 2017.
- The development proposed is described as: "To develop existing unused land to incorporate two pairs of semi detached houses with access provided by cul de sac from Canterbury Rd."

Decision

1. The appeal is dismissed.

Procedural Matters

2. No postcode was provided on the application and appeal forms, or the Council's decision notice. Accordingly, I have omitted a postcode from the details at the top of this letter.

3. Following the Council's determination of the planning application, the Council adopted its new local plan, the *Canterbury District Local Plan*. Its policies supersede those listed in the decision notice and elsewhere in prior evidence. The appeal was lodged after the adoption of the new plan, with all parties having had the opportunity to incorporate its policies within relevant evidence. As such, I am satisfied that my consideration of its policies in this appeal does not prejudice any party.

Main Issues

4. The main issues are:

   - The appropriateness of the principle of residential development in this location;
   - The effect of the proposed development on the character and appearance of the area;
   - The effects of the proposed development on protected species and the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site; and
   - The effect of the proposed development on highway safety.

Reasons

Principle of residential development

5. The appeal site comprises part of a field, adjacent to Canterbury Road, from which it is separated by a strip of trees and shrubs, and a drainage ditch. The appeal proposal incorporates the development of two pairs of two-storey, semi-detached houses, accessed via a service road. The land around the appeal site is predominantly rural in appearance.

6. The Local Plan sets a hierarchical approach to the location of development, with Policy SP4 supporting new housing on suitable sites in existing urban areas, and other identified settlements. The built-up area of Herne Common is some distance to the north, but open land separates the site from this area, and I do not consider the site to be part of this settlement or any of the settlements listed in the policy. Despite the presence of some small-scale development close to the site, such as a garden centre, no areas visible from the site could reasonably be described as a settlement for the purposes of the Local Plan. Accordingly, I consider it to be open countryside.

7. Policies SP4 and HD4 state that new housing in open countryside will only be supported in specific circumstances, including agriculture and forestry purposes. This is consistent with paragraph 55 of the *National Planning Policy Framework*, whereby housing in rural areas should be located where it will enhance or maintain the viability of rural communities. The appellant has stated that the proposed homes would be required for workers at the nearby microbrewery, but as I have no evidence before me to suggest that this is an essential need or other exception of the type set out in paragraph 55, I cannot consider whether such an exception would be appropriate. As such, the proposed development would be in conflict with both the advice of Framework and the Local Plan.

8. The appellant has provided additional evidence in favour of the principle of the land's development for housing. This includes information regarding sustainable transport options, and the proximity of local services including the garden centre opposite the site. However, the Local Plan is clear in its intent to restrict housing development in the countryside outside of existing settlements, and does not make provision for exceptions on this basis. Moreover, the Local Plan has also been recently adopted and is therefore up-to-date, and thus in this instance, such considerations do not significantly weigh in favour of the proposal.

9. The appellant has also suggested that development of the land should be acceptable in principle, in line with the general encouragement of development as set out within the Framework, including paragraph 17. Although the Framework contains a presumption in favour of sustainable development, this should be considered in tandem with the adopted policies of an area, as set out within paragraph 14, which in this instance are restrictive. Moreover, Framework paragraph 119 notes that the presumption does not apply where development requiring assessment under the Habitats Directives is being considered, which is the case in this instance. I will return to this matter in the following section.

10. I therefore conclude that the principle of residential development, in the form of the proposed scheme, is not appropriate in this location. It would conflict with Local Plan Policies SP1, SP4, HD4, T1 and DBE3, as well as the Framework,

which together explain the approach to housing in the countryside, for the reasons that I have set out above.

Character and appearance

11. Although sporadic development is evident along Canterbury Road in the vicinity of the appeal site, the site itself is open land, apart from the vegetated front edge. The main development in the area is the Canterbury Garden Centre opposite the site, which although spacious in nature, nonetheless imposes an urbanising effect on the otherwise rural areas. Much of the other development along Canterbury Road has a similar effect, thereby altering its rural character. Additional built development would compound this urbanising effect, and be detrimental to the rural character of the site, and the sylvan character along its frontage.

12. The site is also located within a designated Area of High Landscape Value (AHLV), which requires additional consideration of the effects of development on the local landscape character. The proposed dwellings would be visible from the road and across the surrounding open land, and be clearly noticeable against the natural features of the landscape. Development of this nature would be at odds with these features, and would fail to protect the landscape character or enhance the appearance of the landscape, and its heritage and nature conservation interest.

13. I therefore conclude that the proposed development would harm the character and appearance of the area, and conflict with Local Plan Policies DBE3 and LB2, which together require development to have regard to its surroundings, including AHLV considerations.

Impact on protected species and the SPA

14. The Council and Kent County Council have identified the potential for the presence of protected species on the site, and given the proximity of ancient woodland and a site of special scientific interest (SSSI), and based on the available evidence I agree that this is a possibility. No habitat or species surveys have been submitted with the evidence, and thus I cannot be certain that the proposed development would not have harmful effects on protected species as listed in Schedule 1 and Schedule 5 of the *Wildlife and Countryside Act 1981* (as amended).

15. With regard to the proposal's impact on the SPA, Local Plan Policies LB5 and SP6 set out the Council's approach to development within the identified 'zone of influence', which includes the appeal site. The methods identified within the policies are suitable for provision of mitigation and enable the Council to meet its obligations under the Habitats Regulations and European Directives.[1] No such methods have been proposed by the appellant, and thus I am not satisfied that the appeal scheme would provide appropriate mitigation for its contributory effects on the SPA.

16. I therefore conclude that in the absence of appropriate information or mitigation, the proposed development could harm protected species and the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site. It would conflict with Local Plan Policies SP1, SP6, LB5, LB6, LB8 and LB9, which together seek to protect natural features of importance and assist the Council in

[1] Conservation of Habitats and Species Regulations 2010; Council Directive 92/43/EEC.

its statutory requirements for the protection of same, amongst other considerations.

Highway safety

17. Kent County Council, as the highway authority for the area, seeks visibility splays of 160 metres in each direction from a carriageway setback of 2.4 metres within the appeal site. The appeal plans indicate that 30 metre visibility splays have been provided, which when considered in the context of the speed limit of Canterbury Road and previous accidents in the vicinity of the site, are insufficient. The appellant has suggested that various local road conditions could slow passing traffic, but there is no indication that the authority has not already included these considerations in its modelling for the site.

18. The authority has also noted the lack of refuse vehicle turning information. Although the appeal plans indicate that there would be vehicular turning areas in the site, the appellant has not demonstrated that these would be suitable for the turning of a refuse lorry. Large vehicles leaving the site would need to do so in forward gear, otherwise they could pose a risk to highway safety

19. The appellant has indicated that the pre-application requirements of the highway authority have been met. However, pre-application advice is not binding, nor is it a replacement for advice provided by a statutory consultee at the application stage. It also suggested that suitable amendments could be requested via planning condition, were I to allow the appeal. However, as the amendments would potentially involve the creation of splays across land outside the boundary of the appeal site, this approach would not have been suitable.

20. I therefore conclude that the proposal does not provide sufficient information to demonstrate that it would not be harmful to highway safety. The development would conflict with Local Plan Policy DBE3, which encourages safe places and movement within and around development. This is consistent with similar advice given by the Framework, particularly paragraphs 17 and 64.

Other issues

21. The appellant has noted that the development meets the Council's requirements in other area, including living conditions; however, an absence of harm is not sufficient to mitigate the harm that I have identified. I also acknowledge its comments that it was not notified by the Council of its various information requirements during the assessment of the application, but this has not had any bearing on my consideration of the planning merits of the case. Additionally, the appellant has provided an example of previous development in the area being permitted by the Council.[2] However, the allowed scheme is different to the proposed development in principle, layout and use, and thus I do not consider it to be a suitable precedent for the appeal before me.

Conclusion

22. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Rollings INSPECTOR

[2] Decision notice for Council ref: CA/15/01266/FUL.