
Appeal Decision

Site visit made on 2 October 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/E2205/W/19/3228040

**Land to the west of Greenways, Appledore Road, Kenardington, Kent
TN26 2LX**

- 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 Smith against the decision of Ashford Borough Council.
 - The application Ref 19/00135/AS, dated 30 January 2019, was refused by notice dated 15 April 2019.
 - The development proposed is outline application for the erection of one dwelling with repositioned access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Smith against Ashford Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application to which the appeal relates was made in outline, with all matters reserved with the exception of access. I therefore regard the submitted plans showing the position of a proposed dwelling and garage on the site to be indicative only.

Background and Main Issue

4. Between the submission of the application and its refusal by the Council, the trees along the site's western boundary became the subject of a Group Tree Preservation Order (TPO), as detailed in Annexe 3 of the Council's Statement.
5. Since the application was refused and the appeal lodged, the Council has confirmed in its Statement that a 'confines map' for Kenardington has since been adopted by the Parish Council and endorsed by the Borough Council. Annexe 2 of the Council's Statement shows the boundary and adopted confines of the village. The appeal site clearly lies within the newly adopted confines. In light of this, the appeal falls to be determined under Policy HOU3a (Residential Windfall Development Within Settlements) of the Ashford Local Plan 2030 (the Local Plan) and no longer under Policy HOU5 (Residential Windfall Development in the Countryside), as cited in the refusal notice. The Council now consider the site to be a suitable plot for infilling that could accommodate a dwelling and,

provided it was suitably designed, would unlikely represent an incongruous form of development.

6. In light of the above, I consider the main issue to be the effect of the trees on living conditions of future occupiers with regards overshadowing and whether any future threat to fell any of the trees would harm the character and appearance of the area.

Reasons

7. The appeal site is an overgrown infill plot in a stretch of ribbon development along the B2067. Dwellings are set back from the road and are a mix of styles and designs. There is a group of mature trees along the site's western boundary (now protected by the TPO) along which also runs a public right of way (PROW) leading to fields and more woodland beyond. On my site visit I observed that the trees are prominent and positively contribute to the verdant and rural setting of the settlement and the character and appearance of the wider countryside. The appellant confirms that no trees would be felled as part of the proposal.
8. The proposal is for the erection of a single dwelling and a new access formed onto the B2067. The Council and highway authority has no objection to the formation of the access and the necessary visibility splays. The appellant suggests the dwelling would be single storey with accommodation in the roof, with an approximate footprint of 112sqm, and broadly sited to respect the prevailing building line of other dwellings. However, the appearance, scale and exact location of the dwelling would be determined at reserved matters stage, should outline planning permission be granted.
9. The appellant's submitted Arboricultural Report¹ (the 'tree report') identifies there are 2 high quality oak trees (graded 'A' under the British Standard BS:5837 categorisation for tree quality) deemed to be particularly good specimens with particular importance as arboricultural and/or landscape features, and of significant conservation or other value. Other trees were graded 'B' (moderate quality – these would be 'A' grade but have been downgraded because of impaired condition) and other 'C' grade trees of low quality.
10. The tree report also identifies that the BS:5837 defined root protection areas (RPAs) of the surveyed trees occupy a significant proportion of the plot, approximately 50%. This is shown on the indicative proposed Block Plan. The dwelling is illustratively shown sited to the east of the trees to avoid the RPAs, and foundations could be piled to protect them. Due to this and following the prevailing building line, there would be limited choice for the siting of a dwelling within the site.
11. The significant extent of the RPAs across the site would affect the general usability of the garden and would put limitations on what future occupiers could do in their garden. Furthermore, due to the location of the trees in relation to the path of the sun and their substantial height, the tree canopies would cause overshadowing of the proposed dwelling and rear garden. Overshadowing would likely be worse when all the trees are in leaf, which I observed on my site visit.

¹ Duramen Consulting dated 28 December 2018

12. I accept that at outline stage the final design of the dwelling and location of windows to habitable rooms has not been determined. Should outline planning permission be granted, this would need to be addressed at the reserved matters stage to avoid harm to living conditions of future occupiers.
13. I accept that sites can have boundary screening, and future occupiers of the dwelling would be aware of the trees and would choose to live on the site because of them. However, at the time of moving in, future occupiers may not have fully considered the seasonal variations of the trees, the potential overshadowing, the lack of useable garden, the spread and growth of the trees, or the reality of safety and maintenance issues that could arise. As a result, the trees and their overshadowing and extensive RPAs would adversely affect the living conditions of future occupiers. This would lead to pressure to cut back, or even fell, the trees in the longer term.
14. Neither party has provided any substantive evidence to demonstrate daylight and sunlight levels and the extent of overshadowing across the site. Nor is there a topographical survey to determine the precise location of the trees for their full impact to be assessed. I therefore find there is insufficient information to fully determine the extent of the impact of the trees and overshadowing. As a result, I am not persuaded that their impact has been fully assessed to demonstrate there would be no harm to the living conditions of future occupiers, and that in turn there would not be a potential threat for the trees to be removed in the future. Even though the Council would have to sanction any future felling or other tree works, I find that there would be a likelihood of requests that would put the trees under threat. This would then harm the landscape setting of this part of Kenardington and the wider character and amenity of the area.
15. Accordingly, the proposal would be in conflict with Local Plan Policies SP1 criterion b), ENV3a criterion i), and HOU3a criterion d). These collectively seek, amongst other things, to conserve and enhance the Borough's natural environment and features that contribute to the local landscape character.
16. Criterion g) of Policy SP1 relates more the mix of housing types and sizes. As the application is in outline, I have no reason to doubt that a dwelling could be designed to comply. Therefore, this policy element is not directly relevant.

Other Matters

17. I acknowledge the appellant's concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.
18. A number of third parties raise a series of other concerns about the proposal. But in light of the reasons for refusal and my conclusions on the main issue there is no need for me to address these in the current decision.

Conclusion

19. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K. Stephens INSPECTOR