
Appeal Decision

Site visit made on 4 December 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/J2210/W/19/3233809

1 Rose Cottages, Canterbury Road, Herne Common CT6 7JU

- 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 Tee of Tee Bon Developments Ltd against the decision of Canterbury City Council.
 - The application Ref 18/02489, dated 5 December 2018, was refused by notice dated 16 April 2019.
 - The development proposed is demolition of existing garage. Erection of detached dwelling with associated parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has confirmed that the company name provided on the application form contained a typing error. The company name provided on the appeal form is Tee Bone Developments Ltd, which the appellant has confirmed is correct, and I have considered the appeal on this basis.

Main Issues

3. The main issues are: whether the site would be an appropriate location for residential development, with particular regard to accessibility to everyday local facilities and services by a range of modes of transport; and the effect of the proposal on a European Designated Site.

Reasons

4. The appeal site lies towards the edge of, but within, Herne Common, an outlying settlement of Herne. The site fronts onto Canterbury Road, a road linking Herne and Canterbury, which has a footway on the opposite side of the road, but which is, at this point, unlit, although street lighting begins a short distance away.
5. The site lies outside of any named settlement identified within Policy HD4 of the Canterbury District Local Plan -2017- (the Local Plan) and is defined as being in the countryside for the purposes of that policy, where development will only be permitted when it comes within the exceptions stated in the Local Plan. The proposal would replace an existing garage with a detached dwelling.
6. Policies SP1 and SP4 comprise the Council's overarching spatial strategy and are broadly consistent with the provisions of the National Planning Policy

Framework -2019- (the Framework) in as much as they seek to promote sustainable development in larger communities with access to services and facilities.

7. Policy HD4 of the Local Plan allows, subject to certain criteria being satisfied, development of housing in the countryside. No case has been made that the proposal satisfies these criteria.
8. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of such boundaries. The appeal site is located in close proximity to existing dwellings and is not isolated and so the countryside location does not conflict with paragraph 79 of the Framework. Paragraph 78 supports new housing where it will enhance or maintain the vitality of rural communities and so, whilst the site is outside any settlement boundary, this in itself does not persuade me that the site is in an unsustainable location.
9. The village of Herne Common contains some services, such as a public house, that would cater for some of the day-to-day needs of the future residents of the development and those services are within walking or cycling distance of the site. Whilst these services do not provide all of the services required by future residents on a day-to-day basis, the village is also served by bus routes connecting it to larger settlements in the area where such services, including connexions to mainline rail, are available. The Framework recognises that sustainable transport solutions will vary between urban and rural areas and that rural housing development in smaller settlements can enhance or maintain the vitality of rural communities. The amount of travelling required to access facilities providing for the day-to-day needs of residents would be modest and not solely restricted to use of a private car.
10. The proposed development would be contrary to Policies SP1, SP4 and HD4 of the Local Plan in as much as the site lies outside any defined settlement boundary and does not satisfy the criteria for an exception site in the countryside. However, the proposed development would provide new housing in a location with access to transport and services and where it would enhance or maintain the vitality of the rural economy. The proposed dwelling would replace an existing structure and would not extend the developed boundary of Herne Green.
11. Given the particular characteristics of the site, its location and the relationship with the adjacent settlement and its access to meaningful alternatives to the use of the private car to satisfy the day-to-day needs of future occupiers, I conclude that these material considerations outweigh the policy conflict I have found above.
12. For the reasons given above I conclude that this site would be a suitable location for a new dwelling because of its location in an existing settlement and accessibility to everyday local facilities by a range of modes of transport.

European Designated Sites

13. The site is located within the zone of influence of the North Kent Marshes and the Thanet Coast and Sandwich Bay Special Protection Areas (the SPAs), which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

Policies SP1, SP6 and LB5 of the Local Plan seek to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the Local Plan the Strategic Access Management and Monitoring (SAMM) Mitigation Measures for the coastal SPAs and Ramsar sites incorporates strategic mitigation measures to be delivered to avoid adverse impacts.

14. The Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
15. Paragraph 175 of the Framework states, with regard to habitats sites, that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused". The Protected Sites are used for public recreation and therefore the proposed development is likely to generate an increased recreational use and thus, in combination with other development, have a significant effect on the features of interest of the Protected Sites.
16. Although I note the willingness of the appellant to enter into a legal agreement to provide the SAMMS payment, a financial contribution towards mitigating the effects of the proposal on the SPAs, no such agreement is before me.
17. I am, therefore, unable to complete the AA favourably and, as such, I must conclude that, following Appropriate Assessment, the proposal would cause harm to the Protected Sites. Therefore, the scheme would conflict with Policies SP1, SP6 and LB5 of the Local Plan.

Other Matters

18. The proposal lies within the Herne Conservation Area (the CA). As such I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. In addition, Paragraph 193 of the Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
19. The character and appearance of the CA in the immediate vicinity of the site is defined by dwellings of varying design set back from the road by modest front gardens.
20. The proposed dwelling, although detached by a small gap would have similar design features to the dwellings in the adjacent terrace and would be set back in line with them. The locality contains a mix of terraced, semi-detached and detached dwellings and so the separation of the dwelling from the terrace would not be out of keeping with the area. I note the Council's concerns regarding the proposed materials, but this concern, were I minded to allow the appeal, could be addressed through the imposition of a suitable planning condition.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

21. I therefore conclude that the proposal would preserve the prevailing character and appearance of this part of the CA. I note that this agrees with the opinion of the Council.

Conclusion

22. Although I have found in accessibility terms that this would be an acceptable location for a new dwelling, I consider that the development would cause unacceptable harm to the European Protected Sites. I therefore conclude that the appeal should be dismissed.

I Dyer

INSPECTOR