



Appeal Decision

Site visit made on 9 October 2019

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Appeal Ref: APP/A2280/W/19/3223080

Land east of Mierscourt Road, Rainham

- 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 Parmatt Ltd/Montra Invicta Ltd against the decision of The Medway Council.
 - The application Ref MC/18/2047, dated 25 June 2018, was refused by notice dated 25 October 2018.
 - The development proposed is 50 dwellings with new access road, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appeal application was made in outline with all matters, apart from access, reserved for later consideration. An illustrative layout was also submitted. I have considered the appeal and layout in these terms.
3. As part of the appeal the appellants submitted, ultimately, two purported Planning Obligations by way of Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) seeking to make provision for affordable housing and other infrastructure. I will discuss them further below.
4. Both main parties were agreed that the Council could not demonstrate a five years supply of land for housing (5YHLS). However, I was not originally appraised of the extent of the shortfall. I therefore asked the two parties to agree the latest situation. The parties agreed that the Council could demonstrate just over 3 years supply of land for housing and this decision takes account of that agreement.

Main Issues

5. The main issues are:
 - the effect on the character and appearance of the area;
 - the effect on highway safety;
 - whether the proposed development would result in a high quality environment;

- the effect on air quality;
- whether the proposed development would be at risk of flooding or increase the risk of flooding elsewhere;
- whether the proposal makes adequate provision for affordable housing and infrastructure; and
- whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposals should be determined otherwise than in accordance with the terms of the development plan.

Reasons

Character and appearance

6. The appeal site consists of a field and a series of paddocks on the eastern side of Mierscourt Road. The general topography of the area rises from north to south along the road. There is a recently constructed housing development to the north which joins with the northwestern extent of the appeal site. There are paddocks between this housing development and the appeal site further to the east approximately 90m from the highway. The appeal site has a strong hedgerow along the western boundary of the site with Mierscourt Road.
7. The appeal site is located outside a settlement and in the countryside. Policy BNE25 of the Medway Local Plan (the Local Plan) only permits development in such a location if it maintains, and wherever possible enhances, the character, amenity and function of the countryside, offers a realistic chance of access by a range of transport modes, is allocated for that use, or falls within a list of uses which are set out. The proposal does not fall within that list of acceptable uses.
8. The Council has provided a copy of the Medway Landscape Character Assessment (the LCA). In the LCA the appeal site falls within the Moor Street Farmland area within the North Kent Fruit Belt character area. The landscape characteristics are described as an undulating landscape of orchards and arable farm-land although a trend to horse paddocks and arable farming has led to a decline in traditional field pattern. Detracting features are described as being associated with the insensitive introduction of equine related activities, including lotted fields, fencing, equipment, materials, degraded hedges, conifer belts and churned-up road edges. The overall condition of the land is described as poor with moderate sensitivity. Notwithstanding the detracting features identified above, the appeal site has a rural character.
9. The Council also indicates that the appeal site lies in the Mierscourt/Meresborough Area of Local Landscape Importance (ALLI). Policy EN34 of the Local Plan indicates that in such areas development will only be permitted if it does not materially harm the landscape character or function, or the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. The policy continues that development within ALLIs should be sited, designed and landscaped to minimise harm to the landscape character and function.
10. In the supporting text to this policy, the Mierscourt/Meresborough ALLI is described as being important as a buffer zone, helping to counteract outward pressure on urban sprawl and maintaining the separation of settlements.

11. The introduction of a housing estate on the appeal site would be harmful to the existing rural character and appearance of the area changing it from countryside to part of the urban area. This would also physically reduce the distance between Rainham and the settlements to the east and thus their separation. I will discuss below whether the economic and social benefits would be sufficient to outweigh the harm to the conservation of the area's landscape and whether the proposal would be sited, designed and landscaped to minimise harm to the landscape character and function so that there would be compliance with Policy EN34 of the Local Plan.
12. I also discuss below the sight lines necessary to provide an access and this would require the removal of the vast majority of the existing frontage hedgerow. Any replacement would take some time to grow and, in any event, may not be the appropriate design solution. This loss of hedgerow would be harmful to this section of the street scene.
13. Having walked and driven around the area as part of the site visit, I am satisfied that due to the existing enclosed nature of the landscape that this proposal, while harmful, would only result in limited harm to the character and appearance of the area. For example, due to existing hedgerows and other vegetation, the appeal site cannot readily be seen from the public right of way to the north or from Meresborough Road to the east. Any reduction in the gap between the urban area of Rainham and the settlements to the east would not significantly reduce the effectiveness of the overall gap separating those settlements.
14. However, by representing development in the countryside, which is not permitted under the policies of the development plan, the proposal would be contrary to its terms and harmful to the character and appearance of this area of countryside. It would, in particular, be contrary to Policy BNE25 of the Local Plan as set out above. It would also be contrary to paragraph 170 of the National Planning Policy Framework (the Framework) which indicates that planning decisions should recognise the intrinsic character and beauty of the countryside.

Highway safety

15. The Council's reasons for refusal was partly based on a lack of evidence, as it saw it, that a pedestrian footway could be provided on the eastern side of Mierscourt Road to connect with an existing footway on the edge of the carriageway a short distance to the north and thus allow access to Rainham town centre. This was on the basis that the footway would require land outside the ownership of the applicant. The Council was also concerned that the sight lines from the proposed access would also cross land in third party ownership.
16. The Courts have held¹ that the question of whether a proposal can be implemented through the landowner having all the land required is irrelevant to the decision whether to grant permission. If the necessary works can be identified and then secured through a 'Grampian' condition then that is the appropriate mechanism. However, the national Planning Practice Guidance (the PPG) also indicates² that such conditions should not be used where there are

¹ British Railways Board v Secretary of State for the Environment [1994] JPL 32

² Reference ID: 21a-009-20140306

no prospects at all of the action in question being performed within the time-limit imposed by the permission.

17. The appellant has shown that the proposed footway connection and land required for sight lines would either be on land within its control or that of the highway authority. I also note that the highway authority as landowner did not write to object to the proposal.
18. Given, if permitted, the appellant would have up to three years in which to submit reserved matters and two years to commence development thereafter, and the lack of landowner objection from the highway authority, I consider that there are reasonable prospects that the land required to deliver sight lines and the footway could be secured. In order to ensure that the footway and sight lines are secured the relevant condition would need to be written in negative terms.
19. A bus stop is located on Mierscourt Road a short distance to the north of the appeal site on the eastern side of the road. I also noted at the site visit buses travel along Lonsdale Drive with another bus stop a short distance along that road. Access to the footway network can be satisfactorily achieved as described above and there are connections to the north and Rainham town centre with its railway station. There would be, therefore, a reasonable choice as to transport modes for those living on the appeal site. I also note that the Planning Obligation purports to make provision for a contribution toward improvements to the public rights of way network, which could be used to enhance connections to the town centre, although for reasons explained below this is not secured.
20. The Council was also concerned that no assessment had been undertaken of the potential impact on the roundabout to the south (Mierscourt Road/Harvester Close) or to the north at the junction of Mierscourt Road/High Street.
21. As part of the appeal the appellant submitted a further Transport Assessment (the fTA), which shows that the proposal would only have a very limited effect on the highway network, and information from the Transport Assessment submitted with the planning application for the adjoining site. This earlier Transport Assessment indicated that following contributions secured under that planning permission there was an improvement of junction capacity to the north. I am therefore satisfied that the proposal would not have a harmful effect on this junction so as to lead to severe residual effects.
22. In respect of the Mierscourt Road/Harvester Close roundabout the fTA highlighted that in the AM peak cars park at the side of the road close to this junction to drop children off at Mierscourt Primary School. However, in the fTA it is stated that this was not observed to impede traffic flow and no queueing was observed at the junction. This was not rebutted by the Council.
23. Having said that the fTA did not assess the effects of the additional traffic generated by the development on the Mierscourt Road/Harvester Close junction. However, given that the quantum of traffic travelling to/from the south would be less than that to/from the north and the lack of identified current issues at this junction I am satisfied that the proposal would not have a material effect on this junction, certainly not to the level which would lead to severe residual impacts.

24. In light of this additional information I am satisfied that the proposed development would have a safe and suitable access for all users and that there would not be severe residual impacts on the road network if it were to be completed.
25. Consequently, the proposal would comply with Policies T1, T2 and T3 of the Local Plan which require the highway network to have adequate capacity to cater for the traffic which will be generated by the development, development not to significantly add to the risk of road traffic accidents, and that the access will be not detrimental to the safety of vehicle occupants, cyclists and pedestrians, and provide attractive and safe pedestrian access. It would also comply with paragraphs 108 and 109 of the Framework, which require safe and suitable access, and that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The nature of the proposed development

26. While this is an outline proposal with only access for consideration, the Council is concerned that the illustrative layout does not provide sufficient confidence that the number of dwellings, which is fixed at 50, could be delivered on site along with appropriate infrastructure to ensure a high quality development. Its concerns related to the illustrative layout. In the Council's opinion this shows a lack of on-site open space, visitor parking, bin stores for apartment blocks and does not provide for turning heads for waste collection and emergency vehicles on site. There were also concerns that as there were no pedestrian or vehicular links to the built development to the north the proposed occupiers would lack a sense of community, isolated from the existing built-up area and this would prevent social integration.
27. As an outline application with only access for consideration the illustrative layout is just that. Similarly, the dwelling sizes and parking provision for those dwellings set out on that drawing are not fixed. Neither the Council nor the appellant has indicated that the housing mix shown on the illustrative layout is required to meet a particular housing need in the area. I note that there is a significant proportion of larger (4-bedroom, 7-person and 3-bedroom, 6-person) and detached dwellings accommodated within that layout; this could be amended in any reserved matters submission and approval. In addition, there is nothing to indicate that the bin stores for the apartment blocks would not be within the buildings as opposed to being separate buildings which the Council's concerns imply. I therefore consider that, subject to consideration of the other detailed matters dealt with below, there is sufficient flexibility to allow for the criticisms of the internal illustrative layout to be resolved to ensure a high quality layout with sufficient manoeuvring space and parking.
28. The appeal site is in close proximity to the existing built up urban area of Rainham which is located immediately opposite the appeal site. The appeal site is therefore not isolated. At 50 dwellings, I do not consider that the number of those living on this site could properly be described as a 'community'. They may well wish to undertake activities on site, but given the proximity to Rainham, they are more likely to form part of that community rather than a small, discrete community.
29. I have discussed above that links to the adjoining development to the north can be secured at the western end of the appeal site. Due to the existing

- adjoining paddocks between the two sites it would not be possible to create links to the north further into the site. However, the site is not of such a depth that, in my view, it is necessary to require additional linkages to the north.
30. Concerns have been expressed about the landscaping around the perimeter of the site, but for the same reason relating to the illustrative nature of the layout plan I am satisfied that it would be possible to deliver a high quality landscaping scheme that respects the overall character of the area and provides an appropriate boundary to the appeal site. To that extent there would be compliance with the relevant part of Policy EN34 of the Local Plan.
31. A further criticism of the illustrative layout is that it does not include an area of open space/play space. Table 1: Play Provision, within the supporting text to Policy L4 of the Local Plan, indicates that for a Locally Equipped Area of Play the nearest house property boundary should be at least 20m from the activity zone to avoid noise and disturbance. Notwithstanding my comment about the illustrative nature of the layout, it may be that it would not be possible to satisfactorily deliver such a space on site and ensure sufficient separation to nearby dwellings to ensure high quality living conditions for the occupiers of those dwellings without resulting in such adverse effects. I therefore conclude that seeking to ensure the delivery of an on-site open space/play space through a condition would not be reasonable given the fixed number of dwellings set in the application.
32. Policy L4 of the Local Plan indicates that where there is a proven deficiency, residential development proposals shall make open space provision in accordance with certain standards. For residential development likely to be occupied by more than 100 people, as here, formal on-site recreation is required. However, this part of the policy does allow off-site provision, either in whole or part, where the Council is satisfied that this would be a better alternative.
33. The first point to make is that it has not been demonstrated, or even asserted, that there is a proven deficiency in the quantum of open space in the area generally. The “deficiency” appears to relate to the distance to a play area. The appeal site is approximately 300m deep and I noted an existing play area (the Cherry Trees Play Area) a short distance along Mierscourt Road to the north. The Planning Obligation purports to make a contribution towards open space provision. While those living at the eastern end of the site will have to walk further than the 400m set out in Table 1: Play Provision referred to above as the appropriate distance to walk to a play area, those living at the western end will be within this distance.
34. On this point alone, I conclude that the proposal would be contrary to Policy L4 of the Local Plan in that not all the occupiers would be within 400m walking distance of such a play area but, as some would, this harm can only be given limited weight.
35. Below I conclude it has not been demonstrated that the site could be appropriately drained and would not give risk to off-site flood risk. As with formal open space a solution may involve a greater land-take than is shown on the illustrative layout meaning that it may not be possible to ensure a high quality layout given the fixed number of dwellings.

36. Pulling together the above, because of the lack of provision for on-site open space and appropriate drainage, I am not satisfied that the proposed development would create high quality places. As such the proposal would be contrary to Policy BNE1 of the Local Plan which requires the design of development to be appropriate in relation to the character, appearance and function of the built and natural environment. In respect of the provision of formal open space, part of the development would be at a greater distance than that set out in the table accompanying Policy L4 of the Local Plan, and thus contrary to that policy. Consequently, the proposal would not comply with paragraphs 124 and 127 of the Framework which indicate that the creation of high quality places is fundamental to what the planning and development process should achieve, and requires development to function well and add to the overall quality of an area.

Air Quality

37. The relevant reason for refusal was based on there being insufficient information to assess the effects of the development on air quality. This is particularly relevant as there is an Air Quality Management Area (AQMA) a short distance away from the appeal site either side of the A2 at High Street Rainham. The Council advises that the pollution within this AQMA is understood to arise from traffic on the A2, and from what I have read this appears to relate to Nitrogen Dioxide (NO₂) rather than particulates.
38. In support of the appeal the appellant submitted an Air Quality Report to take account of the potential effects of increased road traffic emissions on the AQMA. However, the Council then considered that the Air Quality Report was not sufficiently robust to allow for a full assessment of the proposal. The Council's concerns related particularly to the baseline data, the number of monitoring sites and whether cumulative impacts from committed developments have been included in the opening year assessment scenario. There were also concerns the monitoring data does not show a clear downward trend; this suggesting that predicted concentrations at existing receptors are not a reliable indication of future air quality, either with or without the development. This is relevant because, under the existing predictions, the AQMA is expected to achieve air quality objectives in 2021, which is also the operational year for the purposes of this appeal.
39. The use of 2016 baseline data is not of itself objectionable, although the use of 2017 data would be an improvement and represent best practice. The 2017 data showed air quality not improving in line with predictions and slight increases in pollution levels at some sites. It is not clear to me whether any of the sites with such increases occurred in this AQMA. What, however, is important is whether using the 2017 as opposed to the 2016 data would make a material difference to the results.
40. I do not have information as to whether the Air Quality Report has taken into account the cumulative effect of other committed developments. Paragraph 181 of the Framework makes clear the cumulative impacts from individual sites in local areas should be taken into account. The further away the baseline data from the operational date the greater the possible effect of the failure to take into account cumulative effects from other developments.
41. Having said that the Air Quality Report does make it clear that any increases in NO₂ concentrations caused by the proposed development at existing receptor

locations would be negligible. These include receptors alongside the A2. The largest changes would be close to the signalised junction of Mierscourt Road with the A2, which is not surprising given idling and acceleration of vehicles creates particular concentrations of pollution. The figures given, which of themselves are not disputed by the Council, indicate an increase in concentration at the worst-case location (close to this junction) of $0.3\mu\text{g}/\text{m}^3$ to a level of $20.2\mu\text{g}/\text{m}^3$. This compares with the NO_2 Air Quality Objective of $40\mu\text{g}/\text{m}^3$.

42. The PPG³ sets out examples of mitigation which includes contributing funding to measures designed to offset the impact on air quality arising from new development, including those identified in air quality action plans and low emission strategies. The Kent and Medway's Air Quality Partnership has published Air Quality Planning Guidance to allow for the production of an Emissions Mitigation Assessment which is then monetized, normally through on-site provision.
43. Taking into account the precautionary principle, although there are clear deficiencies with the Air Quality Report, I am satisfied that subject to appropriate mitigation secured through planning obligations, the proposal would not materially increase the risk of non-compliance with relevant limit values or national objectives for pollutants given the headroom between the predicted levels and the Air Quality Objective level.
44. However, neither of the planning obligations makes provision for such a contribution. Consequently, the proposal would not be acceptable in terms of air quality and would not comply with Policy BNE24 of the Local Plan which indicates that development will not be permitted when it is considered that unacceptable effects will be imposed on health in the surrounding area, taking into account the cumulative effects of other proposed or existing sources of air pollution in the vicinity. It would also not comply with paragraphs 180 and 181 of the Framework which indicate planning decisions should ensure that new development is appropriate for its location taking into account the effects on health, and sustain and contribute to compliance with relevant limit values or national objectives for pollutants taking into account AQMAs.

Flood Risk

45. The appeal site is located in Flood Zone 1 of the Environment Agency's maps and as such as at the lowest level of risk of flooding. There are areas within Flood Zones 2 and 3 to the west of Mierscourt Road. The application was accompanied by a Flood Risk Assessment and Drainage Strategy (the FRADS). The FRADS indicates that there would be no increased risk off-site on the basis that all surface water would be contained on site.
46. The Council's concerns are that the proposal would increase flood risk off-site, and levels criticisms that the proposed soakaways to deal with surface water on site are located in rear gardens and also that the half drain times are "far higher than acceptable".
47. As with other criticisms of the layout it must be remembered that this is an outline application and there is flexibility in the layout. Having said that, the number of soakaways shown in the FRADS would indicate that it would be

³ Reference ID: 32-008-20140306

likely that some soakaways would have to be located in private as opposed to public areas. This increases the risk that necessary maintenance would not be carried out which may increase the risk of flooding.

48. As to the half drain times, I have noted that the Council has indicated they are "far higher than acceptable" but has not indicated what an acceptable rate would be. I note that in the FRADS that a half drain time for the 1 in 100 year event (including an addition of 20% for climate change) for a 2 bedroom property would be 2501 minutes and for a 4 bedroom property would be 2777 minutes and in various scenarios there is a flood risk. In my experience these half drain times are excessive, being well above the 24 hours (1440 minutes) normally considered appropriate and would mean that alternative or additional methods may be required to satisfactorily drain the site and not result in the risk of flooding. Should the on-site drainage not be satisfactory then there is also a risk of increased flooding off-site.
49. It is next appropriate to look to see whether this increased risk could be mitigated by use of a planning condition. In order to be acceptable, there needs to be a reasonable prospect that the condition could be fulfilled. Given that alternative mechanisms may have greater land-take than shown in the FRADS I am not satisfied that it would be possible to deliver the necessary site drainage given the fixed number of dwellings proposed, even taking into account the outline nature of the proposal.
50. Consequently, it has not been demonstrated that the site could appropriately be drained and would not give risk to off-site flood risk. Therefore, it would be contrary to paragraphs 163 and 165 of the Framework which indicate that flood risk should not be increased off-site and that sustainable drainage systems should meet appropriate minimum operational standards.

Planning obligations

51. As noted above, two purported unilateral Planning Obligations have been submitted. Original versions of the Obligations were provided dated 15 September 2019 and, following comments by the Council, revised versions dated 20 November 2019 were submitted. Following further criticisms third versions were submitted, but these had the original date upon them; 15 September 2019.
52. The first two versions included five parties to the purported Obligations; the last version only included three parties. It would also appear that the Planning Obligations have been completed in counterpart, but I have only been provided with the signature sheets, and, in respect of one of these signature sheets, this includes parties who are not said to be parties to the Planning Obligation. The relationship to the land of these other two signatories, whether owner, tenant, contracted purchaser or something else, is not clear.
53. Furthermore, because the Obligations are dated 15 September 2019, I am not satisfied that the signatories have agreed to the subsequent changes to the terms of the Obligation which have taken place in the later versions. I do not have full versions including signatures, or even initials of signatories, agreeing to the changes against each and every change, which is necessary.
54. Without the full documents, even in counterpart, being provided I cannot be satisfied that they have been properly completed. I therefore conclude that the

obligations are not clear. This is imperative in case there was a need for enforcement.

55. Equally, the Planning Obligations includes reference to an attached plan showing the site, but while I have been provided with a plan, it does not form an integral whole with the purported Planning Obligations, nor is it signed as a document within the Planning Obligation.
56. Finally, the Obligation relating to affordable housing places "covenants" on the Council which cannot be enforced as the Council is not a signatory to the Obligation. Similarly, there is a reference to a dispute resolution procedure which cannot be utilised as it refers to "the parties" and the Council cannot be required to use it as it has not agreed to be a party to the Obligation
57. Overall, I consider that both purported Obligations are deficient and therefore cannot be given any weight.

Affordable housing

58. Policy H3 of the Local Plan states that where the need has been identified, affordable housing will be sought as a proportion of residential developments of substantial scale, with this proposal being of an appropriate size. The need for affordable housing is not disputed by the appellant.
59. By failing to make provision for affordable housing through an effective Planning Obligation the proposal would be contrary to Policy H3 and would also be contrary to paragraph 62 of the Framework which indicates that where a need for affordable housing is identified affordable housing should be provided. This failure weighs substantially against this proposal.

Infrastructure

60. The officer report, upon which in respect of these issues the Council relies, set out the case for contributions towards education provision, improvements to public rights of way, off-site open space (as referred to above), contributions to improvements at a leisure centre, health provision and waste and recycling provision. It also sought contributions to bird disturbance mitigation (see below). None of these are in dispute and the sums to be provided within the purported Planning Obligation are the same.
61. I am satisfied that in each case a contribution is necessary to make the development acceptable in planning terms, directly relates to the development and would fairly and reasonably relate in scale and kind to the development.
62. However, for the reasons set out above, the purported Planning Obligation fails to deliver such contributions and this means that the proposal would not deliver the necessary infrastructure to support this development. This also weighs substantially against this proposal.

Other material considerations, including the benefits of the proposal

63. The appellant has set out various benefits from the proposal as it sees it. These are that the site is well located in relation to Rainham, would have a satisfactory access and would deliver appropriate links to the existing footpath network. It considers that the proposal would enhance the character and appearance of the area. The appellant sees no air quality or flooding objections

and the proposal would deliver the necessary affordable housing and infrastructure.

64. As noted above both the appellant and the Council agree that the Council is unable to demonstrate a 5YHLS. In response to my questioning the Council indicated that it believes that it could demonstrate "just over 3 years supply of deliverable sites". The Council confirms that this is measured against the latest calculation of Local Housing Need using the government's 'Standard Method', and applying a 20% buffer, at 1683 homes a year. The appellant agrees with this analysis.
65. By any measure this shortfall is significant, and while the Council has set out in an Action Plan measures to resolve this, including a new Local Plan, it is inevitable that this will take some time to deliver the necessary housing to meet the needs of the area. The delivery of the applied for numbers of additional housing is a material consideration of substantial weight in addressing this shortfall in a reasonable timeframe.
66. Paragraph 11 d) and footnote 7 of the Framework indicate in this scenario planning permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits, or there are particular policies in the Framework that provide a clear reason for refusing the development proposed.
67. I have considered footnote 6 of the Framework which sets out the application of policies in the Framework that protect areas or assets of particular importance. Included in this list is "areas at risk of flooding". My interpretation of this is that relates to the area at risk of flooding itself rather than any effects of a proposed development off-site onto such an area. Consequently, none of the relevant policy considerations referred to in this footnote apply.
68. I also take account of paragraph 177 of the Framework which indicates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an Appropriate Assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above, the purported planning obligation would not deliver necessary mitigation in this regard and consequently, it cannot be concluded that the proposal would not have such an effect on a habitats site.
69. The most important policy for the purposes of restricting development in the countryside, Policy BNE25 of the Local Plan, is out-of-date. The Council makes it clear that it does not object to the proposal just because it lies outside the settlement boundary. I discuss Policy BNE34 of the Local Plan below and am of the view that there would be compliance with that policy.
70. Consequently, taking all this together the so called 'tilted balance' would not apply as I cannot be satisfied on the evidence in front of me that the proposal would not have an effect on habitats sites either alone or in combination with other plans or projects.

Other matters

71. The appeal site lies within 6km of the Medway Estuary & Marshes Special Protection Area (SPA) and Ramsar Site/Thames Estuary & Marshes SPA and

Ramsar Site. Because of the increase in human population this proposal, in combination with other plans and projects, is likely to have a significant effect on those sites meaning that, were I minded to grant outline planning permission, I would need to undertake an Appropriate Assessment to confirm that it would not adversely affect the integrity of the sites.

72. I note that the purported Planning Obligation seeks to make a contribution towards SAMM measures (not defined). However, as I have concluded that the planning obligation would not be effective and as I am going to dismiss this appeal, I need not consider this matter further.

Planning Balance

73. The proposed development would result in the construction of 50 dwellings in a accessible location with appropriate highway arrangements and could be satisfactorily accessed by the use of a variety of transport modes. I give this benefit very significant weight.
74. Policy BNE34 allows for a balance to be made and I consider that the economic and social benefits of the proposal outweigh the harm to the ALLI. I have concluded that it would be possible to deliver a high quality landscaping scheme that respects the overall character of the area meaning that there would be compliance with this policy.
75. I am satisfied that the proposal could, through the use of planning obligations, make adequate provision for on-site mitigation to ensure that air quality objectives were not compromised. However, this has not been secured.
76. Furthermore, the proposal would be contrary to Policy L4 of the Local Plan in that it would not provide adequate open space conveniently located for all the residents of the proposed development and the purported Planning Obligation would not mitigate this effect. I am also not satisfied that this site can be appropriately drained and maintain the fixed number of dwellings sought.
77. The proposal, for the reasons set out above, would not secure the provision of affordable housing or necessary infrastructure.
78. While the tilted balance does not apply for the reasons set out above, even if it did, taken individually the harm of granting planning permission in respect of the air quality and drainage issues, and the failure to deliver the necessary affordable housing and infrastructure and habitats site mitigation, significantly and demonstrably outweigh the benefits. The failure to provide appropriate on-site open space adds to this harm.

Conclusion

79. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR