
Appeal Decision

Site visit made on 20 January 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/L2250/W/19/3236946

The Outlook, Dymchurch Road, Hythe CT21 4NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Dale Gill of Nexus Land Group Ltd against Folkestone and Hythe District Council.
 - The application Ref Y18/0791/FH is dated 18 June 2018.
 - The development proposed is the construction of two detached bungalows with associated parking and amenity.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Application for costs

2. An application for costs was made by Nexus Land Group Ltd against Folkestone and Hythe District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the site address and description of the proposed development from the planning application form, although I note these are expressed differently on other documents. In addition, the appellant has confirmed that the company underwent a name change during the planning application process. The company name, as set out in the banner heading, has been confirmed to be the updated company name, hence I have utilised it for correctness.
4. Since the planning application was submitted to the Council a revised version of the National Planning Policy Framework ('the Framework') has been published. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Main Issues

5. This appeal has been lodged following the Council's failure to determine the planning application. The Council in its appeal statement has put forward reasons for refusal had it been in a position to determine the application. I have used these refusal reasons to inform the main issues below. Whilst not

forming one of the Council recommended refusal reasons, it is clear from the Council's Statement that there is concern pertaining to highway safety in relation to the use of the existing southerly access.

6. I, therefore, consider the main issues raised in respect of this appeal are: -
- a) Whether the countryside location is an appropriate location for the proposed development with regard to the spatial strategy of the development plan;
 - b) The effect of the proposed development upon the character and appearance of the area, including the adjacent Romney Marsh Local Landscape Area (LLA);
 - c) The effect of the proposed development upon habitat of principal importance;
 - d) The appropriateness of the site's location within an area of high flood risk; and
 - e) Highway safety.

Reasons

Location

7. The appeal site is situated in a rural location with open land to its west that forms part of the Romney Marsh LLA, and Hythe Ranges Local Wildlife Site to the east, beyond Dymchurch Road. Further north/west is open land with countryside beyond and further south/east is open land behind the beach used as a military firing range. The site, being located outside of any defined settlement boundary, is within the countryside for the purposes of planning policy.
8. Policy SS1 of the Shepway Core Strategy Local Plan (the Core Strategy) directs development towards existing sustainable towns and villages and indicates that development in the open countryside will only be allowed exceptionally where there is essential need. Core Strategy Policy CSD3 reflects this. Saved Policy CO1 of the Shepway District Local Plan Review (the Local Plan) indicates that new development in locations outside of the settlement hierarchy will only be allowed if a rural location is essential. I have not been directed to any particular requirement or need for new dwellings at this rural location. It, therefore, has not been demonstrated that the development cannot be practically located within an existing settlement and/or that it essentially requires a countryside location.
9. Consequently, the proposed development, being within the countryside, would not represent an appropriate location having regard to the spatial strategy of the development plan. This brings the proposal into conflict with Core Strategy Policies SS1 and CSD3 and Saved Local Plan Policy CO1.

Character and appearance

10. The appeal site is situated within a small group of linear residential dwellings located on the northern side of Dymchurch Road. All of the existing properties within the group are bungalows and are sited within reasonably spacious plots with gaps between the properties. There are currently two single storey

outbuildings at the appeal site, however I observed that the remainder of the site is largely undeveloped.

11. I note that there is general support to make use of previously developed land, nonetheless the Framework seeks planning decisions to be sympathetic to local character to protect and enhance valued landscapes. Saved Policy CO1 of the Local Plan indicates that the countryside will be protected for its own sake and sets out criteria against which proposals are to be assessed. I shall consider these criteria below. Saved Policy CO5 seeks to protect the landscape character and functioning of LLAs.
12. The proposal would involve the erection of two detached dwellings that would be visible from the open land to the east and west of the site. The existing dwellings along this short stretch are low-key and loose knit. The space between buildings allows for views from the highway toward the LLA. This also applies to the appeal site where clear views of the LLA can be gained from the adjacent highway. The loose knit pattern of the existing development and the spaces between properties contributes to the rural appearance of this locality and to the relatively undeveloped character of the area.
13. The proposal, being for two dwellings within the appeal site, would be a more intensive development than that of the existing properties within this group. The proposal would domesticate the site creating a development of urbanised appearance. It would also significantly reduce views across the site of the LLA. This would represent a diminution to the character of the countryside and visual appearance of the rural landscape. Furthermore, being a denser development to that of the loose knit dwellings that form the pattern of development in this locality, the development would also be out of keeping within the context of this streetscene.
14. Taking these matters collectively, the proposal would be harmful to the character and appearance of the area and would conflict with Saved Policy CO1 part a) that requires proposals, amongst other matters, to maintain or enhance features of the landscape, as well as the quality and character of the countryside. Placing domestic built development at the site would not maintain or enhance the rural landscape and the character of this countryside location.
15. Saved Policy CO1 part b) requires the proposal to demonstrate that it cannot be practically located within an existing settlement and that it essentially requires a countryside location. Given my findings in regard to my first main issue, the proposal would not accord with Saved Policy CO1 part b).
16. Turning to Saved Policy CO1 parts c), d) and e); part c) requires the proposal to be of a high standard of design and sympathetic in scale and appearance to their setting. I consider the proposed dwellings would be of an acceptable design taken on their own merit and their scale would reflect that of the existing dwellings close by. Part d) requires the development to be acceptable in highway and infrastructure terms. I shall deal with this as part of my 'highway safety' section further below. Part e) seeks to preserve or enhance the amenity, character and functioning of rural towns and village. This is not relevant as the proposal falls within the countryside.
17. For those reasons set out further above, the proposed development would have a harmful affect upon the character and appearance of the area, including the adjacent Romney Marsh LLA. It would, therefore, conflict with Saved Policies

CO1 and CO5 of the Local Plan. I have not been directed to any overriding social or economic need for the proposed development. Furthermore, I do not consider the negative impact of the proposal or its adverse environmental effect has been sufficiently minimised to justify the proposal coming forward, as is also required by Saved Policy CO1.

Habitat

18. The appeal site is split into two key habitats, unimproved grassland and vegetated shingle. The site is adjacent to a Local Wildlife Site which is a priority high value habitat. A Biodiversity Statement Report (the BSR) has been submitted in support of the proposed development. The BSR highlights that the 'vegetated shingle should be retained where reasonably practicable to do so'. Kent County Council (KCC) Ecological Advice Service has identified that the vegetated shingle is a habitat of principal importance and the proposed dwellings and residential use of the site would result in the loss of the priority habitat on site.
19. Saved Policy CO11 of the Local Plan indicates that permission will not be given for development if it is likely to endanger plant or animal life (or its habitat) protected under law and/or identified as a UK Biodiversity Action Plan priority species or cause the loss of, or damage to, habitats and landscape features of importance for nature conservation, unless; i) there is a need for development which outweighs these nature conservation considerations, and ii) measures will be taken to minimise impacts and fully compensate for remaining adverse effects.
20. The BSR suggests that a sympathetic landscaping plan for the site should be produced to enable an assessment of the level of mitigation provision for the loss of notable habitat present on this site. However, it appears to me that this has yet to be produced. The evidence that supports this proposal has not demonstrated clearly that the proposed development would not harm the biodiversity at the appeal site. Consequently, I consider that a precautionary approach is justified as the development could result in the loss or damage to vegetation shingle, which is a habitat of principal importance. As such, this brings the proposal into conflict with Saved Policy CO11 of the Local Plan. I have not been directed to any need for the development that might outweigh the nature conservation considerations and mitigation that would fully compensate for the development's adverse effects.

Flooding

21. The Environment Agency (EA) flood risk maps class the area within which the site lies as Flood Zone 3a. The Council's Flood Risk Assessment identifies the site as being within an area at significant risk should flooding occur despite the area benefitting from flood defences.
22. A Flood Risk Assessment (FRA) has been submitted in support of the proposed development. This FRA indicates that whilst the site is situated within Flood Zone 3a it benefits from existing flood defences. The surrounding area is located within the same hazard classification and consequently the appellant has applied what is considered to be a more realistic overtopping hazard mapping reference. Using this mapping the FRA considers the proposed development to be at lower risk of flooding when compared to alternative sites and advocates that the site should be placed at a 'low' hazard category should

flooding occur. This could allow the site to be considered as sequentially preferable. I note that the Environment Agency is satisfied that the proposed development could be made 'safe' subject to the recommendations of the FRA being fully incorporated into the development.

23. Notwithstanding the above, the aim of the sequential test is to steer new development to areas with a lower risk of flooding. The Council has looked at the most recent HIA and this showed that there are a number of alternative sites within the Folkestone & Hythe character area that could be built out. The Council contends that there are other locations which are sequentially safer to develop for residential purposes outside of high-risk areas and the appellant's sequential test has not acknowledged these sites. With regard to the Framework's commitment to apply the sequential test I have concerns as to whether it is correct for the proposed development to have been proposed to be located in Flood Zone 3a in the first instance. This conflict with the Framework would add to the harm that I have identified in respect of the other main issues.

Highway safety

24. Access to the most southerly property and its associated proposed parking would make use of the existing vehicular access of the adjacent property known as 'The Outlook'. This would create a shared access representing an intensification in the use of this existing access. The Council has highlighted that this access would require visibility splays across land owned by the neighbouring occupiers. As this land falls outside of the planning application site area the visibility splays cannot be secured as part of the proposed development. Therefore, the proposal in its current form would increase highway safety risk due to the intensification of use of the southern access without adequate visibility splays having been secured.
25. Part d) of Saved Policy CO1 of the Local Plan requires the proposal to be acceptable in highway and infrastructure terms. The proposal would result in an increased highway safety risk and this bring the proposal into conflict with Saved Policy CO1 part d). Furthermore, the Council's Statement refers to Saved Local Plan Policy TR11 that seeks to ensure that the intensification in use of an existing access is not detrimental to the safety of vehicle traffic, cyclists and pedestrians. I conclude that the proposal would also conflict with this policy.

Other Matters

26. The Council has not raised concern with regard to the living conditions of adjoining occupiers, the space standard of the habitable internal living area of the proposed dwellings, the proposed parking provision or archaeology. On the available evidence I have no substantive reason to come to a different view to the Council in respect of these matters. I note that the proposal would contribute to the supply of homes within the District but being a proposal for only two dwellings, this contribution would be extremely modest.
27. The Council has referred to a number of emerging plan policies. Whilst some weight can be afforded to those policies, they do not yet supersede those saved policies of the Local Plan and the Core Strategy policies to which I have had regard in reaching my decision.

Conclusion

28. A number of third parties have raised other concerns about the proposal but in view of my conclusion on the main issues there is no need for me to address these in the current decision.
29. Having regard to the above findings, the appeal is dismissed, and planning permission is refused.

Nicola Davies
INSPECTOR