The Planning Inspectorate

Appeal Decision

Site visit made on 11 February 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Appeal Ref: APP/J2210/W/19/3235764
Radfall Gate, Radfall Road, Chestfield, CT5 3EN

- 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 Jaimie Clarke against the decision of Canterbury City Council.
- The application Ref 19/00918, dated 5 May 2019, was refused by notice dated 1 July 2019.
- The development proposed is the erection of 9 dwellings to include 2 custom build plots.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline permission with all matters being reserved for future consideration. The description of the development limits its scale to 9 dwellings.

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;
- The effect of the development on the character and appearance of the site and the surrounding area;
- The effect of the proposal on the Thames, Medway and Swale Estuaries and the Thanet Coast and Sandwich Bay Special Protection Areas, which are protected European Sites.
- The effect of the development on biodiversity of the area;
- Whether or not the proposed development would make adequate provision for affordable housing;
- Whether the site makes suitable provision for local libraries bookstock and secondary education; and: -
- The effect of the proposal on the free and safe movement of vehicles, with particular regard to access onto the public highway.

Reasons

Suitability of the location of the site

4. The appeal site is an open field on the north-eastern side of Radfall Road. Opposite, and to the south-west lies the settlement of Radfall. Radfall Road is a single carriageway road with limited footway provision in the vicinity and narrow verges and outside the site is subject to a 30 MPH speed limit. To the north lies open countryside, and the A299, a dual carriageway road. To the east lies a mature wooded area. The Radfall Road frontage is formed by a wide strip of mature planting incorporating many mature oak trees. This strip of planting gives the area a verdant, semi-rural feel and establishes the edge of the open countryside.

5. There is currently a field access into the site and a short distance to the north west of this are a pair of bus stops. Beyond the bus stops the mandatory speed limit increases to 40 MPH. From the bus stop on the opposite side of Radfall Road there is a footway on one side of the road heading towards Chestfield.

6. The site is situated outside any settlement boundary and is defined as countryside by Policy SP4 of the Canterbury District Local Plan -2017- (the Local Plan). It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies.

7. Policy SP4 of the Local Plan sets out the Council's Spatial Strategy and seeks to direct new housing development to within the physical limits of existing settlements. Policy HD4 of the Local Plan allows, subject to certain criteria being satisfied, development of housing in the countryside. Amongst other things, this policy allows the development of new dwellings where the design of the development is of an exceptional quality or innovative nature. These aims are broadly consistent with the aims of the Framework, including Section 9 of the Framework: Promoting sustainable transport and those paragraphs whose aim is to provide a supply of rural housing.

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 the settlement boundary, this in itself does not persuade me that the site is in an unsustainable location.

9. Radfall contains a very limited range of services and the site is located a significant distance from the nearest centres that would provide a full range of services for the day-to-day needs of residents, in Canterbury, Whitstable and Chestfield. The nature of the intervening local roads with their lack of lighting and continuous footways, vehicular speeds and the distances involved, are such that they would deter pedestrians and cyclists, particularly after dark, with children or during inclement weather and so residents of the site would still be likely to rely heavily upon the private car for their day-to day needs.

10. The appellant has drawn my attention to the nearby Crab and Winkle Cycle Route. However, I have limited information before me regarding this cycling

facility and have considered cycling access on the basis of the evidence before me of the highway network in the vicinity of the site.

11. There is a bus service serving the village providing connection to Canterbury and Whitstable with a full range of shops and services and connectivity to the wider public transport network. However, these are a significant distance away and, on the basis of the evidence before me, the service is restricted in frequency and I have no information regarding the duration of the day through which it runs.

12. The Framework promotes sustainable development in rural areas, requiring that housing should be located where it will enhance or maintain the vitality of rural communities especially where this will support local services. The Framework recognises that rural housing development in smaller settlements can support services in a village nearby and that sustainable transport solutions will vary between urban and rural areas. However, in this instance, notwithstanding the opinion of the Highway Authority, there is no meaningful alternative to using the private car to satisfy the day-to-day needs of future occupiers. Given the modest scale of development there is very limited scope to improve connections for walking, cycling or public transport, therefore dependency upon private motor vehicles would be almost total.

13. 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 appeal site lies in an area of only sporadic development, where dwellings form small loose groups or hamlets with no services within them requiring, in all likelihood, a trip into the local town to satisfy their day-to-day needs. Thus, it could not be said that the development would contribute meaningfully to the vitality of villages outside the town.

14. Policy HD4 allows the development of new dwellings where the design of the development is of an exceptional quality or innovative nature and this approach is supported within the Framework. However, this proposal is in outline, with all matters, including design, reserved for determination at a later date. Although the appellant has stated their intention that the development would adhere to design the requirements set out within Policy DBE3 of the Local Plan there is no evidence before me to demonstrate how the proposal would achieve exceptional quality of design or innovation. I therefore give this matter limited weight.

15. My attention has been brought to a recent appeal decision, Ref APP/J2210/W/18/3204617, which the appellant considers as having a degree of similarity to the case before me. However, I do not know the full circumstances associated with that appeal and so I am unable to draw a contextual comparison. In any case, I have determined this appeal on its own merits.

16. I conclude that the appeal site would not 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. It is therefore in conflict with Policies SP1, SP4 and HD4 of the Local Plan which together, amongst other things, seek to protect the countryside from inappropriate development.

Character and appearance

17. Whilst the appeal site lies on the edge of the built-up area of Radfall, it lies outside of it and would encroach into open countryside, extending the built-up area by a significant amount and further urbanising the countryside.

18. Because of the local topography, this urbanisation of the countryside would be clearly visible from the A299 and in views from dwellings in Chestfield and the outskirts of Whitstable.

19. Whilst the site is surrounded by mature planting there would also be views of the new buildings from existing dwellings fronting Radfall Road. The urbanisation of the countryside would alter the character of the area to such a degree as to constitute harm.

20. Notwithstanding that I will be dealing with matters of highway safety later, I note that the Highway Authority has identified that provision of visibility spays at the junction accessing the proposal is likely to result in the loss of existing planting adjacent to Radfall Road. Given the importance that I have placed on the planting fronting the site in establishing an edge to the open countryside, the loss of trees would significantly reduce the verdancy of that road boundary and result in harm to the character and appearance of the area.

21. I note that the appellant intends to replace any trees lost in providing the visibility splays. However, no details of such proposals are before me and there is no evidence to demonstrate that such replacement would adequately address the loss of the existing trees.

22. Whilst I note the conclusions of the Planning Inspectorate Environmental Impact Assessment. This assessment is specifically in relation to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and it does not follow that further arguments relating to environmental issues do not fall to be considered as part of the appeal.

23. I therefore find that the proposal would result in harm to the character and appearance of the site and the surrounding area and would, therefore, be contrary to Policy DBE3 of the Local Plan in as much as the proposal fails to respect the character, setting and context of the site and the way the development is integrated into the landscape.

Effect on European Protected Sites

24. The site is located within the zone of influence of the Thames, Medway and Swale Estuaries 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.

25. However, 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 stage[1]. 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.

26. 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.

27. 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.

28. 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. Similarly, it would conflict with those parts of the Framework that seek to protect the natural environment.

The biodiversity of the area

29. The site is bordered by ancient woodland. Natural England have advised that records of protected species exist in the area. Given the presence of mature vegetation within and on the boundaries of the site, it is likely that this could provide a suitable habitat for protected species or provide them with food. No accompanying ecology or biodiversity study has been provided with the application.

30. I am mindful of the advice provided in paragraph 99 of Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. The circular further advises that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

31. In the absence of such a study I cannot be satisfied that the development would not have an unacceptable impact upon the biodiversity of the area and so the proposed development would be contrary to Policy LB9 of the Local Plan which seeks, amongst other things, to avoid a net loss of biodiversity/nature conservation value and actively pursue opportunities to achieve a net gain. Similarly, the development would be contrary to the aims set out in Section 15 of the Framework.

Affordable housing

32. There is no dispute between the parties whether the development should make provision for affordable housing and the appellant has indicated a willingness to enter into a planning agreement, in the form of a Unilateral Undertaking (UU), at reserved matters stage to deliver a financial contribution in lieu of provision on site in accordance with the requirements of Policy HD2 of the Local Plan.

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

However, no such agreement has been submitted to accompany this appeal. The provision of affordable housing is a matter which needs to be resolved as part of this appeal because it relates to the principle of development.

33. I therefore conclude that the proposal fails to make adequate provision for affordable housing. The proposal is therefore contrary to Policy HD2 of the Local Plan, which requires the provision of affordable housing within qualifying developments, the Council's Development Contributions Supplementary Planning Document (2007), which explains the Council's approach to developer contributions, and those parts of the Framework that seek to provide affordable housing within development.

Provision for libraries and secondary education

34. Policy QL5 of the Local Plan requires that provision shall be made to accommodate local community services within new residential development and mixed use developments, whilst EMP9 requires the City Council to work with the Education Authority and other school and education providers to ensure that provision is made for educational needs, including those arising from new development.

35. The County Council has identified a need for contributions towards the provision of library books and secondary education that would result from the proposed increase in the number of dwellings in the area. The appellant has accepted the sums identified by the County Council for these contributions and stated that he will provide these through a UU at submission of reserved matters. However, a UU has not been submitted with this appeal. Consequently, these impacts of the development have not been addressed.

36. I therefore find that the proposal does not make suitable provision for local libraries bookstock and secondary education. It is therefore contrary to Policies QL5 and EMP5 of the Local Plan.

The free and safe movement of vehicles

37. Whilst the proposal is in outline with all matters, including access, reserved, the location plan indicated that it is intended to use the existing field access. The Highway Authority has identified the need for 43 metres of visibility for emerging drivers, measured at a point set back 2.4 metres from the edge of the carriageway and the appellant has not disputed the appropriateness of this.

38. Whilst the appellant considers that this visibility can be provided, and the Highway Authority has no objection to the principle of the proposal, no plan setting out the visibility splays at the access has been provided to demonstrate this.

39. On the evidence before me it is evident that a safe, practicable access could be provided, incorporating the required visibility splays, albeit at the loss of trees and planting on the frontage, which I have addressed above.

40. I therefore conclude that the proposal makes suitable provision for the free and safe movement of vehicles and is therefore in accordance with policy DBE3 of the Local Plan in as much as that policy requires that development should allow the safe movement of pedestrians, cyclists and cars within and around the proposed development, and with those parts of the Framework that seek safe and suitable access to the site to be achieved for all users.

Other Matters

41. I note that the appellant has expressed dissatisfaction with the way in which the Council has handled his application. However, this is a matter between the appellant and the Council.

Planning Balance

42. The proposal would provide an additional nine dwellings, including two custom-built dwellings, to boost local housing stock. Paragraph 68 provides some support for development of limited scale, as these have potential to be built-out quickly. However, there is no proposed timescale for development in the evidence before me. Irrespective of the Council's position in regard to its ability to demonstrate in excess of five years supply of housing land in this area, such ability does not mean that development should be capped as the Government's objective is to significantly boost the supply of homes, including custom build dwellings, of which, from the evidence before me, none have yet been provided by the Council.

43. There would be benefits to the local economy in terms of short term employment in the construction industry and longer term support to local shops, businesses and community facilities, albeit that the benefit to local shops and businesses is most likely to be felt in the local town.

44. Taken together, and given the scale of the development, these benefits carry moderate weight. These benefits would, however, be outweighed by the harm that I have found to the Council's spatial strategy, the character and appearance of the area, the European Protected Sites, the ecology of the area, and the failure of the proposal to make provision for affordable housing, secondary education and libraries.

Conclusion

45. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR