
Appeal Decision

Site visit made on 7 January 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2020

Appeal Ref: APP/H2265/W/19/3235009

Site of the former Upper Bell Inn Public House, 1 Chatham Road, Blue Bell Hill, Aylesford, ME5 9QY

- 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 K Tremain (Path Property Group Ltd.) against the decision of Tonbridge & Malling Borough Council.
 - The application Ref: TM/17/01864/FL dated 30 June 2017, was refused by notice dated 11 February 2019.
 - The development proposed is the residential re-development of former public house site with an apartment block housing 10 no. flats and 4 no. semidetached houses (4-bed units) together with associated access, car parking and amenity facilities.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposed development in the banner heading above is taken from the application form. During the course of the consideration of the application by the Council, the proposals were amended. The amendments included the replacement of the 4 no. semidetached houses (4-bed units) originally proposed with 2 no. terraces of 3 houses (3-bed units). These revised proposals were those on which the Council made its decision and, for the avoidance of doubt, on which I have determined this appeal.
3. The appellant and the Kent Downs AONB Unit have drawn my attention to the emerging Tonbridge and Malling Borough Council Local Plan (TMBCLP), which was submitted for public examination in January 2019. From the evidence before me the TMBCLP is still at the Examination stage. Paragraph 48 of the National Planning Policy Framework (the Framework) explains that weight may be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies in the emerging plan to the Framework.
4. Although the TMBCLP has reached an advanced stage in its preparation and the policies to which I am referred are broadly consistent with the Framework, the independent examination has yet to be concluded. Furthermore, I have not been advised whether or not there are any unresolved objections to the policies to which these parties refer. I can therefore give only limited weight to these emerging policies in my determination of this appeal.

5. Reference is made in decision notice to the 2018 version of the Framework. The Framework was further revised in February and June 2019. I have had regard to the latest version in my determination of this appeal. As the paragraphs to which the main parties refer are unchanged in the most recent version I am satisfied that this approach has not prejudiced their respective cases.
6. During the course of the determination of this appeal, the appellant submitted a planning obligation in the form of a unilateral undertaking relating to the payment of financial contributions towards secondary education provision and library book stock. I return to this matter below.
7. The 2019 Housing Delivery Test (HDT) results were published on 13 February 2020. These show a change in the measurement for Tonbridge and Malling Borough Council from 155% in the 2018 HDT to 117%. However, this change does not result in the need to change the buffer to be included in the supply of specific deliverable sites and it has not been necessary to consult the parties on this matter. I consider the housing land supply situation under Other Matters.

Main Issues

8. The main issues are i) the effect of the proposed development on the character and appearance of the area, with particular regard to the location of the site within the Kent Downs Area of Outstanding Natural Beauty (AONB) and ii) whether the proposal makes adequate provision for affordable housing and any additional need for open space arising from the development.

Reasons

Character and appearance

9. The appeal site is located in the village of Blue Bell Hill and within the Kent Downs AONB. Section 85 of the Countryside and Rights of Way Act 2000 requires, in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. Paragraph 172 of the Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONB and the scale and extent of development within these designated areas to be limited.
10. The appeal site is just to the south-east of the junction of Maidstone Road and Mill Lane. Both roads are characterised by dwellings fronting and set back from the highway with lawns, gardens and hard standings to the frontages, giving Maidstone Road and Mill Lane beyond the appeal site a spacious feel.
11. The dwellings on Maidstone Road are a mixture of detached and semi-detached 2-storey dwellings, bungalows and chalet bungalows of varying ages whereas the dwellings on Mill Lane are detached, predominantly 2-storey and of a more consistent age. Dwellings on both roads vary in design and materials. The pattern of development along Maidstone Road is more regular than that on Mill Lane, where a number of properties are set well back from the road. The trees at the eastern end of Mill Lane mark the transition from village to countryside.

12. The site formerly accommodated the Upper Bell public house but this was demolished, from the evidence before me, in 2013. The site is currently derelict and unattractive and detracts from the character and appearance of the area. The Council and many third parties accept in broad terms that redevelopment in some form is the most appropriate way of securing the remediation of the site. However, development proposals should still have regard to the policies of the development plan and the national legislative and policy framework for AsONB.
13. The proposed development comprises an apartment block and two small terraces. The apartment block would be on four levels over 3.5-storeys and be approximately 12.5 m high to the ridge. The appellant's evidence is that the former Upper Bell public house that formerly stood on the appeal site was approximately 12.1 m high to the ridge. The submitted drawings indicate that the proposed development would be only slightly higher than the neighbouring property to the east, which has accommodation within its mansard roof, and the appellant contends that the ridge height of the apartment block would be comparable with the adjacent 2-storey houses.
14. However, the proposed apartment block would have a substantially greater overall bulk than the former public house, particularly at the level of the upper floors, and would be of a significantly larger scale than other domestic-scale properties on Maidstone Road or Mill Lane. The gable end of the apartment block would dominate Mill Lane to the north and the bulk of the block would be readily apparent from Mill Lane and The Downs to the east and from Maidstone Road and Common Road to the west. Its size, form and design would be at odds with other properties in the vicinity and whilst, from the evidence before me, it would not be prominent in longer distance views from the wider area, it would be prominent and obtrusive in the street scene, notwithstanding the significant change in ground levels on the site.
15. The appellant contends that the former Upper Bell public house was at odds with the prevailing character and uses of the area. However, the public house has been demolished and is therefore has limited weight as a benchmark. From the evidence before me, the former Upper Bell public house was a landmark building on this prominent site but the proposed development would not represent an appropriate replacement landmark building due to the scale of the apartment block.
16. Furthermore, although some of the properties on Mill Lane have large driveways, the proposed large parking / turning area for the apartment block would also be an incongruous element of the proposals. The proposed development would also result in the loss of a horse chestnut, protected by a Tree Preservation Order (TPO). I observed during my site visit that this tree is clearly visible from Maidstone Road and Common Road near the site and that it contributes positively to the amenity of the area. A number of third parties have referred to the tree in their objections to the proposed development. Although its loss was not a specific reason for refusal, I consider that its loss would be harmful to the character and appearance of the area. I am not persuaded that the proposed planting, which would take some time to mature, would adequately compensate for the loss of this protected tree.

17. The first reason for refusal refers to the density of the proposed development. The Council identifies the density of existing development in the vicinity of the appeal site as being between 20 and 35 dwellings per hectare (dph). The proposed development would be 35 dph, which would be at the upper end of this range. The appellant draws my attention to two relatively recent developments in Blue Bell Hill which had densities of 41 and 33 dph. However, from the evidence before me, these developments are located on Maidstone Road some way from the appeal site and have a different context.
18. Nevertheless, I do not find that the density of the proposed development would, in itself, be materially harmful to the character and appearance of the area. Whilst flats are not a common form of accommodation in Blue Bell Hill, I see no objection in principle to the development of flats on the site and, from the evidence before me, the Council has not expressed any such objection.
19. Turning to the effect of the proposed development on the AONB, the settlement of Blue Bell Hill has expanded through further development since the AONB was designated in 1968. The village has a different character to the undeveloped down land, woodland and other habitats of the AONB, including the land to the west of the appeal site and across the A229. I accept that Blue Bell Hill is not specifically identified in the section of the Kent Downs AONB Landscape Design Handbook that the appellant has provided to me.
20. I also acknowledge that of the characteristics the public selected as the most important components of natural beauty and the most valued features listed in Table 1 of the Kent Downs AONB Management Plan 2014-2019 (AONBMP), only "villages and village life" apply to the appeal site or Blue Bell Hill village. Nevertheless, it is important that the character and appearance of the villages within the AONB, including Blue Bell Hill, are conserved and enhanced in accordance with paragraph 172 of the Framework.
21. Although not cited in the reasons for refusal, reference is made to Policy CP7 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (2007) (the Core Strategy) within the Council's Committee Report and Statement of Case, and in the statement from the Kent Downs AONB Unit. Policy CP7 seeks to protect the AONB in the Borough from development that would be detrimental to their natural beauty and quiet enjoyment, including their landscape, wildlife and geological interest.
22. The policy sets out two exceptions to this approach of restraint; "*major development that is demonstrably in the national interest and where there are no alternative sites available or the need cannot be met in another way*" and "*any other development that is essential to meet local social or economic needs*". Any such development must have regard to local distinctiveness and landscape character and use sympathetic materials and appropriate design.
23. As regards 'quiet enjoyment', notwithstanding the reference by third parties to the use of the area by walkers, cyclists and horse-riders, as the appeal site is within a village and close to the A229, I do not consider that the proposed development would be significantly detrimental to the quiet enjoyment of the

- AONB. Nor have I any evidence that the development would be harmful to the wildlife or geological interest of the AONB.
24. The appeal site lies within a village. In my experience it is not uncommon for AsONB to include villages and 'landscape' can be a broad term encompassing settlements as well as undeveloped countryside. I have found that it would be harmful to the character and appearance of the area and it is thus necessary to consider whether either of the two exceptions in Policy CP7 apply.
25. 'Major development' is not defined in the Core Strategy. Footnote 70 of the Framework explains that the definition of 'major development' in the Glossary to the Framework is not for the purposes of paragraphs 172 and 173 of the Framework which refer to 'major development' in designated areas and Heritage Coasts. Footnote 55 of the Framework explains that, for the purposes of these paragraphs, whether a proposal is 'major development' is a matter for the decision maker, *"taking into account its nature, scale and setting, and whether it could have an adverse impact on the purposes for which the area has been designated"*.
26. In my judgement, considering the matters set out in footnote 55, in this instance the proposed development does not constitute major development in the AONB. Although the scale of the proposed apartment block would result in an adverse impact on the character and appearance of the area, the proposals are residential development within an existing settlement and the overall size of the development in relation to the size of the village would be modest. I note that neither the Council nor the AONB Unit specifically contend that the proposals represent major development in terms of Policy CP7 or the Framework.
27. As I do not consider the proposal to constitute major development, clause (a) of Policy CP7 does not apply. However, I note that the appellant argues that the public interest would be served by the proposed development as it would make a 'major' contribution to housing provision in an area of housing need. I return to this matter under Other Matters below.
28. Turning to the second exception under clause (b) of Policy CP7, I have no evidence that that this particular development is essential to meet local social or economic needs as opposed to helping to meeting the need for housing in the Borough as a whole. Even if I did, Policy CP7 requires any such development to have regard to local distinctiveness and landscape character and use sympathetic materials and appropriate design.
29. I have not been advised of any particular characteristics or features of Blue Bell Hill that make it locally distinct, nor were any apparent to me during my site visit, and the proposed materials, as amended, are acceptable. However, a lack of local distinctiveness does not mean that the village lacks character, and I have concluded above that the proposed development would be harmful to the character and appearance of the area principally because of the massing of the proposed apartment block.
30. The Kent Downs AONB Unit refer to Policy LP12 of the emerging TMBCLP which, from the evidence before me, also seeks to protect the special

qualities, character and tranquillity of the AONB and requires regard to be had to the relevant AONB Management Plan. However, as explained above, I can only give this policy limited weight.

31. The decision notice refers to the AONBMP. The vision for the AONB set out in the AONBMP refers to the qualities and distinctive features of the AONB being valued, secured and strengthened in 2034. Although the list of qualities and features do not include the villages of the AONB, the vision also refers to 'robust responses' to development pressures having enhanced landscape character. For the reasons given above, the proposed development would not enhance the landscape character of the AONB.
32. The AONB Unit refers to other appeals where the AONBMP was been treated as a material consideration¹ and refers to a number of policies within the AONBMP. Of these, Policies SD2 and SD9 seek to conserve and enhance the local character, qualities and distinctiveness of the AONB in the design, scale, setting and materials of new development.
33. The AONBMP was due for its 5-yearly review in 2019 and, from the evidence before me, some changes are proposed for the third revision. However, as the policies to which my attention has been drawn accord with the national legislative and policy context for ASONB, I afford these policies significant weight in this appeal, although the weight I can attach to them is less than that to development plan policies.
34. In summary, the proposed development would fail to respect, conserve or enhance the character and appearance of the area. I therefore conclude that it would be contrary in this respect to Policy CP24 of the Core Strategy, which requires, amongst other things, all new development to be well designed and be designed to respect the site and its surroundings in scale, density, layout, siting, character and appearance. It would also conflict with Policy CP7 of the Core Strategy in respect of its effect on the AONB.
35. The proposed development would also be contrary in this respect to Policy SQ1 of the Managing Development and the Environment Development Plan Document (2010) (the MDEDPD), which also requires, amongst other things, all new development to protect, conserve and, where possible, enhance the character and local distinctiveness of an area.
36. The proposed development would conflict with Policies SD2 and SD9 of the AONBMP and paragraph 172 of the Framework. It would also conflict with paragraph 127 of the Framework, which requires planning decisions to ensure that developments add to the overall quality of an area and are sympathetic to local character, including the surrounding built environment and landscape setting.

Provision for affordable housing and open space

37. Policy CS17 of the Core Strategy requires, in the rural area, 40% of all new developments of 5 dwellings or more to be affordable housing. For the proposed development, this would be 6 dwellings. The requirement for a proportion of the development to be affordable housing is consistent with

¹ Including APP/U2235/W/15/3131945

paragraphs 63 and 64 of the Framework as, although the definition of 'major development' in the Glossary to the Framework does not apply to paragraphs 172 and 173 of the Framework, the proposed development is a 'major development' for the purposes of paragraphs 63 and 64 of the Framework.

38. However, the proposals make no provision for any of the dwellings to be affordable. The appellant contends the development would not be viable if it included affordable housing. To support this contention, the appellant refers to Policy LP39 of the emerging TMBCLP which, from the evidence before me, only requires 25% affordable housing on developments of 11 dwellings or more in the north-east of the Borough, in which the appeal site is located. However, this policy is not yet adopted and I can only give it limited weight. Even if I could give it full weight, the proposals would fail to comply with the policy as it would require 4 of the dwellings to be affordable.
39. The appellant also draws my attention to two previous planning permissions in Blue Bell Hill granted without any requirement for affordable housing, including one for the conversion of the former Upper Bell public house to 3 flats and the erection of 4 houses. However, I do not have the full details of these developments and I must determine this appeal on the proposals and evidence before me.
40. In that respect, the appellant has not provided me with any persuasive evidence that the provision of affordable housing as part of the proposed development would render it not viable. Paragraph 57 of the Framework makes it clear that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.
41. Policy OS3 of the MDEDPD requires open space provision in accordance with the quantitative standards set out in Policy Annex OS3 on all residential developments of 5 units or more (net). Where it is impractical or inappropriate to provide open space on-site, off-site provision, or a financial contribution towards it, will be sought. No such provision or contribution is before me and again I have no evidence from the appellant that the requisite contribution would result in the proposed development being unviable.
42. The appellant refers to a request from the Council to 'clean up' the land to the west of the site, which the appellant estimates would cost £50,000. However, I have no evidence of this request or details of any works required and so am unable to give this matter any significant weight.
43. I therefore conclude that the proposed development fails to make adequate provision for affordable housing and open space and so would be contrary to Policy CS17 of the Core Strategy and Policy OS3 of the MDEDPD in these respects.

Other Matters

44. It is common ground between the main parties that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. From the evidence before me, the latest published figures show that the supply as at 31 March 2018 is approximately 3 years. The Council has not provided any update on

this position. I have referred to the latest HDT measurement under Procedural Matters.

45. As a consequence, paragraph 11 of the Framework is engaged such that the policies which are most important for determining the application cannot be considered to be up-to-date. Accordingly, the presumption in favour of sustainable development as set out in paragraph 11 of the Framework requires planning permission to be granted unless either of two circumstances apply. The first of these circumstances is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. These policies are set out in footnote 6 to paragraph 11 and include those relating to AONBs.
46. Given my conclusions above on the matter of the effect of the proposed development on the character and appearance of the AONB, paragraph 172 of the Framework provides a clear reason for refusing the development proposed. Therefore, in accordance with paragraph 11 d) i of the Framework, the presumption in favour of sustainable development does not apply in this case.
47. Nevertheless, I accept that the provision of an additional 16 dwellings would contribute to meeting the shortfall in the housing land supply. Although I consider that it would be a relatively modest contribution, the development would therefore accord with the Government's objective, as set out in the Framework, of significantly boosting the supply of housing. The provision of additional housing would also have a social benefit. The proposed development would have a potential economic benefit from the construction, albeit temporary, and from the contribution of future occupiers to the local economy.
48. The site is previously developed land within the confines of Blue Bell Hill as shown on the Local Plan Proposals Map. The principle of the proposed development is therefore acceptable. I observed during my site visit that there is also a bus stop within easy walking distance of the site. The development would also make effective use of land.
49. However, paragraph 117 of the Framework makes it clear that making effective use of land should also safeguard and improve the environment. As I conclude above that the development would have an adverse impact on the character and appearance of the area, notwithstanding the remediation of the site, it would conflict with paragraphs 117 and 127 of the Framework and would not achieve the environmental objective for the planning system set out in paragraph 8 of the Framework.
50. The proposed development would be likely to lead to an increase in demand for school places. Kent County Council (KCC) has therefore sought financial contributions towards education provision. The amounts of these contributions were revised during the determination of the application, but in its Statement of Case submitted for this appeal, KCC has requested a contribution of £4,115 per applicable house and £1,029 per applicable flat towards secondary school places within the DfE School Planning Group of Malling (non-selective) and Maidstone and Malling (selective) Planning Group which will serve the needs arising from the proposed development. The proposed development would also be likely to lead to an additional demand for library books and KCC has requested a contribution of £48.02 per dwelling towards the library book stock.

51. The appellant has submitted a signed unilateral undertaking dated 10 February 2020 for the payment of financial contributions towards secondary school places and library books of the amounts requested by KCC. I am satisfied that the obligation meets the tests of Community Infrastructure Levy Regulation 122(2) and paragraph 56 of the Framework and I have therefore had regard to it in the determination of this appeal.
52. I note that there was significant support for the proposed development as providing much needed housing, being of good, contemporary design and remediating the site. However, this support does not outweigh the harm I have identified to the character and appearance of the area and the AONB and the failure to make adequate provision for affordable housing and open space, with consequent conflict with the development plan and the Framework.
53. Representations from third parties include contentions that the appeal site is within a Conservation Area and the Wouldham to Detling Escarpment Site of Special Scientific Interest (SSSI). However, the Local Plan Proposals Map indicates that the site is not within a Conservation Area and I have no evidence to confirm that it is within the SSSI.

Planning Balance

54. The proposed development would provide 16 dwellings in a Borough with an acknowledged shortage of deliverable housing sites. The development would have some economic, social and environmental benefits, including a financial contribution towards secondary school places and library book stock. These are significant benefits to which I attach considerable weight.
55. However, the proposed development would be harmfully at odds with the character and appearance of the area. It would fail to conserve or enhance the landscape of the Kent Downs AONB, to which I must give great weight. The development would fail to make any provision for affordable housing or open space. The proposed development would conflict with a number of policies in the development plan as a consequence.
56. I thus conclude that the harm to the AONB and to the character and appearance of the area provide clear reasons for refusing the development and that, on balance, that the proposals would not represent sustainable development.
57. Neither the Framework nor any other material considerations indicate that a decision should be made other than in accordance with the policies of the adopted development plan.

Conclusion

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

Martin Small

INSPECTOR