
Appeal Decision

Site visit made on 18 May 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2020

Appeal Ref: APP/Z2260/W/20/3244464

Land north of Monkton Road, Hoo, Minster

- 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 St Nicholas Court Farms Limited against the decision of Thanet District Council.
 - The application Ref F/TH/19/1347, dated 2 October 2019, was refused by notice dated 11 December 2019.
 - The development proposed is change of use of land, creation of vehicular access and erection of 4 detached dwellings with associated parking and gardens.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address and the description of proposed development from the planning application form, although I note these are expressed differently on other documents.
3. A Unilateral Undertaking (UU) has been submitted in support of this appeal. I will deal with this matter further below.

Main Issues

4. The main issues in this case are: -
 - (a) The effect of the proposal upon the character and appearance of the area;
 - (b) The effect of the proposed development upon ecology, in particular ground nesting birds;
 - (c) Whether or not the proposal makes adequate provision for affordable housing and any additional need for infrastructure arising from the development; and
 - (d) The effect of the proposal on the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site and the Sandwich Bay and Hackling Marshes Site of Special Scientific Interest (SSSI).

Reasons

Character and appearance

5. Policy CC1 of the Thanet Local Plan 2006 (the Local Plan) indicates that “*within the open countryside new development will not be permitted unless there is a need for the development that overrides the need to protect the countryside*”. As the proposal would be located in the countryside it would be contrary to this policy unless there is an overriding need for the development. However, the Council does not have its five-year supply of deliverable housing sites in place and in accordance with the National Planning Policy Framework (the Framework) Policy CC1 can only be afforded limited weight in this appeal.
6. Policy D1 of the Local Plan seeks new development to, amongst other matters, respect or enhance the character or appearance of the surrounding area. Policy CC2 indicates that in the Wantsum Channel North Shore Area development will only be permitted that would not damage the setting of the Wantsum Channel.
7. The character of the area is one of sporadic houses, farms and businesses interspersed by fields along this stretch of Monkton Road. Open countryside defines the character of the wider surrounding area. Although the appeal site adjoins and opposes existing dwellings, the proposal relates to agricultural land. Whilst the appellant comments that the appeal site does not link well with the adjoining fields for the purposes of crop planting and harvesting due to size of the machinery required, it is nonetheless an undeveloped agricultural site even if different in character to other surrounding agricultural land.
8. The proposal would create four two-storey dwellinghouses. The appearance of the development would be one of substantial houses together with a formalised layout with highways, parking and domestic landscaping and gardens. The proposal would also remove some the existing substantial vegetation that runs along the site frontage. A post and rail boundary fence with hedge planting behind are proposed along the site frontage which would be of domestic scale and appearance. The site frontage would also be punctuated by a new site access.
9. The development would have a significant urbanising effect upon the site and would substantially change its countryside character. This would result in a diminution of the rural character and appearance of this location and the countryside. The residential development, particularly being a two-storey development, would be visually prominent and intrusive within this rural landscape for these reasons. Therefore, the visual harm of the proposal to the character and appearance of the countryside would be substantial. Furthermore, the visual harm of urbanising development would be clearly visible in public views from Monkton Road even if some existing trees are retained at the front edge of the site and additional landscaping provided within the site boundaries, as is shown on site section drawing 219/20-11.
10. The site forms part of the Wantsum Channel North Shore Area landscape character area. Whilst there is some sporadic development, the countryside forms a distinctive part of the landscape character between the former channel side villages of Minster and Monkton. It has been suggested that this parcel of

land has a different character to the agricultural land around it having been sub-divided in the 1960's and not been farmed like other land. Nonetheless, the intrinsic quality of the land does not justify lesser weight being given to its landscape protection. It is still open agricultural land and it functions as part of the rural landscape and, as such, is of value to the quality of the Wantsum Channel North Shore Area landscape. I observed that some of the site lies within a dip in the landscape and this would reduce the impact of the proposed development upon long distance open views across the landscape. Nonetheless, placing urban development in this site would be damaging to the setting of the Wantsum Channel North Shore landscape character area.

11. I acknowledge that the proposal has found favour with the Council's Conservation Officer. Whether or not the layout and dwellings are considered to be acceptable on their own merits, this would not overcome the harm that I have identified above arising from the encroachment of urban related development into this open undeveloped countryside landscape.
12. For these reasons, the proposed development would have a harmful effect upon the character and appearance of the area, and this brings the proposal into conflict with Policies D1 and CC2 of the Local Plan. These policies are consistent with paragraph 170 of the Framework that aim to protect and enhance valued landscapes and to recognise the intrinsic character and beauty of the countryside. Emerging Plan Policy SP23 also seeks to conserve and enhance Thanet's landscape character and local distinctiveness. Although the proposal would conflict to some extent with Policy CC1 in so far as it seeks to protect the countryside, as noted above, this policy can only be afforded limited weight.

Ecology

13. The Framework requires planning decisions to protect and enhance sites of biodiversity value. A Preliminary Ecological Appraisal of the site accompanied the planning application. This Appraisal identifies that the site has a high potential to support breeding birds within the trees and scrub and that all species of bird whilst actively nesting are afforded legal protection under the Wildlife & Countryside Act 1981 (as amended). The Appraisal recognises that consideration must be given to the timing of any site clearance works by avoiding bird nesting season (which extends from March – August inclusive) or only after a survey has confirmed the absence of nesting birds.
14. Although the Council raises concern that no survey work has been provided to assess the impact of the proposed development on ground nesting birds, as I see it, having regard to Kent County Council's Ecological Advice Service comments, this would only be required if the development is commenced during bird nesting season. The Ecological Advice Service seeks additional information to assess the impact upon ground nesting birds and provide details of any mitigation which may be required.
15. By way of providing enhancement of biodiversity at the site, the Appraisal indicates that new hedgerow/trees/scrub planting and bird nesting boxes could be erected as part of the proposed development to replace habitat lost. However, the Ecological Advice Service wishes to confirm which enhancements will be incorporated into the site prior to any grant of planning permission.

16. The imposition of an appropriately worded condition would ensure that the timing of site clearance works could avoid bird nesting season or, if this was not possible, that site clearance works would only taking place after a survey has confirmed the absence of nesting birds. With regard to which enhancements would be incorporated into the site, on the available evidence I cannot be certain that new landscaping or the provision of bird nesting boxes would provide suitable mitigation for ground nesting birds as it is not clear that such mitigation measures would be used by those birds. I therefore cannot be certain that the effects of the development would be mitigated. Furthermore, it has not been made clear how the delivery of the mitigation relied upon by the appellant would be secured and delivered.
17. For the above reasons, the proposed development has not satisfactorily demonstrated that it would not have a harmful effect upon ecology at the site relating to ground nesting birds. This brings the proposal into conflict with paragraphs 170 and 175 of the Framework that seek decisions to contribute to and enhance the natural environment and to adequately mitigate harm to biodiversity.

Infrastructure

18. Policy H14 of the Local Plan sets a threshold triggering an obligation to secure affordable housing as part of developments where the size of the site is 0.5 hectares or more irrespective of the number of dwellings proposed. The Framework sets out at paragraph 63 that affordable housing should not be sought for development that is not major development, other than in designated rural areas. The glossary to the Framework sets out that major development for housing would relate to development where 10 or more homes, or sites of 0.5 hectares or more are proposed. This threshold reflects the Town and Country Planning (Development Management Procedure) (England) Order 2015 site area criteria for major applications.
19. Whilst the proposal relates to a development of 4 residential units and irrespective as to whether or not the Council categorised the application as a major or minor development, the planning application form indicates that the site would have an area of 0.5 hectares. As such the proposal would meet the threshold of the Framework and the 2015 Order that would trigger affordable housing provision. This corresponds to the threshold set by Policy H14. Policy H14 requires 30% of the residential units to be provided as affordable housing. This would equate to one unit within the proposed scheme.
20. The appellant highlights that there was an error in the size of the site provided on the planning application form and a 'rounded up' site area size was stipulated. I have not been provided with details as to site calculations. Furthermore, the difference in site area provided by the appellant to inform the appeal is extremely small. Nonetheless, the planning application form stipulates the size of the site to be 0.5 hectares and it is on this basis that the Council determined the planning application. In this case I consider the Council is correct to apply Policy H14, as equally am I.
21. Kent County Council has assessed the implications of the proposed development in terms of the delivery of community services and considers that it will have an additional impact on the delivery of its services, which will require mitigation either through the direct provision of infrastructure or the payment of an appropriate financial contribution. I consider that without the

contributions there would be a harmful effect in terms of the provision or availability of infrastructure or facilities for future occupiers of the proposed development. Therefore, the financial contributions are necessary to make the development acceptable in planning terms. They would be directly relevant to the development and fairly and reasonably related in scale and kind to the development. A planning obligation would be an appropriate mechanism to secure the financial contributions having regard to the tests set by Regulation 122(2) of the Community Infrastructure (CIL) Regulations 2010 and paragraph 56 of the Framework.

22. The appellant has submitted a UU that would aim to secure the infrastructure contributions sought by Kent County Council. This UU indicates the appellant's willingness to provide these contributions. Nonetheless, the UU is undated. In these circumstances the UU would not be effective as a planning obligation, therefore, I am unable to take the UU into account in reaching my decision when assessing the effect of the scheme upon infrastructure.
23. The proposed development, therefore, would not make adequate provision for affordable housing and infrastructure arising from the development. The proposal would, therefore, conflict with Policies H14, CF2 and SR5 of the Local Plan that seek to secure affordable housing and appropriate infrastructure contributes.

SPA and SSSI

24. The Council has identified a likely significant impact upon the Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marches SSSI as a result of increased recreational activity arising from new residential development and related population growth. The need for mitigation has been acknowledged by the appellant and the UU indicates the appellant's willingness to secure a financial contribution to subsidise the District wide mitigation strategy. However, as noted previously, that UU is incomplete. Notwithstanding this, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail or the need for an appropriate assessment to be undertaken to assess the development's effect upon the integrity of the protected habitats.

Planning Balance

25. At the heart of the Framework is the presumption in favour of sustainable development. However, although the emerging Local Plan is at a reasonably advanced stage the Council does not currently have a five year of deliverable housing sites in place. Consequently, Paragraph 11d) of the Framework is triggered and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal.
26. The development would provide benefits in terms of delivering an additional four windfall homes to boost local housing supply and would support social well-being by providing new family homes. There would be minor benefits to the local economy in terms of short-term employment in the construction industry and longer-term support for local services. I acknowledge that the appeal site would represent a sustainable location in regard to accessibility. I note that this corresponds with the opinions of an Inspector and the Council in relation to recent proposals close by (Appeal Ref: APP/Z2260/W/16/3162744 &

Planning Ref: F/TH/19/1026). These are matters in the proposal's favour to which I attach moderate weight.

27. Nevertheless, I have found that the proposal would be harmful to the character and appearance of this area and the Wantsum Channel North Shore Area landscape character area. There would also be harm arising from the lack of affordable housing provision and infrastructure contributions. Individually and collectively these are significant factors weighing against the scheme.
28. I, therefore, conclude that the adverse impacts would significantly and demonstrably outweigh the moderate benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole. Consequently, the presumption in favour of sustainable development does not apply in this case.

Conclusion

29. For the reasons given, I conclude that the proposed development conflicts with the development plan and there are no other considerations, including the advice of the Framework, that outweigh that conflict. Therefore, the appeal should be dismissed.

Nicola Davies
INSPECTOR