
Appeal Decision

Site visit made on 4 June 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th June 2020

Appeal Ref: APP/A2280/W/20/3245079

Land North of Merryboys Road, Cliffe Woods, Kent ME3 7TP

- 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 Matthew Brett-Chaponnel, Classicus Estates Ltd against the decision of The Medway Council.
 - The application Ref MC/19/1455, dated 3 June 2019, was refused by notice dated 5 December 2019.
 - The development proposed was described as 'outline application with all matters reserved except for access for the construction of six self-build detached dwellings with access from Merryboys Road, associated landscaping and groundworks'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the banner heading above is taken from the application form. The application was originally made in outline with approval sought for access only, but a revised application form dated 25 July 2019 subsequently indicated that approval was additionally sought for landscaping. It is clear from the Council's report that the proposal was considered accordingly, and the description stated on the decision notice was 'outline application with all matters reserved except for access and landscaping for the construction of six self-build detached dwellings with access from Merryboys Road, associated landscaping and groundworks'. This is also the description entered on the appeal form, and I have determined the appeal on the same basis.
3. The details considered by the Council include a proposed site plan and street scene (plan nos 18/17/SK03 and 18/17/SK08). Although these are not marked as 'indicative', the appellant and Council have referred to them as such. The revised application form also sets out that layout, appearance and scale are reserved for future approval. Insofar as they relate to these reserved matters, I have therefore treated the details shown on these plans as indicative.

Main Issue

4. The main issue in this appeal is whether or not the proposed development would provide a suitable location for housing, having regard to its effect on the landscape character and appearance of the area and the provisions of the development plan.

Reasons

5. The appeal site is adjacent to, but outside of the boundary of the village of Cliffe Wood as defined by the Medway Local Plan 2003 (MLP). It is therefore within the countryside in planning policy terms.
6. Policy H11 of the MLP allows for housing development in the rural area outside of settlement boundaries where an exceptional justification can be made. However, Policy BNE25 outlines that development will only be permitted in the countryside where it is on a site allocated for that use, or comprises development meeting one of a list of defined circumstances. The proposal does not fall within any of these circumstances and the site is not allocated for development. Accordingly, it would conflict with this part of policy BNE25.
7. Policy BNE25 also requires that development maintains, and wherever possible enhances, the character, amenity and function of the countryside and offers a realistic chance of access by a range of transport modes. Alongside this, MLP Policy BNE47 further requires that development served by or affecting important rural lanes does not adversely affect the value of the lane including in terms of its landscape and amenity.
8. Merryboys Road is also designated as an important rural lane under the MLP. The appeal site is part of a paddock to the north side of the lane, close to the junction with Perry Hill and Cooling Common. The open site and surrounding agricultural fields, together with the strong hedgerows and lack of footpaths along its north side near to the site result in a distinctly open and rural character and appearance to the north of Merryboys Road and contribute positively to the setting of Cliffe Wood. Adjacent to the site are a small group of dwellings. These are of mixed traditional designs, and are arranged in an irregular ribbon around the junction of Merryboys Road as it meets Perry Hill. As a consequence, they have a loose, informal appearance in keeping with their rural setting at this crossroads.
9. In contrast, the fairly close arrangement of dwellings fronting Merryboys Road between the appeal site and its junction with View Road together with the recent development at Berrywood Close¹ give a more built-up and suburban character to the southern side of Merryboys Road and the edge of Cliffe Wood. The footpath to the south side of Merryboys Road which runs between Cooling Common and View Road further connects the development here with Cliffe Wood, in visual as well as access terms.
10. While there may be no difference in landscape designation, given the differing character to either side of the road, I nevertheless find that Merryboys Road forms a clear visible natural boundary between the existing built up area around Cliffe Wood and the countryside beyond. Consequently, the appeal site and adjacent dwellings to the north of Merryboys Road appear detached and distinct from the development to the south.
11. The layout, appearance and scale of development on the appeal site are reserved for future consideration. The proposal is also for a self-build development and dwellings on the site would therefore be individually designed. Nevertheless, I see no reason that it would not be possible for the detailed design and scale of the dwellings to respond sympathetically to the

¹ Application reference MC/17/0962

- established rural character of the area and existing buildings nearby, with details including on the selection of materials and architectural detailing established through the agreement of a design code.
12. However, although the layout shown on the submitted drawings is indicative, the position of the access to the site forms part of the application. The arrangement of the proposed dwellings around this access would result in dwellings positioned behind those closest to Merryboys Road. I note that the submitted details show that it would be possible to provide an irregular form of development with regard to the scale, form, massing and layout of buildings, and that there are other developments with courtyard layouts in the wider area. Nevertheless, the indicated arrangement would contrast unsympathetically with the linear ribbon character of the adjacent buildings.
 13. Moreover, the buildings themselves, as well as their curtilages and domestic paraphernalia that would typically be associated with residential use, would result in development spreading across a considerable proportion of the site. This would transform the appeal site from an open paddock to a housing development. In addition to the conspicuous loss of openness, the resulting urbanisation of the site would significantly harm the open and rural character and appearance of this part of Merryboys Road.
 14. In addition, the proposal includes creation of a footpath along part of the site frontage to improve pedestrian accessibility. Notwithstanding the proposed hedgerow set behind it and to the rest of the frontage beyond the access, this would further exacerbate the urbanising effect of development and the harm to the existing rural character of this side of Merryboys Road.
 15. I accept that the development would often be viewed in the context of the existing buildings to the south. Even so, it would represent a marked shift of much more intense built up development to the north of Merryboys Road and the proposal would be a conspicuous and incongruous intrusion into the countryside. In addition to breaching the natural boundary, the spread of development to the north side of Merryboys Road would result in coalescence with the separate cluster of existing buildings here, subsuming them within the village and diminishing their historic rural character.
 16. Given the scale of the development and that it would not extend further north than adjacent buildings on Perry Hill, its impact on the effectiveness of the overall gap separating Cliffe Wood and surrounding settlements would be fairly small. The appellant's Landscape and Visual Impact Assessment (LVIA) also suggests that changes resulting from the development would not be experienced across the wider Cliffe Woods Farmland Landscape Character Area (LCA) as a whole, and that the extension to the settlement will have little significance in the size of the character area. While that may be the case given the large overall size of the LCA, that does not mean that impacts would be insignificant or acceptable.
 17. The proposed retention and enhancement of boundary vegetation would provide for containment of the site, and would help to screen the development to some viewpoints. However, such screening would take some time to mature and would inevitably be partial and indeed the appellant's evidence suggests that the development is intended to be seen. My observations from visiting the site and surrounding area concur with the LVIA which confirms that the development will form a prominent component of views from close range, that

this will be detrimental to the enjoyment of views from neighbouring properties and sections of nearby public rights of way and that there will be an adverse effect on the settlement envelope.

18. The evidence before me does not indicate that the appeal site is part of a protected landscape, or that it would comprise valued landscape in the terms of paragraph 170 of the National Planning Policy Framework (the Framework). I also accept that the effect of the development would be fairly localised.
19. Nevertheless, although the appellant refers to suburbanisation of village edges as a key characteristic of the area, the Medway Landscape Character Assessment 2011 identifies this as one of the principal development impacts and detracting features on the LCA. I find that the spread of the village edge and more intense built form to the north side of Merryboys Road would be urbanising and intrusive. The proposal would result in a significant loss of openness on the site and a fundamental change to the rural character and appearance of the site and the intrinsic character of the countryside. The resulting harm to the countryside and this part of the landscape would not be mitigated by the proposed planting or landscape enhancements, or by detailed design considerations.
20. For these reasons, I conclude that the proposed development would result in significant harm to the landscape character and appearance of the area. It would not be of a type generally permitted within the countryside under the policies of the MLP, and would not therefore provide a suitable location for housing. As a consequence, there would be conflict with Policies S1, S2, H11, BNE25 and BNE47 of the MLP. Broadly, these policies together require that development maintains or where possible enhances environmental quality, design standards and the character, amenity and functioning of the countryside. The proposal would also be contrary to the requirement within the Framework to recognise the intrinsic character and beauty of the countryside.

Other Matters

21. I have considered appeal decisions referred to by the appellant in support of the appeal. In the case of Baytree Farm², the appeal decision pre-dates the Framework and relates to a site within the defined area of Allhallows village. The appeal at Hepworth Road³ was for a larger proposal for 30 plots and is within a different council area with different policy considerations. Accordingly, their circumstances are distinct from the appeal before me.
22. The appellant has also pointed to examples of development allowed by the Council or on appeal highlighting that development has been accepted outside of the settlement boundary of Cliffe Wood. However, the very limited details provided of the application for Land West of Merryboys Road⁴ means I can draw little direct or meaningful comparison with the circumstances of the appeal before me, and I have already outlined, the appeal site appears to me to be distinct in character from the south side of Merryboys Road where recent development has come forward⁵. The appeal decision at Land South of View Road⁶ related to a proposal for 50 retirement homes with different matters of

² Appeal reference APP/A2280/A/07/2052430

³ Appeal references APP/G2435/W/18/3214451 and APP/G2435/Q/18/3214498

⁴ Application reference MC/17/3572

⁵ Application reference MC/17/0962

⁶ Appeal reference APP/A2280/W/18/3202264

judgement and policy considerations, and the proposal at Town Road⁷ similarly related to a much larger development for up to 225 dwellings. I find that these appeals are not therefore directly comparable to the appeal proposal which I have in any case considered on its own merits.

23. The appeal site is located within 6km of the Thames Estuary and Marshes and Medway Estuary and Marshes Special Protection Area (SPA) areas and Ramsar Sites. These are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Regulations impose a duty on the competent authority to consider whether a proposal may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). This duty would now fall to me.
24. As part of the appeal, I have been provided with a copy of a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended). This includes a contribution towards measures intended to mitigate the effect of the proposal on the SPA/Ramsar Sites in accordance with the North Kent Strategic Access Management and Monitoring Strategy. Had I found the proposal to be acceptable, I would have found it necessary to investigate this matter in greater detail as part of my AA. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further as it could not be determinative.

Benefits and Planning Balance

25. There is no dispute between the main parties that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. Consequently, in accordance with the Framework, the policies which are most important for determining the proposal are considered to be out-of-date. In these circumstances, paragraph 11 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
26. The development would make effective use of the site. The 6 dwellings proposed would contribute to the Council's identified requirement for housing which would be an important benefit in light of the housing under-supply position. I recognise that alongside the objective of significantly boosting the supply of housing, the Framework highlights that small and medium sized sites such as the appeal site can make an important contribution to meeting housing requirements and are often built out relatively quickly. I also acknowledge the appellant's comment that they are a Small and Medium Sized Enterprise (SME) which the Housing White Paper February 2017 identified as important to helping address failures in the housing system through ensuring homes are built faster and with greater diversity in the market.
27. There are a range of local shops and services within Cliffe Wood. Many of these are near to Town Road, towards the west of the village, but it is not unrealistic that future occupiers would be able to reach services on foot or by cycling from the site. There are also nearby bus stops offering services connecting to larger settlements. Travel by modes other than the private vehicle would therefore be

⁷ Appeal reference APP/A2280/W/17/3175461

supported and I do not find that the accessibility of the site would be unacceptable. There would also be some further short-term economic benefits during the construction period as well as support for the local economy by future occupiers, and associated social benefits to the community.

28. However, the small scale of the development means that the contribution to the supply of housing more generally and the extent of the other benefits above would be more modest. Accordingly, I give these benefits moderate weight overall in the planning balance. The absence of identified harm to the living conditions of neighbouring occupiers is a neutral factor and weighs neither for nor against the proposal.
29. In support of the appeal, the appellant also refers to the Self-build and Custom Housebuilding Act 2015 (as amended) (the Act). This makes provision for relevant authorities to maintain a register of people who are seeking to acquire a serviced plot in their area, and footnote 26 of the Framework highlights that under the Act, relevant authorities have a duty to have regard to the demand for self-build or custom housebuilding in their area and to give enough suitable development permissions to meet the identified demand.
30. The Planning Practice Guidance⁸ advises that the level of demand is to be established according to the number of entries added to an authority's register during a base period. It further notes that authorities have 3 years following the end of each base period in which to grant permission for an equivalent number of plots of land.
31. The appellant's evidence states that 68 applicants in the Medway Council area showed an interest in self-build or custom build plots over the base periods 1 April 2016 to 30 October 2018, but that over this period planning permission was granted for only 11 plots. The Council has not challenged the appellant's assertion that the demand arising from the initial base period, and much less from subsequent periods, has been met.
32. Against this apparent shortfall, the appellant's Unilateral Undertaking includes provision to secure the proposed plots as 'self-build' plots. However, this term is not defined within the Undertaking and I cannot therefore be certain that the proposal would deliver self-build or custom housing as sought by the Act. This qualifies the weight that I can afford to this benefit. Even so, in light of the demand for plots and duties under the Act, as well as wider Government support for self-build, I give this potential benefit of the proposal significant weight.

Planning Balance

33. I have found that the development would cause significant harm to the character and appearance of the area and would conflict with Policies S1, S2, H11, BNE25 and BNE47 of the MLP. While these policies are most important for determining the proposal, they would be considered out of date in light of the lack of housing land supply and the provisions of the Framework.
34. It is common ground between the main parties that policies H11 and BNE25 are not fully consistent with the Framework in their approach to development in the countryside. Given this and that they relate to settlement and development

⁸ Paragraph: 023 Reference ID:57-023-201760728

limits which are failing to meet housing requirements, the weight that I afford to the conflict with these policies is limited.

35. However, in addition to conflicting with policies in the development plan relating to suitable locations for housing, I have found that the development would cause significant harm to the character and appearance of the area. The appellant has not challenged the Council's assessment of Policies S1, S2 and BNE47 of the MLP as being consistent with the Framework. In seeking to focus investment in the urban fabric, maintain and improve environmental quality, and ensure that development on rural lanes does not adversely affect considerations which include landscape and amenity, I find that these policies broadly reflect objectives within the Framework. I therefore afford the conflict with them significant weight. The harm to the character and appearance of the area would also conflict with the requirements in the Framework to recognise the intrinsic character and beauty of the countryside and to protect and enhance the natural environment as a key aspect of sustainable development and weighs against the proposal.
36. Whether the benefits of the proposal are considered individually or cumulatively, in the context of paragraph 11(d) of the Framework, I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development set out at paragraph 11(d).
37. I am required to determine the appeal in line with the relevant policies of the development plan, unless material considerations indicate otherwise. Notwithstanding the reduced weight that I attach to the conflict with MLP Policies S1, S2, H11 and BNE25, the conflict with the development plan and Framework when taken as a whole are significant factors. The duties under the Act do not provide for the approval of self-build plots irrespective of or as an exception to the provisions of the development plan, and I find that the benefits of the scheme, whether considered individually or cumulatively, do not outweigh the harm I have identified. The proposal conflicts with both the development plan and the Framework when each is considered as a whole, and there are no material considerations which suggest the decision should be taken otherwise than in accordance with the development plan.

Conclusion

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

J Bowyer

INSPECTOR