
Appeal Decision

Site visit made on 15 September 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/J2210/W/19/3241763
Marley Wood, Pean Hill, Whitstable CT5 3BG

- 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 R Lewis against the decision of Canterbury City Council.
 - The application Ref 19/01547, dated 24 July 2019, was refused by notice dated 16 October 2019.
 - The development proposed is erection of 2 no. two-storey 5-bedroom family dwellings with detached garages and creation of a new vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline permission with matters relating to access, layout and scale to be determined at this stage, whilst appearance and landscaping of the proposal are reserved for future consideration.

Main Issues

3. The main issues are: -
 - Whether the site is a suitable location for the proposed development having regard to development plan and national planning policies;
 - The effect of the development on biodiversity of the area;
 - The effect of the proposal on the Thames, Medway & Swale Estuaries and the Thanet Coast & Sandwich Bay Special Protection Areas; and:-.
 - The effect of the development on Marley Wood, an Ancient Woodland;

Reasons

Suitable location for the development

4. The appeal site is a clearing within an area of woodland fronting onto Pean Hill, a classified County Road which, in the vicinity of the site, is unlit and subject to a 40 MPH speed limit. On the opposite side of Pean Hill lies sporadic residential development and there is a footway of restricted width. The frontage onto Pean Hill is in the form of a dense, mature hedge containing numerous trees, whilst within the site lie areas of scrub growth.

5. The site lies outside of the defined area of Whitstable as identified within the Canterbury District Local Plan -2017- (the Local Plan) and is defined as being in the countryside for planning purposes, where development will only be permitted when it comes within the exceptions stated in the Local Plan.
6. Policies SP1 and SP4 comprise the Council's overarching spatial strategy and are broadly consistent with the provisions of the National Planning Policy Framework -2019- (the Framework) in as much as they seek to promote sustainable development in larger communities with access to services and facilities.
7. Policy HD4 of the Local Plan allows, subject to certain criteria being satisfied, development of housing in the countryside. One of these criteria allows the development of new dwellings where the design of the development is of an exceptional quality or innovative nature. The proposal before me is in outline form and there is little substantive evidence to demonstrate that the design would be of such quality. There is no claim that any of the other criteria apply in this instance.
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 any settlement boundary, this in itself does not persuade me that the site is in an unsustainable location.
9. The settlement along Pean Hill contains a limited range of services and would not provide all of the services required by future residents on a day-to-day basis, requiring a trip into nearby settlements with a full range of services, such as Whitstable, to satisfy these needs. Whilst there are bus services that would connect the site to larger settlements running along Pean Hill, where such services are available the bus stops are some distance away. The nature of Pean Hill, with its restricted footway, lack of effective lighting and vehicular speeds is likely to discourage pedestrians and cyclists, particularly after dark, with children or during inclement weather. The bus service is therefore unlikely to provide a realistic alternative to the use of the private car for the day-to-day needs of future occupiers of the development. It is therefore likely that the travel required to access facilities providing for the day-to-day needs of residents would be largely reliant on the use of a private car.
10. 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 limited 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.
11. Further, there is no meaningful alternative to using the private car to satisfy these needs. With, for such a limited scale of development, no real scope to improve connexions for walking, cycling or public transport, dependency upon private motor vehicles would be almost total.

12. Whilst I note the intention to utilise timber recovered during the management of the adjacent woodland, this does not outweigh the lack of sustainable transport options for future occupiers of the site that I have identified above.
13. I conclude that the appeal site would not be a suitable location for the proposed development having regard to development plan and national planning policies. 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, HD4, T1 and DBE3 of the Local Plan which together, amongst other things, seek to protect the countryside from inappropriate development and locate development where it will be most sustainable, having regard to access to alternative modes of transport to the car.

The biodiversity of the area

14. The proposal was accompanied by a Preliminary Ecology Report (PER). The proposal site is located within the Clowes Wood and Marley Wood Local Wildlife Site (LWS). Whilst identifying an LWS at Foxes Cross Bottom, the PER does not mention the Clowes Wood and Marley Wood LWS. The development would result in the loss of part of the Clowes Wood and Marley Wood LWS.
15. The site is bordered by ancient woodland and the PER advises the presence and potential for bats and other protected species in the area. Given the presence of scrub and 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.
16. 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 to which 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.
17. In the absence of detailed surveys 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 LB7 and LB9 of the Local Plan which seek, amongst other things, to protect LWS and avoid a net loss of biodiversity/nature conservation value whilst actively pursuing opportunities to achieve a net gain. Similarly, the development would be contrary to the aims set out in Section 15 of the Framework.

Effect on European Protected Sites

18. 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.

19. 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 stage¹. 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.
20. 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.
21. 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.
22. 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.

Ancient woodland

23. Marley Wood is an Ancient Woodland. The site lies within land subject to a Tree Preservation Order. The site is a clearing surrounded by the woodland, with a mature, dense hedge incorporating trees on its frontage to Pean Hill. These are positive features contributing to the overall verdant rurality of the area. Whilst the site is a clearing within the woodland, the proposal lies within the encompassing wood and the presence of the clearing does not, of itself undermine the overall wooded nature of the immediate area.
24. The appellant has brought to my attention that the site formerly accommodated a dwelling and that this was removed to allow redevelopment of the site for a replacement dwelling and that the site is, therefore, brownfield or previously developed land. I have no substantive evidence before me to demonstrate that the site is entered on a brownfield land register and I am mindful of the definition of “previously developed land” within the Framework which excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. Further the presence of a former dwelling does not demonstrate that the entirety of the proposal site has lost its status as Ancient Woodland.
25. During my site visit there was little evidence of the former building present on the site and I consider that the remains of the former dwelling have blended back into the landscape. I therefore attribute the argument that the site constitutes previously developed land little weight.

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

26. The application is in outline form and layout and access are for determination at this stage. The proposal is laid out to avoid the loss of trees of significance within the site.
27. With regard to access I note that the appellant has proposed 120 metre visibility splays, at a setback of 2.4 metres either side of the access. No plan showing such a splay has been provided and, whilst I am satisfied that a suitable visibility splay can be achieved in accordance with the proposed standard, the proposal is likely to result in the loss of existing planting adjacent to Pean Hill.
28. Paragraph 175 of the Framework states that “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”.
29. The proposal would result in public benefits resultant from the provision of two additional dwellings to supplement the local housing stock and are, as the site is in the ownership of the appellant, deliverable in the short term. This would support the Government’s objective to significantly boost the supply of homes. The appellant states that the dwellings would be self-build. However there is no evidence before me to suggest that the future occupiers of the dwellings are on a self-build register, nor how the homes would be secured for self-build.
30. 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 shops and businesses is most likely to be felt in the local town. I have already found that the proposal would result in harm to the development plan with regard to the suitability of the location for the development, to the ecology of the area and to the Protected Sites.
31. Given the scale of the benefits resultant from the proposal I consider that, whilst the appellant has demonstrated a strategy of future management for the adjacent ancient woodland, no wholly exception circumstances have been demonstrated.
32. I therefore find that the proposal would result in unacceptable harm to Marley Wood, an Ancient Woodland. The proposal would, therefore, be contrary to Policies HE13 and LB10 of the Local Plan in as much as these seek to preserve and enhance historic landscape, including ancient woodlands, hedgerows and field boundaries including their appearance. The proposal would also be contrary to the aims of paragraph 175 of the Framework.

Other Matter

33. My attention has been drawn to other developments on Pean Hill. However I have little information before me to demonstrate how these relate to the context of the appeal site. I have, therefore, attributed these developments little weight in my deliberations.

Conclusion

34. For the reasons given above the appeal is dismissed.

I Dyer

INSPECTOR