



Appeal Decision

Site visit made on 20 August 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2020

Appeal Ref: APP/J2210/W/20/3252170

The Pear Orchard and Hawthorn Bungalow, The List, Altona, Grove Road, Wickhambreaux, Canterbury, Kent CT3 1RX

- 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 Mr John Showler (Rogate Properties (Wickhambreaux) Ltd) against the decision of Canterbury City Council.
 - The application Ref CA/19/01798, dated 6 September 2019, was refused by notice dated 26 March 2020.
 - The development proposed is 5 no. two-storey detached dwellings and 2 no. single-storey detached dwellings following demolition of 2 no. existing dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address used in the heading above has been taken from the application form. Alternative addresses have been used within the appeal form and the Council's decision notice, but confirmation has not been provided by the main parties that a revised address has been agreed. As the submitted plans adequately clarify the extent and location of the site and as the various addresses that have been used by the main parties are similar, I do not find that any party would be prejudiced through the use of the address set out above.

Main Issues

3. The main issues are whether the proposal would make adequate provision towards the supply of affordable housing and community infrastructure and the effect of the development on protected species, ecology and wildlife habitats.

Reasons

Affordable Housing

4. Policy HD2 of the Canterbury District Local Plan 2017 (The CDLP) requires 30% of dwellings to be affordable housing on all developments which have a combined gross floor area of more than 1000 square metres, allowing for a financial contribution to be made instead where on-site provision is not suitable. However, Policy HD2 of The CDLP also allows for reduced provisions to be made subject to viability appraisals justifying such an approach. The development would exceed the abovementioned threshold and the main parties agree that an on-site provision would be unfeasible. However, they disagree as to whether an affordable housing provision should be required, particularly in view of the National Planning Policy Framework (The Framework), and the extent of such a provision. No mechanism is in place to secure any form of contribution towards affordable housing provision.

5. Policy HD2 of The CDLP being adopted prior to the publication of The Framework does not prevent it being afforded due weight according to the degree that it is consistent with The Framework. In this regard, Policy HD2 and The Framework provide different thresholds for when affordable housing should be sought, with The Framework identifying that affordable housing should only be sought from major developments. The Framework definition of 'major' does not include a floorspace threshold for housing developments in the same way as Policy HD2 but does include sites that are more than 0.5 hectares in area.
6. Moreover, whilst Policy HD2 of The CDLP is consistent with The Framework in terms of allowing off-site financial contributions in circumstances where it has been justified, The Framework goes further than Policy HD2 by also requiring it to be demonstrated that such an approach would contribute to the creation of mixed and balanced communities. In this regard, the requirement of paragraph 62 of The Framework for financial contributions to be robustly justified is in the context that this approach should only be taken where it is not possible to make a provision on-site. As such, when that paragraph is read as a whole, I do not agree with the appellant's inference that the need to justify an off-site provision is intended to restrict contributions towards affordable housing provision being sought.
7. Paragraph 62 of The Framework identifies the manner in which policies should be prepared to address any identified affordable housing need and is, therefore, more relevant to plan-making than decision-taking. However, in terms of need, the supporting text of policy HD2 of the CDLP identifies the importance of affordability and that the 30% requirement set out above was chosen despite the Council's Strategic Housing Market Assessment identifying a need for this target to be higher. Conversely, no evidence has been provided by the appellant to support the contention that affordable housing is not needed. As such, the available evidence does not lead me to conclude that there is not a need for affordable housing and the expectation for an affordable housing provision to be forthcoming is sufficiently clear to accord with Paragraph 34 of The Framework which requires plans to set out the contributions that are expected from development.
8. As a result of the above, whilst I recognise that Policy HD2 of The CDLP and The Framework are not consistent, the level of divergence is small and does not change the overall aim of securing affordable housing where a need for such housing has been identified. As such, I afford significant weight to Policy HD2 of The CDLP.
9. The appeal site falls within The Framework definition of a major development and, as such, The Framework enables an affordable housing provision to be sought, in some form, to meet the local need that has been identified. As The Framework definition of 'major' is specific to that document, other definitions do not lead me to reach a different conclusion in this regard. Similarly, the thresholds that apply in designated rural areas and the site being within a conservation area do not represent reasons to afford diminished weight to the applicable thresholds.
10. Any planning obligation must, amongst other things, be fairly and reasonably related in scale and kind to the development. Supplementary planning guidance has not been prepared to clarify how financial contributions in lieu of an on-site provision will be calculated, contrary to the expectations of the supporting text of Policy HD2 of The CDLP. However, neither The Framework nor Policy HD2 state that a financial contribution can only be sought where a defined methodology is in place and there is no reason to conclude that a suitable level of contribution cannot be identified in the absence of such a methodology. In this respect, the main parties have utilised alternative approaches.

11. With regard to the approaches taken by the appellant, I am not persuaded that a contribution related to 2 and 3 bedroom units that only meet minimum internal floorspace standards would be proportionate to the level of provision that would reasonably be expected in the context of the development proposed. Similarly, I have no basis to conclude that the contribution should be limited to that necessary to enable other land to be purchased. However, if I set aside those concerns, the appellant's statement indicates that a contribution lower than that sought by the Council could be made whilst also enabling the developer to achieve a pre-tax profit that falls within the 15% to 20% profit range that the Planning Practice Guidance (The PPG) states should be assumed to be a suitable return for the purposes of plan making.
12. The appellant has also provided a viability assessment based on three further scenarios where differing financial contributions towards off-site affordable housing are made in lieu of an on-site provision. Paragraph 57 of The Framework states that viability is a matter that should be afforded weight but that it is for the decision maker to decide how much weight it should be afforded. In this case, as the viability appraisals show no assessment of the benchmark land value, they do not accord with The PPG or paragraph 57 of The Framework which states that viability assessments should reflect the approach in national planning guidance.
13. However, even if I set this aside and have regard to the appellant's viability submissions, they demonstrate that the development would be profitable at a level that falls within the abovementioned profit range if no financial contribution towards affordable housing provision is made. Whilst the profit levels would fall below the abovementioned profit range in the other two scenarios, the viability appraisal indicates that a financial contribution of an amount between those shown in Scenarios 1 and 3 would not prevent a profit being made that falls within the range that is deemed to be appropriate by The PPG. As such, the viability submissions do not justify no contribution being made towards affordable housing.
14. Whilst I have had regard to the appellant's comments that the abovementioned profit range should not apply to small developers and I note that The PPG advice is intended to address plan making rather than decision taking, I have not been made aware of any policy or guidance that supports an alternative profit level being factored into the viability assessment. Moreover, whilst the appellant has indicated that making profits at the level forecast increases the difficulty of financing the development, the evidence before me does not demonstrate that this would prevent the development occurring. As such, I do not find that the justification of the appellant represents a compelling reason to apply an alternative profit expectation.
15. Although the appellant has suggested that the Covid-19 pandemic might have an effect on the viability of development, there is insufficient evidence before me to be certain that this would be the case. Moreover, whilst the Coronavirus (Covid-19) Planning Update and a current Government consultation document¹ suggest that changes may be made to procedures and guidance relating to planning obligations and CIL, as they have not been introduced at this time, the potential for changes to occur does not alter my assessment in respect of this matter.
16. The requirements of The CDLP and The Framework in relation to affordable housing pre-date the submission of the application and therefore, whilst I acknowledge the frustrations of the appellant at the time when this matter was brought to their attention and the absence of a defined methodology to calculate the level of contribution that would be required, the development plan and The Framework

¹ Changes to the Current Planning System. (MHCLG, August 2020)

give clear reason for it to be expected that some form of provision towards the supply of affordable housing would be sought. Moreover, whilst I recognise that the requirement to make a Community Infrastructure Levy (CIL) payment has been introduced comparatively recently, the evidence before me does not demonstrate that this would wholly prevent any form of contribution being made towards the provision of affordable housing. As such, given that this appeal should be determined in the context of the planning policies and guidance that are now in effect, the chronology of events that have preceded this appeal do not lead me to reach a different conclusion in respect of the above matters.

17. For the reasons set out above, the proposal would not make adequate provision towards the supply of affordable housing. Consequently, the proposal would be contrary to Policy HD2 of the CDLP which aims to secure a mix, range and type of affordable housing to meet a need that has been identified. The proposal would also be contrary to The Framework which requires that the needs of groups with specific housing requirements are addressed.

Community Infrastructure

18. The application that is the subject of this appeal was also refused on the grounds that inadequate provisions were made to mitigate the effect of the development on community infrastructure. However, since the determination of the application, the Council have adopted CIL and a contribution would be levied on the proposed development in that format. I have no reason to conclude that the CIL payment would not address the effect of the proposed development on community infrastructure and have no basis to conclude that any other contributions should be made to mitigate the effect of the development in that respect. I also recognise that the Council have confirmed that they no longer wish to defend the reason for refusal relating to contributions towards community infrastructure.
19. Consequently, the proposal would make adequate provision towards community infrastructure and would therefore accord with policies QL5 and EMP9 of The CDLP which together require that educational needs arising from new developments are met and that community services are provided to serve development.

Biodiversity

20. The application was refused on the grounds of the effect of the development on protected species, ecology and wildlife habitats. However, the appellant has submitted additional information identifying that hedgerows would be able to be retained and managed in a manner that reflects the potential presence of dormouse. Other ecological enhancements are also proposed including the provision of an area of habitat to host reptiles and log piles for hedgehogs. The evidence before me indicates that, if I were minded to allow the appeal, it would be possible to impose a condition to address this matter and ensure that there would be a net gain in terms of biodiversity and nature conservation. The Council and their specialist advisors have also reached the same conclusion.
21. Consequently, the effect of the development on protected species, ecology and wildlife habitats could be made acceptable and would, therefore, accord with policy LB9 of The CDLP which requires that development avoids a net loss of biodiversity and actively pursues opportunities to achieve a net gain.

Other Matter

22. The appeal site is part of the Ickham, Wickhambreaux and Seaton Conservation Area. The significance of the Wickhambreaux part of the conservation area is principally derived from the age and layout of the settlement, its relationship with

the rural surroundings and the groups of listed and locally listed buildings which include The Old Rectory (Grade II* listed) and its former stable and outbuilding (Grade II listed) which were formerly part of the same parcel of land as the appeal site but have subsequently been separated. The open land at the appeal site separates the older core of the settlement from later additions, provides a spacious backdrop to some dwellings and forms part of the setting of the listed buildings as a result of its historic association. I have paid special attention to the desirability of preserving or enhancing the character and appearance of the conservation area and have had special regard to the desirability of preserving the setting of the listed buildings.

23. The proposal would cause some loss of significance in respect of the setting of the abovementioned listed buildings but, due to the substantial distance between the proposed buildings and those heritage assets and the presence of substantial trees and vegetation in the intervening space, the harm caused would be limited to the effect on the historic association. Unlike the main parties, I have also found that the development would cause the erosion of the sense of spaciousness at the site and within the surrounding area which would detract from the conservation area to a small degree. However, as the site is partially screened from the public domain by surrounding buildings, trees and vegetation and the layout of the proposed development would enable a good amount of space to be retained around the dwellings, the harm to the character and appearance of the conservation area would be limited. As such, the harm caused in these respects would be less substantial.
24. The public benefits of a development are required to be weighed against any less than substantial harm caused to heritage assets and, in this case, the public benefits include the boost of housing supply which would also create support for local services and facilities. The proposal would also bring about economic benefits in terms of the construction and subsequent occupation of the dwellings. Whilst the small scale of the proposed development would limit the extent of these benefits, I still afford them moderate weight. The inclusion of a footpath within the development, the provision of a passing bay and improved visibility at the junction of The List and Grove Road would enhance highway and pedestrian safety and convenience for the wider community as well as mitigating the effect of the proposed development. As such this is a benefit to the wider community that I also afford moderate weight.
25. Therefore, whilst less than substantial harm being caused to the character and appearance of the conservation area and the setting of the abovementioned listed buildings is of considerable importance and I afford that harm considerable weight, in both respects, the harm caused would be limited and cause only a small loss of significance. As such, the harm would be outweighed by the public benefits of the proposal. The proposal would, therefore, accord with Policies HE1, HE4, HE6 and HE8 of the CDLP which seek to avoid the loss of the significance of heritage assets but also allow for less than substantial harm to be weighed against the public benefits of development. The proposal would also accord with the similar requirements of The Framework.

Planning Balance and Conclusion

26. The appellant contends that the Council is unable to demonstrate an adequate supply of housing land and has referred to an appeal decision² where it was concluded that either a 4.7 or 4.8 year supply of land was available. In this regard, neither main party has demonstrated the extent of housing supply that

² APP/J2210/W/18/3216104

now exists and the Council has not provided evidence to demonstrate that the situation has changed. In this regard, as the proposal relates to a net gain of five dwellings and the shortfall of housing supply is also small, I afford moderate weight to the benefit. I also afford weight to the other benefits of the proposal to the same extent that has been set out above. However, as achieving net gains in terms of biodiversity and surface water drainage are to be expected of most developments, the benefits arising in these respects carry little weight.

27. Conversely, by not making any form of contribution towards the supply of affordable housing and in the absence of sufficient justification for no provision being made, the proposal would not address an identified need that exists within the Canterbury District. As The Framework seeks to ensure that the needs of groups with specific housing requirements are addressed and seeks to create mixed and balanced communities, I afford very significant weight to the harm that has been identified in this respect.
28. Therefore, even if I proceed on the basis that an adequate supply of housing land does not exist, that the shortfall is of the same magnitude as set out above, that the most relevant policies are out of date and that the approach set out at paragraph 11d) of The Framework is applicable, the absence of any provision for affordable housing would significantly and demonstrably outweigh the benefits of the proposal when assessed against The Framework taken as a whole.
29. Therefore, the lack of affordable housing provision and the associated conflict with the development plan would not be outweighed by other material considerations, including The Framework. Consequently, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR