
Appeal Decision

Site visit made on 6 October 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/E2205/W/20/3255381

Land east of Chestnuts, Biddenden, Kent TN27 8BH

- 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 Sam Beaney against the decision of Ashford Borough Council.
 - The application Ref 19/01690/AS, dated 12 November 2019, was refused by notice dated 15 May 2020.
 - The development proposed is single detached dwelling.
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Decision

1. I allow the appeal and grant planning permission for single detached dwelling at Land east of Chestnuts, Biddenden, Kent TN27 8BH in accordance with the terms of the application, Ref 19/01690/AS, dated 12 November 2019, subject to conditions 1) to 7) on the attached schedule.

Main Issue

2. This is whether the site is in a sustainable location, whether there are material considerations in favour of allowing the development, and the weight that should be applied in the planning balance.

Reasons

3. The appellant states that the Reason for Refusal does not refer to specific policies and only makes reference to '*the core principles of the Local Plan*'. In fact, the Refusal Notice lists Local Plan Policies SP1, SP2, HOU5 and HOU10 under the heading 'Reasons' and then recites a single reason after a bullet point. That appears to be the Council's established format, and where multiple Reasons are numbered, the policies are still listed as a group in a foregoing paragraph.
4. Local Plan Policy SP1 states the strategic objectives of focussing development on accessible and sustainable locations and Policy SP2 set out the strategic approach to housing delivery, with windfall development needing to be consistent with the spatial strategy. Windfall development in the countryside is provided for in Policy HOU5 subject to being adjoining or close to named settlements, including Biddenden, and the appellant considers this to be the key policy with regard to the proposed development. For development elsewhere the policy lists a very limited number of exceptions to the general policy of restraint. The development of residential gardens is permitted subject to Policy HOU10 allowing the location as being suitable.

5. Evidence has referred to 2 other applications for residential development in the vicinity that have been granted permission relatively recently. The decision at 'Kypp Cottage', reference 17/01013/AS dated 15 September 2017 was taken at a time when the Council accepted that they were unable to demonstrate a 5-year supply of housing land and the presumption in favour of sustainable development set out in the then paragraph 14 of the 2012 Framework was applied. Similar to the present paragraph 11, there would still have been the ability to refuse permission if the adverse effects were considered to significantly and demonstrably outweigh the benefits, and that proposal did provide 2 dwellings slightly nearer Biddenden, but not much nearer.
6. Of more significance and relevance to the present appeal is the grant of permission on 5 June 2018 for a single dwelling on the site 'Silver Birches' to the immediate east of the appeal site and hence slightly further from Biddenden; reference 18/00062/AS. The Council seeks to differentiate the circumstances of that grant of permission, with reference to the distance to the services in Biddenden rather than the edge of the settlement, and to the fact that this pre-dated the 2019 adoption of the Local Plan, stating that at that time they were unable to demonstrate a 'robust' 5-year supply.
7. The Officer's Report in favour of that development is relevant to the present situation. The conclusion was that the proposal was contrary to the adopted Tenterden and Rural Sites Development Plan Document Policy TRS2 but it is clear that significant weight was attached to the emerging Local Plan Policy HOU5 and it was specifically stated that the Council considered that it could demonstrate a 5-year supply of housing land and that the 'tilted balance' in the then paragraph 14 need not be applied. It appears from the commentary regarding the criteria in that emerging Policy HOU5 that little if anything changed on adoption about 7 months later, certainly there is reference to access to day-to-day services *in the nearest settlement* and not just to the edge of the settlement.
8. The nuances of the reference to whether there was a 'robust' 5-year supply in June 2018 are acknowledged, as that was prior to the receipt of the Examining Inspector's Report, but the Officer's Report is adamant on the point based on the Local Plan evidence base. In addition, no harm was identified other than that in principle with regard to Policy TRS2, and the site was not considered 'isolated' under the then paragraph 55 and having mind to the 'Braintree' judgments¹, that is certainly not the case with regard to the replacement paragraph 79. The conclusion was that the proposal complied with emerging Policy HOU5 and that appeared determinative in the grant of permission.
9. The appellant has expressed the view that he has been subject to some form of discrimination in the treatment of his application relative to that next door, but that is not a matter that can be commented on in this Decision. It is further acknowledged that a Council decision does not have the same weight as that of the Secretary of State or an Inspector, but the web-based Planning Practice Guidance does refer to the importance of determining similar cases in a similar manner (Paragraph: 049 Reference ID: 16-049-20140306).
10. Turning then to the specifics of the appeal proposal, the Officer's Report does not identify any harm other than through the location. The site is part of a

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

ribbon of development on the south side of the road with open farmland to the north side, and the character and appearance of the area is heavily influenced by built form and the stationing of caravans. The development of the 'Silver Birches' site next door would consolidate this character and appearance and the roadside vegetation retains a rural margin to the main road. There is residential land behind, stated to be a traveller site, and the appellant describes the site as being surrounded on three sides by development. The proposed dwelling would be in keeping with the existing built form and would sit comfortably with the 2018 development.

11. Whilst the adjoining 'Silver Birches' site was noted as being greenfield land, it appears that the appeal site is garden land associated with the site to the rear and that as such may be considered as previously developed land. The exclusion in the Glossary definition in the Framework refers only to residential gardens in built-up areas. Nevertheless, the definition goes on to say that it should not be assumed that the whole of the curtilage should be developed.
12. Looking at the specific criteria in Policy HOU5;
 - a) *The scale of development proposed is proportionate to the size of the settlement and the level, type and quality Of day to day service provision currently available and commensurate with the ability of those services to absorb the level of development in combination with any planned allocations in this Local Plan and committed development in liaison with service providers.* The single dwelling proposed would accord with this requirement, and further to being well able to absorb this small level of development, it would assist in their viability.
 - b) *The site is within easy walking distance of basic day to day services in the nearest settlement, and/or has access to sustainable methods of transport to access a range of services.* Policy HOU5 is predicated on the site adjoining or being close to the settlement, and although that latter requirement is not defined, the supporting text refers to an 800m distance, while acknowledging that a higher or lower figure may be appropriate. The 2018 development was stated to satisfy that requirement and was further away than the appeal site. There are no footways along most of the road, but there is a Right of Way that cuts the corner and the route from there soon reaches the 30mph limit, with the services at that settlement not far beyond the T junction. The availability of sustainable methods of transport is an alternative in the criterion and buses were seen passing the site with the previous Officer quoting a reasonable distance to the bus stop, although buses will sometimes stop where safe outside built-up areas. Having mind to the number of other residential uses close to the site, the possibility of shared journeys should not be disouted.
 - c) *The development is able to be safely accessed from the local road network and the traffic generated can be accommodated on the local and wider road network without adversely affecting the character of the surrounding area.* That requirement is met.
 - d) *The development is located where it is possible to maximise the use of public transport, cycling and walking to access services.* The comments with regard to criterion b) answer this matter.

- e) *The development must conserve and enhance the natural environment and preserve or enhance any heritage assets in the locality.* No harm has been identified and although in a countryside location in policy terms, there is already a residential or commercial character and appearance in this locality.
- f) *The development (and any associated infrastructure) is of a high-quality design and meets the following requirements.* These are not listed for brevity, but the proposal is similar to that found acceptable in this location in 2018 and the 6 sub-criteria are met.

The conclusion is that the proposal does accord with Policy HOU5 and as a result, accords with Policy HOU10 on the use of residential gardens.

13. The supporting text to Policy HOU5 makes reference to the necessity of considering the 3 dimensions of sustainable development set out in the then current Framework. These now appear as 3 overarching objectives in paragraph 8;
- a) The economic objective would be furthered by providing additional business to local shops and facilities, thus aiding their viability and there would be some benefit in the construction.
 - b) The social objective is met since the 5-year housing land supply is not to be treated as a maximum, and the addition of a further dwelling in this small residential group would provide scope for social interaction in good times and support in bad.
 - c) The environmental objective is not jeopardised, as the site is a distinct plot where the physical development causes no identified harm to the environment, the location is not isolated, and the location can access services by sustainable transport means.
14. To conclude, the 2018 grant of permission next door is a significant material consideration, but having regard to the similar considerations now that the then emerging Local Plan is adopted, including the existence of a confirmed 5-year supply of housing, the single dwelling can be assimilated into this location without harm and would comply with the key adopted Policy HOU5 as a windfall dwelling in the countryside. Consequently, planning permission should be granted.

Conditions

15. The Council had set out the headings for suggested conditions and the appellant had commented on them, including an objection to the need for ecology enhancements and to the removal of certain permitted development rights. It is also appropriate to consider the conditions attached to the 2018 grant of permission next door.
16. In addition to the standard time limit, a condition naming the 'as proposed' drawings is required for the avoidance of doubt. There is a need to obtain further details of the materials to be used in order to control the quality and visual effect of the development, and parking and landscaping should be provided. Whilst not sought in 2018, electric charging points for vehicles would be reasonable and their use would provide a sustainable method of transport

as sought in Policy HOU5b). The requirement attached to the permission in 2018 regarding drainage appears reasonable as an additional condition.

17. That leaves the disputed conditions: The Council has not quoted any Plan policy to back the request for ecological enhancements and having mind to the small size of the site, its containment and the nature of the surrounding development, built form on 3 sides, allowing for the build-out of the 2018 permission, and a main road to the fourth, that condition does not appear to be necessary to make the development acceptable. Permitted development rights were not removed in 2018 and paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Again, having regard to the nature of this and the surrounding development, together with the size of the site, there is not a clear justification in this case.

Conclusions

18. The proposal accords with the Development Plan policy specific to windfall development in the countryside and is not isolated in the post 'Braintree' sense. There is no visual or amenity harm and the development would boost the supply of housing and further the 3 objectives of sustainable development set out in the Framework. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 7025 PRO_01_001A, 7025 VHC_01_002A and unnumbered proposed elevations, ground floor plan and first floor plan.
- 3) No development shall proceed above slab level until written details including source/manufacturer, and/or samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out using only the approved external materials.
- 4) No development shall proceed above slab level until details of foul and surface drainage works, the latter to be designed in accordance with the principles of sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority and the works shall be carried out and retained in accordance with these details and shall be operative prior to the first occupation of the dwelling.

- 5) No development shall proceed above slab level until details of hard and soft landscaping of the site, including boundary treatment, the protection of existing features, and the provision of bicycle parking, together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority and the works shall be carried out in accordance with these details and the approved timetable.
- 6) The approved dwelling shall not be occupied until an electric charging point has been provided for a road vehicle, in accordance with details that have first been approved in writing by the Local Planning Authority.
- 7) The area shown on the drawing number 7025 PRO_01_001A as vehicle parking space, garage and turning shall be provided prior to the first occupation of the dwelling, surfaced and drained in accordance with details which are to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to the parking spaces/garage/turning area.