
Appeal Decision

Site visit made on 9 November 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Appeal Ref: APP/E2205/W/20/3252668

Land to the rear of 1-5 The Oast House, Lower Lees Road, Old Wives Lees

- 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 Mrs A Buggins against the decision of Ashford Borough Council.
 - The application Ref 19/01427/AS, dated 18 September 2019, was refused by notice dated 3 December 2019.
 - The development proposed is described as 'erection of 4 No. dwellings with associated landscaping and parking'.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. The planning application was submitted in outline with the application form indicating that all matters of detail are reserved for future consideration save for access and scale. That said, the submissions do not set out a figure confirming the height, width and length of the proposed dwellings. The reference to storey heights is too imprecise, the drawings are annotated as being 'indicative' and Paragraph 4.2.6 of the Design and Access Statement suggests the roof heights of the properties are to be considered under the reserved matters. Given the ambiguity, I have not considered scale.
3. The appellant has provided additional evidence with his submissions confirming he has successfully entered the District Level Licencing scheme for Great Crested Newts. The Council has not submitted a statement of case and therefore I have nothing before me to suggest the appellant's position on this point is inaccurate. As such, the appellant appears to have addressed the Council's concerns on this matter and therefore I have not considered it as a main issue. Thus, the main issue in this appeal is whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy in the development plan.

Reasons

4. Policies SP1 and SP6 of the Ashford Local Plan 2030 (LP) set out the strategic objective of focussing development of a high quality of design at accessible and sustainable locations. Policy SP2 of the LP sets out the housing target over the plan period and explains that this will be met through allocations, existing commitments and windfall proposals. It explains that rural windfall housing should be at a scale consistent with the relevant settlement's accessibility,

infrastructure provision, level of services and environmental sensitivity. Policies HOU3a and HOU5 of the LP are written in order to support and deliver this spatial strategy.

5. Policy HOU3a permits residential windfall development as infilling within the built-up confines of several listed settlements subject to criteria. The built-up confines of a settlement for the purposes of Policy HOU3a are not defined by a settlement boundary on a policies map. Instead, they are established with reference to a written definition. This states that the built-up area of a settlement is the limits of continuous and contiguous development, excluding any curtilage beyond the built footprint of the buildings on the site (e.g. garden areas). There is continuous and contiguous development near to the appeal site in Green Lane and Lower Lees Road and this amounts to frontage residential development accessed directly from the two streets.
6. Save for the site access, the appeal site is positioned behind the existing frontage development and is undeveloped and verdant in character. It therefore sits apart from the nearby residential development. There are open agricultural fields to the north and east of the appeal site. To the immediate west are the rear gardens of the bungalows in Green Lane and the southern boundary of the site abuts the gardens of Castle View and 1-5 Oast House. Thus, when excluding garden land beyond the footprint of existing buildings, the appeal site does not adjoin the built-up confines of the settlement. As the appeal site sits outside the continuous and contiguous development that forms the settlement, its development for housing cannot amount to infilling.
7. Even if a more generous interpretation was taken, and the adjoining gardens were treated as forming part of the built up confines of the settlement of Old Wives Lees, the development of the appeal site would not amount to infilling because it is not located in a built up frontage, it is behind one with two sides open to the countryside. Moreover, the proposal would not amount to the filling of a narrow gap by one or two dwellings. Thus, the proposal would not amount to infilling as set out in Paragraph 6.52 in the supporting text to Policy HOU3a. Therefore, the presence of the proposed development, particularly Plots 1, 3 and 4 would not have the sense of being contained by existing built form.
8. Moreover, the appeal site has to be *within* an area of continuous and contiguous development to be a candidate for infilling rather than simply adjoining, or being contiguous with, such an area. This is because the LP only permits residential development beyond the built-up confines of the larger settlements listed in Policy HOU5. Old Wives Lees is not listed in Policy HOU5 and therefore development beyond the built-up confines of the settlement are not permitted there, even if it would amount to a rounding off of the settlement or the development would be in a location close to services and facilities. Based on the evidence before me, the appeal site is not a residential garden and therefore Policy HOU10 of the LP is not engaged.
9. In conclusion, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for housing in the LP and therefore the appeal site is not a suitable location for the proposed development.

Other Matters

10. The proposed development would not result in isolated housing because the properties would be in close proximity to an existing settlement. Thus, as a

material consideration, there would be no conflict with Paragraph 79 of the National Planning Policy Framework. However, the Framework does not say that a proposal should be approved if not isolated.

11. Of more relevance in this instance is Paragraph 15 of the Framework, which states that the planning system should be genuinely plan led and Paragraph 12, which confirms that planning permission should not usually be granted for development that conflicts with an up to date development plan. Accordingly, the conflict with the spatial strategy is a matter of considerable force weighing against the appeal scheme. Moreover, there is nothing of substance before me to demonstrate the spatial strategy should be afforded reduced weight or that Paragraph 11d) of the Framework is relevant in this instance.
12. The proposal could be delivered quickly and would modestly support the vitality of a rural community as well as services in Old Wives Lees and Chilham. However, there is little evidence before me to suggest four additional households would have a notable economic or social effect. For example, there is nothing to suggest local services are failing for lack of patronage. The proposal would provide some support to the construction industry, but this would be limited in scale. The socio-economic benefits are therefore of limited weight and would not outweigh the conflict with the spatial strategy.
13. Although not a reason for refusal, the Council have raised concerns that a two-storey home behind Castle View would harm the outlook from this neighbouring property. However, and as already explained, I am not considering scale and therefore this would have been a point for the reserved matters had the scheme been otherwise acceptable. Various concerns have been raised by interested parties in respect of other matters, such as the effect on the character and appearance of the area. However, given my overall conclusion it has not been necessary for me to address these matters further as the appeal has failed on the main issue.
14. The appellant has referred to several appeal decisions, but these relate to proposals in Canterbury City Council where different policies and circumstances are evident and therefore, they are of very limited relevance. The Council has referred to advice from Natural England (NE) regarding the potential effects of the proposal on the integrity of Stodmarsh Lakes. However, it has unhelpfully not provided the advice from NE or even given a view on whether it considers an appropriate assessment is required. Nevertheless, as the appeal has failed for other reasons this is not a matter I need to assess further in this instance.

Conclusion

15. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR