

Appeal Decision

Site Visit made on 20 April 2021

by G Pannell Bsc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2021

Appeal Ref: APP/U2235/W/20/3262071

Stilebridge Kennels, Stilebridge Lane, Linton, ME17 4DE

- 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 Peter Freeman against the decision of Maidstone Borough Council.
 - The application Ref 20/503150/FULL, dated 14 July 2020, was refused by notice dated 16 September 2020.
 - The development proposed is Demolition all existing kennels and cattery buildings, erection of four dwellings and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Peter Freeman against Maidstone Borough Council. This application is the subject of a separate Decision.
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Main Issues

4. The main issues are:
 - the effect of the proposed development on protected species.
 - whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Biodiversity

5. Paragraph 99 of Circular 06/2005¹ states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established

¹ Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

- before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
6. Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, it advises that surveys should be carried out before planning permission is granted.
 7. Paragraph 175 of the National Planning Policy Framework (the Framework) advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
 8. The appellant has provided a Preliminary Ecological Appraisal Report, however this recommends further ecological surveys for the presence absence of Great Crested Newts, Otters and Water Vole. Following this a full Ecological Impact Assessment of the effects of the proposed development is recommended.
 9. The parties consider that the proposed development, having regard to its location and proximity to the river or its banks, would not require further surveys in connection with Water Voles or Otters. The Council are content that, during construction, working areas could be adequately fenced to ensure that habitats are not adversely affected. However, this runs counter to the advice provided by the Council's Biodiversity Officer, and there is insufficient evidence before me to conclude whether Water Voles or Otters are present on the site and therefore any potential impacts on these species as a result of the proposed development.
 10. Furthermore, the development has the potential to have detrimental impacts on Great Crested Newts, a species which is protected through the Wildlife and Countryside Act 1981. The appellant has indicated that district level licensing will be utilised, however I have not been provided with any evidence to demonstrate that a licence has been secured or would be granted.
 11. In conclusion, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to protected species. This would be contrary to policies DM1 and DM3 of the Maidstone Borough Local Plan 2017 (LP) which together require ecological evaluation of development sites to take full account of the biodiversity present and to protect and enhance any on-site biodiversity and geodiversity features or provide sufficient mitigation measures. For similar reasons, the proposal would not accord with the Framework, including paragraphs 170 and 174.

Suitable Location

12. The site is located outside of any defined settlement boundary and is therefore within the countryside for planning policy purposes. Policy SP17 of the Maidstone Local Plan states that proposals within the countryside will not be permitted unless they accord with other policies within the local plan and will not result in harm to the character or appearance of the area.
13. Both parties accept that the site comprises previously developed land, where policy DM5 permits development in the countryside, subject to a number of criteria. These include where the redevelopment will result in a significant environmental improvement and the site is, or can reasonably be made,

- accessible by sustainable modes to Maidstone, urban area, a rural service centre or larger village.
14. The settlement of Staplehurst, which has a railway station providing onward travel to London and Ashford, is approximately 3 miles from the site. It can be accessed from the site by walking along the A229, which does not benefit from a continuous footpath. Alternatively, occupiers would have to travel to services and facilities within Maidstone which is approximately five miles away. However, a car is likely to be a more practical, pleasant and convenient choice on many occasions given the distance involved and the volume of traffic using the road.
 15. I have no substantive evidence before me to indicate that the site is well served by frequent public transport. I therefore consider that occupiers of the proposed development would be likely to be reliant on the private car to access a full range of community facilities such as shopping, healthcare, leisure and entertainment, given the distance to the nearest sizeable town.
 16. I therefore conclude that the site represents an inappropriate location for the proposed dwellings, having regard to the settlement strategy and access to services and facilities. Consequently, the development conflicts with policy DM5, SS1 and SP17 of the LP in this regard.
 17. The proposed development would not provide a suitable location for housing, having regard to the accessibility of services and facilities. However, I must have regard to other material considerations. The site has previously been used as a boarding kennels which would result in users travelling by car to access the site, there is nothing before me to indicate that the proposal would generate a materially different level of trips by car than the previous use of the site. Therefore, I find no demonstrable harm to sustainability in respect of accessibility of services and facilities.

Character and Appearance

18. The site is located within the Beault Valley Landscape Character area which is described as an area which includes scattered farmsteads and small hamlets. It is also considered to be of a high overall landscape sensitivity which is sensitive to change. Any new development should respect the local vernacular, scale, density and materials.
19. The site currently contains a range of buildings, formerly used as boarding kennels and cattery and now vacant. The buildings are visible from Stilebridge Lane and as a result of their colour represent a stark feature within the landscape.
20. The appeal proposal would result in the demolition of the boarding kennels and cattery and these would be replaced by 4 detached dwellings arranged around a central parking court and broadly following the footprint of the existing buildings.
21. The scale of the dwellings proposed, with detached single storey 3 bedroom dwellings, would represent a modest reduction in the scale of the development in comparison to the buildings currently on the site. The choice of materials, including timber cladding and slate tile roofs, ensures that the proposal would be blended into the rural setting. The combined effect of the arrangement,

- volume and shape of the group of buildings would lead to a massing which would be lesser than the existing buildings on the site.
22. The development would enhance the appearance of the site as it would result in the clearance of the existing buildings on the site and their replacement with the proposed scheme whose materials and colour palette would be more appropriate to its rural location. The overall design and appearance of the proposed dwellings would be subservient to the main dwelling on the site, with the proposed development drawing inspiration from modest agricultural buildings, which would maintain the appearance of a scattered farmstead.
23. The submitted landscape strategy also demonstrates how the proposal could be landscaped in order to adequately mitigate views of domestic paraphernalia associated with the use of the gardens. Whilst this would result in some enclosure of the site, which would differ from the open fields and paddocks which are experienced within the wider landscape, there is evidence beyond the appeal site of similar subdivision of smaller plots. In addition, where views into the site are possible through the existing landscaping these are of post and rail fencing dividing the paddocks and the concrete posts and wires which provided the animal enclosures. These already detract from the open character of the site and therefore, I am satisfied that the overall benefits of the proposal would outweigh any harm resulting from the enclosure.
24. I therefore conclude that the proposed development would not harm the character and appearance of the area. It would not conflict with policies SS1, SP17, DM1, DM5 and DM30 of the LP which together seek to ensure high quality design which is of a type, siting, materials, density and design which reflects the character and appearance of an area, maintaining or where possible enhancing local distinctiveness.

Conclusion

25. In conclusion, whilst I have found no demonstrable harm to sustainability in respect of accessibility of services and facilities or to the character and appearance of the area, in the absence of sufficient evidence to the contrary, the proposal would potentially cause unacceptable harm to protected species.
26. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

