



Appeal Decision

Hearing Held on 26 May 2021

Site visit made on 27 May 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 JUNE 2021

Appeal Ref: APP/U2235/W/20/3254230

Chilston Quarry, Sandway Road, Sandway, Kent ME17 1HT

- 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 Miss Kate Holland (Bowyers Field Developments Ltd) against the decision of Maidstone Borough Council.
 - The application Ref 19/503276, dated 21 June 2019, was refused by notice dated 20 December 2019.
 - The development proposed is described as an "outline planning application with all matters reserved except 'Access' for the construction of 15no. dwellings to include 9no. self-build dwellings and 6no. affordable dwellings together with 1no. unit of groundskeeper accommodation, open space, earthworks, infrastructure and drainage features".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with only access for consideration. Matters relating to appearance, landscaping, layout and scale are reserved for future determination. The appellant has provided an indicative layout which I have treated as illustrative for the purposes of this appeal.
3. Since the Council made its decision, the Lenham Neighbourhood Plan (the LNP) passed its referendum. The Council confirmed at the Hearing that the LNP is due to be made on 18 July 2021. Therefore, the LNP now forms part of the Development Plan and significant weight can be afforded to it.
4. During the hearing I was provided with a signed and completed planning obligation (the planning obligation) to secure affordable housing as part of the development. I was also provided with the Post Examination Draft LNP June 2020 and the Maidstone Strategic Housing Market Assessment 2019 (SHMA). The appellant also provided an email dated 21 May 2021 from Southern Water confirming that there is capacity to accommodate foul water flows from the proposal within existing infrastructure.

Main Issues

5. The main issues in this appeal are 1) whether the location of the development is appropriate having regard to the Development Plan, and 2) the effect of the development on the character and appearance of the area.

Reasons

Location

6. Policy SS1 of the Maidstone Borough Council Local Plan 2017 (the LP) sets out the Council's spatial strategy and states that an expanded Maidstone urban area will be the principal focus for development in the borough. The rural service centres and larger villages identified within Policy SS1 will be the secondary focus for housing development. In other areas, protection will be given to the rural character of the area.
7. The appeal site does not lie within any of the areas identified within Policy SS1 of the LP for growth or additional housing development and, for the purposes of the Development Plan, it lies within the countryside. Policy SP17 of the LP states that development within the countryside will not be permitted unless it accords with other policies within the LP.
8. The Council argue that the LP does not support the development at the site as it is within an isolated and unsustainable location, resulting in occupiers of the dwellings being heavily reliant on the private car to access services and facilities. Moreover, it can demonstrate a five year supply of deliverable housing sites, which is not disputed by the appellant, and thus there is no debate that the policies the most important for determining the appeal are not out-of-date.
9. The central core of Sandway lies some 200m to the east of the appeal site and where the main focus of development of the hamlet is concentrated around Headcorn Road, Sandway Road and Old Ham Lane. As the appeal site is immediately to the west of Old Ham Lane, the appellant considers the site is not isolated and thus, paragraph 79 of the National Planning Policy Framework (the Framework) would not apply in this instance. The Council take a contrary view.
10. In considering whether paragraph 79 of the Framework applies I would need to identify the relevant settlement and then decide whether the appeal site is isolated from it. It is evident that the main cluster of dwellings within Sandway form a settlement in their own right and from the aerial photograph within the Council's written statement, there are dwellings close to and indeed opposite the site and thus, one could objectively argue that the appeal site is not remote from it.
11. However, whether the proposed development would represent isolated homes in the countryside is a matter for the decision taker based on fact and planning judgement, taking into account the particular circumstances of the case in hand. Moreover, the Braintree¹ (Braintree) and Bramshill² judgements reaffirmed that the term "isolated" relates to the site's location in relation to a settlement and not dwellings. Thus, notwithstanding the presence of dwellings opposite the appeal site, it could still be considered isolated for the purposes of paragraph 79 of the Framework.
12. In considering the word 'isolated', Braintree states that it should be given its ordinary objective meaning of "*far away from other places, buildings or people; remote*". In this instance, although I have carefully considered the Council's argument regarding the flexible view it took in determining the remoteness of the site, the test is not whether the appeal site forms part of the hamlet of Sandway as

¹ Braintree District Council v SSCLG and others [2018] EWCA Civ 610

² City and Country Bramshill Limited v SSCLG and others [2019] EWHC 3437 (Admin)

stated within the Council's written statement, it is whether or not the site is remote or isolated from the settlement.

13. From the evidence that has been provided and from my visit, the appeal site is very close to dwellings to the east of Old Ham Road and indeed those on Sandway Road that make up the linear form of Sandway as it sprawls west towards the appeal site. I am satisfied that the appeal site is not far away or remote from the settlement of Sandway and therefore, is not isolated from it. Thus, paragraph 79 of the Framework is not a determinative factor in the assessment of the development before me.
14. However, one must also take into account the location of the site in relation to services, facilities and other amenities that one could reasonably expect occupiers of the proposed dwelling to require access to. Sandway as a hamlet offers no services and occupiers would need to travel to Lenham to access such services, or indeed further afield. There are no public transport services close to the appeal site and although there is a footpath in the vicinity, it does not connect the site to Lenham and requires walkers and cyclists to navigate an unlit and narrow road. I attempted to walk part of the route to Lenham and found that steep banks prohibit walkers from finding refuge along some parts of the road which is also fraught with dangers from passing traffic travelling at speed. I would not expect any person with children, a disability or laden with shopping to attempt to navigate either Old Ham Lane or Sandway Road to reach Lenham.
15. I accept that private cars are part of daily life and to seek the complete removal of them from the development would be folly. I also accept that homeworking as a result of the Covid-19 pandemic has increased and is now more commonplace, and that home delivery services are available. However, there is no certainty that occupiers of the dwellings would work from home. Moreover, these matters demonstrate that occupiers of the dwellings would be reliant on such services as home deliveries and it does not remove the reality that there are no sustainable transport modes available within a reasonable and safe walking and cycling distance of the appeal site. Thus, it is highly probable that the private car would be required for every journey into and out of the site to access such services as shopping, education, medical services, employment, recreation and entertainment.
16. Furthermore, taking into account paragraph 78 of the Framework, I am not persuaded that the development would contribute towards the vitality of Sandway as a rural community as it contains very little in terms of local services that need support. Moreover, although there are a wide range of services at Lenham and indeed further afield at Harrietsham, occupiers of the dwellings would be reliant on the private car to access even the most basic of services.
17. I acknowledge that paragraph 103 of the Framework states, amongst other things, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Arguably, the lack of options available to the appeal site in terms of access to means of transport other than the private car is reflective of its rural location. However, although the Framework's statement recognises the challenges rural areas face, it should not be used as a justification for the siting of development in locations that are not well served by sustainable transport options.
18. In addition, whilst the appellant states that electric charging points would potentially provide some choice of travel, given the lack of facilities within walking distance of the site, the distance to the Lenham and the unattractive nature of the road network to walk and cycle, the site's location is not one that is or can be made sustainable, even with the proposed extensions to Lenham that could potentially bring the settlement closer to the appeal site. Furthermore, electric

vehicles would not promote the healthy benefits that can be gained from walking and cycling.

19. The Development Plan and Framework must be read as a whole and seek to direct development to locations which are or can be made sustainable, where services are accessible and where the natural environment is protected. I do not consider that the various measures proposed are of such weight to outweigh the conclusion the site is in an inappropriate location in the countryside for new residential development, divorced from services and facilities. It would be in conflict with Policies SS1, SP17, DM1 and DM30 of the LP, which seek, amongst other things, to direct developments to locations within the borough that have greater access to facilities and maximise opportunities for permeability and linkages to the surrounding area and local services

Character and Appearance

20. The appeal site is a former quarry that contains a small lake which the proposed dwellings would be positioned around. The periphery of the site is largely banked, giving it a bowl shaped appearance, indicative of the mineral extraction that historically took place. The site is wedge shaped with the Channel Tunnel Rail Line (CTRL) bordering the site to the north, Sandway Road forming its southern boundary as it runs northwest over the CTRL, and Old Ham Lane to the east.
21. The site lies within the Harrietsham Vale character area as defined within the Maidstone Borough Council Landscape Character Assessment 2012 (LCA). The LCA notes that the landscape has suffered much severance and is heavily influenced by the CTRL and the M20 and indeed, significant visual detracting has been caused by pockets of commercial, industrial and mineral extraction.
22. The site is landscaped on its boundary to Old Ham Lane and Sandway Road so that views into the site are largely interrupted from public vantage points. However, one can glimpse views of the site through parts of the landscaping on Sandway Road and through its access. Quarrying at the site has ceased and the land is being restored, containing an open area between the lake and the CTRL acoustic fencing that abuts the site and landscaping introduced around the lake. The LCA guidelines are to 'restore and improve' the area and contains a summary of actions, such as encouraging the sympathetic redesign of former quarrying sites, with organically shaped water bodies and integrated vegetation.
23. Notwithstanding the CTRL to the north of the site, the area has a verdant and distinct open and pastoral quality. The site is showing signs of restoration and although its shape and depth signals its former use, it nonetheless forms part of the open countryside, to which it makes a positive contribution in an area that has suffered significant levels of visual detracting.
24. The site visually forms part of the open countryside and although it may not be subject to any landscape designations, it nonetheless retains a rural character and appearance. I saw from my visit that the vast majority of development in the vicinity lies to the east of Old Ham Lane and that there is little built development to the west of Old Ham Lane. Consequently, instead of fitting in with the development to the east, the proposal would detract from it.
25. The visual harm associated with the development would be evident from the access into the site as well as from the bridge that crosses the CTRL on Sandway Road. The appeal scheme, although not isolated in respect of its proximity to the settlement of Sandway, would be at odds with the established pattern and character of development. It would result in the creep of built development further into the countryside. This would have a suburbanising impact, which would harm

the rural character of the site and surrounding area and would not be appropriate in terms of the existing settlement form and pattern.

26. Furthermore, it is also necessary to consider the visual impacts of the residential use such as the vehicle movements and parking associated with the development, along with fencing, domestic cultivation and items such as garden furniture and washing lines for each new dwelling which would add to the suburbanising effect. Moreover, the CTRL affects most of the Harrietsham Vale character area and is not in itself a reason to allow further development that would otherwise diminish the contribution that the site currently provides to the overall openness and quality of the rural landscape that surrounds Sandway.
27. I have carefully considered the appellant's LVIA³ and taken account of the biodiversity and habitat enhancements proposed as part of the development, along with the containment provided by existing features that would be supplemented by additional landscaping. However, as with all landscaping, it cannot be relied upon to become permanent and would take a very long time to mature. Moreover, the use of landscaping to shield inappropriate development is not good design as it just limits the immediate effect of it.
28. Thus, the development would fail to improve the area and erode the contribution that the restored former quarry makes to the character and appearance of the countryside and the settlement of Sandway. It would be in conflict with Policies SP17, DM1 and DM30 of the LP and paragraph 127 of the Framework which seek, amongst other things, to ensure that developments respond positively, and where possible enhance the local, natural character of the area.

Other Matters

29. The appellant argues that the development would provide affordable and self-build housing, the latter of which there is a growing and unmet demand within the borough, which is not disputed by the Council, and for which there is strong Government support. Therefore, the development would represent a rural exception site and would be supported by paragraphs 61, 71 and 77 of the Framework and Policies DM13 and DM20 of the LP.
30. Policy SP8 of the LP identifies Lenham as a broad location for growth for the delivery of approximately 1000 homes post 2021. This is reflected in Policy SHDS1 of the LNP whereby the community of Lenham has completed its neighbourhood plan and accepted through its referendum, seven housing sites to provide the 1000 homes around the periphery of the village, thus ensuring that housing growth targets for the plan period to 2031 are met. The appeal site was considered as a development site as part of the LNP through its Regulation 14 consultation⁴ but was rejected at paragraph 12.3.7 as a result of the "*unsustainable nature of this location leading to an over-reliance on the private car...*"
31. The LNP also encourages SBCH as part of the 1000 dwellings, with Policy D4 ensuring that high quality development is secured in such instances. Furthermore, although the housing delivery figures for the borough are not a ceiling, the Council can demonstrate a healthy five year housing land supply position and thus, is meeting Government expectations by boosting the supply of homes in the borough and providing them where they are needed.
32. The Council acknowledges that it is not meeting its targets to provide adequate sites for SBCH and provided very little evidence of how it intends to address a very

³ Landscape and Visual Impact Assessment (LVIA), Barton Willmore, June 2019

⁴ The Neighbourhood Planning (General) Regulations 2012

large SBCH shortfall, especially catering for the majority of respondents which would prefer a site within a rural area as opposed to an urban area⁵. There is no doubt in my mind that the provision of SBCH, and the affordable homes to be secured through the supplied planning obligation, would attract substantial weight in support of the appeal.

33. I have carefully considered the provision of nine SBCH dwellings in this regard, which would make a valuable contribution towards the Council's very large deficit in identifying such sites and plots. However, the SBCH Act⁶ does not alter the status of the Development Plan and although there is support for SBCH within it, this does not diminish the other aspects of the LP, and notably the LNP which has recently been agreed by local residents, and the Framework in seeking to deliver homes that realise genuine opportunities to promote walking, cycling and public transport.
34. Additionally, Policy SP19 of the LP states that the Council will seek a range of house type and tenure, to include SBCH, as part of new housing developments. Although it is not explicit that SBCH must form part of new developments, they nonetheless form part of the Council's overall considerations. The appeal site is within an area that is so poorly served by sustainable transport opportunities that the provision of SBCH as part of the development would not overcome the harm that I have identified above. Moreover, the social and economic benefits relied upon as part of this development are not specific to this appeal site alone and would flow equally from a site that is within or adjacent to an urban centre, rural service centre or larger village which demonstrate greater sustainability credentials.
35. Furthermore, although the appellant argues that the site should also be considered as a rural exception site, criterion 4 of Policy DM13 of the LP states that the sustainability of the site will be a prime consideration in decision making. Preference will be given to settlements that have a wide range of services and facilities that are accessible, preferably on foot, by cycle or public transport. For the reasons already rehearsed, I have found that the appeal site is not within such a location, with occupiers heavily reliant on the private car to access even basic amenities. Moreover, Policy SHDS1 of the LNP requires an element of affordable housing to be provided in accordance with Policy SP20 of the LP. Consequently, the proposal would fail to meet the expectations of Policy DM13 of the LP.
36. The appellant also states that Policy DM13 of the LP is not fully up to date with the Framework as it fails to include "entry level exception sites" (ELES). However, although DM13 does not explicitly refer to ELES, it does refer to "affordable local needs housing", which could include sites that comprise one or more types of affordable housing suitable for first time buyers or those looking to rent their first home, as required by paragraph 71 of the Framework. Furthermore, there is nothing persuasive before me to suggest that the Council would not support the development of ELES. Thus, I am satisfied that Policy DM13 is broadly consistent with the Framework.
37. The appeal site does not represent previously developed land as defined at Annex 2 of the Framework. In addition, there is nothing before me to secure the transfer of land to the north of the appeal site to the Lenham Meadows Trust. Thus, I give this matter limited weight in support of the development.

⁵ SHMA - Paragraph 9.42

⁶ Self-Build and Custom Housebuilding Act 2015

38. The appellant also refers to the art gallery to the south of the appeal site whereby the Council stated that the development was not unsustainable. Although this was one consideration that the Council took into account, there were other matters that were considered significant benefits such as the removal of an unsightly building with a development of merit. Moreover, visitor numbers would be controlled by the applicant and the site had a flexible use which was considered a realistic fallback position, to which the Council gave substantial weight. Taking all these factors into account, and that the development was permitted before the LP was adopted, I do not consider that the art gallery decision represents an irresistible reason to find in favour of the development before me. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.

Conclusion

39. Thus, for the reasons given above, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the Development Plan. As I have found the proposal would be in conflict with the Development Plan, the appeal is dismissed.

Graham Wyatt

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Kate Holland Invicta Planning

FOR THE COUNCIL

Jocelyn Miller Senior Planning Officer - Maidstone Borough Council

INTERESTED PARTIES

Paul McCreery Lenham Parish Council

DOCUMENTS

As a result of the hearing being undertaken virtually, the following documents were provided electronically:

- Letter from agent dated 24 May 2021 regarding waste water treatment
- Planning obligation
- The Lenham Neighbourhood Plan 2021
- Maidstone Strategic Housing Market Assessment October 2019