



Appeal Decision

Site Visit made on 19 May 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal Ref: APP/E2205/W/20/3265664

Land between St Christopher's Church & Boughton Lodge, Faversham Road, Boughton Lees, Boughton Aluph, Kent TN25 4HU

- 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 Thomas Bates and Sons Limited against the decision of Ashford Borough Council.
 - The application Ref 19/01691/AS, dated 2 December 2019, was refused by notice dated 13 November 2020.
 - The development proposed is erection of a five bed dwelling and formation of a new vehicular access from the Eastwell Manor access road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission has been refused and dismissed at appeal¹ in 2019 to a similar development in relation to the access arrangements then proposed involving the creation of an opening in a frontage brick wall. This forms a material consideration on the current appeal.

Main Issues

3. The main issues are:
 - (a) whether this would be an appropriate location for the proposed dwelling,
 - (b) the effect of the proposal on the character and appearance of the locality including an Area of Outstanding Natural Beauty (AONB) and the Boughton Lees Conservation Area (CA)
 - (c) the implications upon the Stodmarsh designated site's protected habitats and the Stodmarsh water environment.

Reasons

Location

4. The appeal site comprises an open plot of land between Boughton Lodge, a gatehouse bungalow with garden, and the Grade II listed St. Christopher's Church. The site has a number of mature trees and is mainly grassed. A public right of way footpath crosses the site with access to Faversham Road through a narrow gap in an historic boundary wall. This is the Pilgrims Way, part of the

¹ application Ref 18/00404/AS and Appeal Ref APP/E2205/W/19/3223859

North Downs Way and leads into the open grounds of the Eastwell Manor estate. The site includes a strip of land to the rear of Boughton Lodge connecting with an access to Eastwell Manor some 400m away; this is a former country house and estate, currently in use as a hotel and spa, and is a Grade II listed building. The appeal site lies within the Boughton Lees Conservation Area (CA) and is on the edge of the Kent Downs Area of Outstanding Natural Beauty (AONB).

5. The previous proposal for a house on the site was not refused permission in relation to its location and sustainability objectives. The current development plan, the Ashford Local Plan 2030 (ALP) had recently been adopted and was taken into account by the Inspector at that time. However, the Council are now relying on a settlement envelope for Boughton Lees within the Boughton Aluph and Eastwell Neighbourhood Plan (NP) which places a boundary on the other side of St Christopher's Church. As such the Council considers the proposal to be within the countryside and therefore contrary to Policy HOU5 on development in the countryside.
6. The NP was at an early stage at the time of the last appeal and had no bearing on the Inspector's decision but it is now at a more advanced stage. Following public consultation, the NP was submitted for Independent Examination in December 2020 and the report of the Independent Examiner was received in April 2021. The NP still has to go through a referendum and may be subject to change but none of the modifications changed the area of the built-up confines of Boughton Lees. Therefore, significant but not full weight should be afforded to the NP's 'village envelope' boundary definition for Boughton Lees notwithstanding that the NP process is not yet complete.
7. The site, whilst comprising open ground, is nonetheless located between buildings fronting Faversham Road not far from the centre of the settlement around a village green. There are houses on the opposite side of Faversham Road. These continue for a considerable distance beyond Boughton Lodge away from the green but would be considered as part of the proposed settlement envelope in the NP. In my judgement, the site is not located within the countryside but at the edge of the built up area. The proposal would not be an isolated home in the countryside in the context of Paragraph 79 of the National Planning Policy Framework (the Framework). Policy HOU3a would be more applicable than Policy HOU5.
8. Policy HOU3a refers to 'Residential Windfall Development within Settlements'. Supporting paragraph 6.51 states, *"For the purposes of this Plan, the built-up confines of a settlement are defined as: 'the limits of continuous and contiguous development forming the existing built up area of the settlement, excluding any curtilage beyond the built footprint of the buildings on the site (e.g. garden areas)'"*. Paragraph 6.52 confirms, *"This definition may, however, include sites suitable for 'infilling' which is the completion of an otherwise substantially built-up frontage by the filling of a narrow gap, usually capable of taking one or two dwellings only"*.
9. The gap between Boughton Lodge and St Christopher's Church is large, not narrow, and does not form a substantially built-up frontage. As open land it is as contiguous with the meadows of the Eastwell Manor estate as with the built up area of Boughton Lees. As a windfall infill, the proposal would not be compatible with the provisions of Policy HOU3a, or with the emerging NP.

10. Boughton Lees does not have a shop but has a church, a village hall, a pub and a hotel. Facilities are limited and the occupiers of the proposed dwelling would be reliant on services elsewhere. There is a regular bus service from the green not far from the site to and from Ashford and neighbouring villages that would provide an alternative to reliance on the use of private cars. The appeal site would not be in a materially less sustainable location than other possible infill sites within the settlement envelope proposed within the draft NP. Nonetheless, having regard to the provisions of Policy HOU3a and the emerging NP, this would not be an appropriate location for an additional dwelling.

Character and appearance

11. The proposed house would be very similar in design and appearance to that previously proposed with the main differences relating to the rear elevation in association with the re-siting of the proposed vehicular access which would be a new feature. The site lies on the edge of the AONB. The new road would be a low lying feature not readily discernible in long views across the undulating land to the west within the AONB but would be noticeable in closer views. The house would be perceived as part of the row of buildings towards the periphery of the settlement and the AONB. The previous appeal Inspector commented that the proposal at that time *"would not harm the natural beauty of the AONB as it would preserve the rural character of the locality and in turn the natural beauty of the area"*. The current proposal includes a new road and turning area that would cover a greater and more exposed area than just the house.
12. Paragraph 172 of the Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs and for the scale and extent of development to be limited. Whilst the scale of the house would be more limited than that previously proposed, the extent of the development as a whole now proposed, including the road, would not be. The road would cut across parts of the open grounds which form part of the landscape character of the locality. It would not conserve or enhance the landscape character of the AONB, a matter to which *"great weight"* has to be attached. The proposal would also conflict with Policy ENV3b of the ALP which requires development affecting the setting of AONBs to enhance the special qualities, distinctive character and tranquillity of the AONB.
13. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas whilst Section 66 imposes a similar requirement in relation to the setting of Listed Buildings. The siting of the dwelling would be no closer to the listed St Christopher's Church than previously proposed and would be distant from Eastwell Manor. I concur with the Council that there would be no harm to the setting of either of these listed buildings.
14. The only harm to the CA identified in the previous appeal related to partial demolition of the boundary wall fronting Faversham Road. The revised access would rectify this issue. The previous Inspector's commented that *"the character of the CA stems from the village green, the spaces between the buildings and the buildings themselves, which are of varying quality and age"*. In relation to the dwelling then proposed, the Inspector commented, *"The design and features of the proposed dwelling, including materials, would be similar to those found elsewhere in the area. Furthermore, the overall height*

and scale of the development would not be dissimilar to those of neighbouring properties". The impact of the currently proposed house on the significance of the CA would be little changed from that previously proposed.

15. But the current proposal includes a new access road. This would not be readily visible from central parts of the CA but it would adversely impact views into the CA from the open land to the west. These views are important as they would be seen by persons on the public right of way, part of the North Downs Way, that crosses the site. The road and house in combination would wrap around Boughton Lodge and change its historic function and setting as a relatively isolated gatehouse at the entrance to the Eastwell estate. Mature trees at the site would be sited sufficiently far from building works to not be directly affected, but the construction of the development as a whole across currently unenclosed grassland that reads as part of wider open grounds would be detrimental to the character and appearance of the locality.
16. Policy ENV14 of the ALP covers a range of issues. Although the scale and detailed design of the proposed house would not be out of keeping with the mixed residential character in the surrounding area the development as a whole would not respect the historical character of the area including the spaces between buildings and the setting of Boughton Lodge. An area of open space that contributes positively to the character and appearance of the area would not be retained and important views into the CA would be prejudiced. In these ways the proposal would be in conflict with Policy ENV14 and the requirements of the 1990 Act to preserve or enhance the character or appearance of conservation areas.
17. The harm to the significance of the CA as a designated heritage asset would be less than substantial and Paragraph 196 of the Framework requires in these circumstances for the harm to be weighed against public benefits arising. The proposal would deliver one additional house making a small contribution towards boosting the local supply of housing. It would provide a modest economic contribution from construction and ongoing investment to local services from its occupation, although this latter point would be of limited benefit to Boughton Lees where there are few services. The harm to the character and appearance of the CA would not be outweighed by these benefits.

Stodmarsh

18. The site falls within the 'Stour Upper' Operational Catchment for nationally and internationally designated protected sites at Stodmarsh lakes, to the east of Canterbury, where Natural England are concerned about the impact arising from excessive nutrients including those from waste water discharges. The appeal proposal is for only one dwelling, but it is nonetheless necessary to consider its impacts in relation to Natural England's 'precautionary principle'.
19. The Habitat Regulations Assessment (HRA) require competent authorities before granting consent for a plan or project, to carry out an Appropriate Assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. The AA must consider the implications of the plan or project for the European site's conservation objectives and the appropriate nature conservation body must be consulted.

20. The appellant has commissioned a nutrient assessment² which concludes that the impact of the development will, with the drainage features proposed, result in a slight net reduction in total nutrient levels. The features include formation of *"a pond or small area of wetland to enhance biodiversity and assist with nutrient uptake whilst hardstanding areas can be constructed in permeable paving which can discharge to this area if there is insufficient permeability to soak directly. Roof water would discharge separately to soakaway or to a pond/swale"*. The appellant anticipates that the mitigation drainage works can be the subject of a planning condition.
21. However, whilst such mitigation measures may be plausible in the context of the site, they cannot be considered independently of an AA in relation to "in-combination" impacts and consultation with the statutory nature conservation body. There is insufficient information from the main parties before me to complete an AA and to conclude on this matter. As such, there is no assurance that the proposal would not be harmful to designated protected sites at Stodmarsh. The proposal would thereby be contrary to Paragraph 175 of the Framework that seeks to protect designated habitat and biodiversity sites.

Other Matters

22. I have noted the representations from residents and the Parish Council against the proposal. The points raised have mostly been addressed above. Several residents have objected on highway grounds in relation to the junction of the access road to Eastwell Manor with Faversham Road. I agree with the findings of the local highway authority that the very limited additional traffic arising from the proposal at this established access would not be detrimental to highway safety.

Conclusion

23. Having regard to all relevant national and local planning policies, this would not be a suitable location for a new dwelling and the proposal would be harmful to the character and appearance of the area including the AONB and CA. There is insufficient information before me to conclude that there would not be harm to protected designated habitat and biodiversity sites.
24. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR

² Technical Note by Considine Civil + Structural Engineers dated 18/12/20