



Appeal Decision

Site Visit made on 13 July 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2021

Appeal Ref: APP/J2210/W/20/3258168

Land West of Oast Glen, Calcott Hill, Sturry, CT3 4NE

- 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 Provectus Developments Limited against the decision of Canterbury City Council.
 - The application Ref CA/20/01045, dated 11 May 2020, was refused by notice dated 30 July 2020.
 - The development proposed is described as redevelopment of previously developed land for nine residential properties and associated parking, hardstanding, landscaping utilising existing means of access.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's Statement of Case refers to the application both as being outline with only highway access for approval at this stage and as being for full permission. The application documents indicate that the application is for a full permission and it is evident that the Council made its decision on this basis. For the avoidance of doubt I have therefore also determined this appeal on the basis that it relates to an application for full permission.
3. The appeal site lies within the 'zone of influence' of the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The Council's second reason for refusal relates to the failure to secure the delivery of necessary measures to mitigate the recreational impacts of the proposed development on the SPA. However, during the course of the appeal the appellant submitted a Unilateral Undertaking (UU) in this respect. I return to this below.
4. The appeal site is also within the catchment of the River Stour, the water environment of which includes Stodmarsh National Nature Reserve / Site of Special Scientific Interest (NNR / SSSI). Since the determination of the application, Natural England (NE) has identified that some of the Stodmarsh lakes are in an unfavourable condition due to their existing levels of nutrients, thought to be primarily from wastewater from existing housing and agricultural sources. The Council has therefore raised this matter as a concern during the appeal process.
5. In response to NE's concerns, during the course of the appeal the appellant proposed an amendment to the scheme with an onsite package treatment plant discharging to a watercourse on the site boundary instead of a connection to a main sewer. The appellant submitted a revised site layout showing the location of the plant and access to it.

6. However, the appeal process should not be used to evolve a scheme and it is important, having regard to the *Wheatcroft principles*¹, that those who should be consulted on this amendment, in this case the Environment Agency, should not be deprived of the opportunity to do so. I have therefore determined this appeal on the basis of the proposals and plans that were before the Council when it made its decision and on which interested parties were consulted.
7. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I have determined this appeal in the context of the revised Framework, on which the parties have been given the opportunity to comment.

Main Issues

8. The main issues are:

- i) whether the site is in an appropriate location for housing, having regard to local and national policies and the accessibility of facilities and services;
- ii) the effect of the proposal on the character and appearance of the area;
- iii) the effect of the proposal on the integrity of designated habitats sites.

Reasons

Location

9. The appeal site is located at Calcott on the A291 Calcott Hill, approximately 1.3 km to the north of Sturry and 3.5 km south of Herne Bay. Calcott comprises a few houses and commercial properties but has no facilities or services for day to day living with only a public house within 400 m of the appeal site.
10. Policy SP2 of the Canterbury District Local Plan (2017) (the Local Plan), to which the appellant refers, sets out the development requirement for the district for 2011-2031, including housing. Policy SP4 sets out a strategic sequential approach to the location of development with a settlement hierarchy. It is thus relevant to the proposal. Calcott is not identified as a settlement in this hierarchy and the site is substantially detached from Sturry. It is therefore within the countryside for the purposes of planning policy. Policy HD4 of the Local Plan is a restrictive policy on new dwellings in the countryside. It has not been put to me that any of the circumstances in which new dwellings in the countryside will be permitted under the policy are applicable to the proposal.
11. Sturry is identified as a rural service centre in the hierarchy of Policy SP4, having a range of facilities and services, including shops, schools and a railway station. Whilst there is a convenience store at Broad Oak approximately 1 km from the appeal site which could be reached on footways along the A291, most facilities and services in Sturry are over 2 km away. Furthermore, the footway is narrow and unlit and not continuous on either side of the road, necessitating crossing the A291 multiple times to reach the store. There is no dedicated cycleway to Sturry along the road and changes in level along the route would also discourage walking or cycling.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1983 P37]

12. The A291 is a bus route, with regular and frequent services between Herne Bay and Canterbury. This would provide access to Sturry and to higher order services and facilities in the larger settlements. There is a southbound bus stop opposite the site with the nearest northbound stop is approximately 100 m to the south. However, there is not a continuous footway on the same side of the road to this stop and neither stop has a shelter or lighting.
13. Therefore, with the convenience of a car, I consider it likely that future occupiers of the proposed dwellings would largely use the private car to access both everyday and higher order facilities and services, particularly during the winter months or in inclement weather. Whilst the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, it advocates limiting the need to travel, prioritising pedestrian and cycle movements and promoting walking, cycling and the use of public transport.
14. The appellant's Transport Assessment notes that there have been a variety of commercial uses on the appeal site since approximately 1949. At the time of my visit the site appeared to be mainly in low-key storage use, although sandblasting was taking place in one of the buildings on the site. The Assessment estimates the existing uses to generate approximately 33 vehicle movements between 07.00 and 19.00, although this is based on historic rather than up-to-date trip rates with no detailed explanation of how they are calculated. No figure for the proposed development for the same period is given, only peak vehicle movements, which exceed those for the existing commercial uses on the site including open storage. I am not persuaded therefore that the proposed development would result in a reduction in vehicle movements as contended by the appellant.
15. I therefore conclude that the appeal site is not an appropriate location for housing, having regard to the availability of facilities and services. Accordingly, in this respect, the proposal would conflict with Policies SP4 and HD4 of the Local Plan.

Character and appearance

16. The land to the west side of the A291, including the appeal site, lies within an Area of High Landscape Value. The existing dwellings and buildings of Calcott are of varying ages, forms and designs. Although the property known as Oast Glen is set back from the road, the majority of the dwellings face Calcott Hill and have individual accesses off the road.
17. The appeal site is set back from the road from which it is accessed by an existing concrete roadway. The site is secluded, with Oast Glen and another dwelling to the east, stables to the north and open agricultural land to the west and south. The site is bounded to the south and west by established trees and hedgerows with more sporadic vegetation to the north and east boundaries. The site is occupied by a range of fairly basic buildings with areas of concrete hardstanding and open storage. The site is thus previously-developed land.
18. Notwithstanding the existing buildings and the adjoining dwellings, the relative openness of the site and boundary vegetation means that on the ground it relates more to the countryside than to any built-up area. The existing buildings have little aesthetic merit but are mostly low-key and of a form and materials that might be expected within the countryside. It has not been put

to me that the buildings are intrusive from anywhere other than from immediately around the site. Consequently, in its present condition, the site does not detract significantly from the character or appearance of the surrounding area.

19. The proposed development would replace the existing buildings with nine detached bungalows accessed by a central spine road with individual driveways and hardstandings. Overall, there would be a reduction in built footprint. The bungalows would sit low in the landscape and the siting of the dwellings away from the site boundaries would allow the retention and strengthening of existing boundary vegetation.
20. However, the proposed in-depth development of nine similar dwellings would not conform with the pattern of development in Calcott, being at odds with the more individualistic arrangement and form of the existing dwellings in the vicinity. The proposal would inevitably result in the formalisation and domestication of the site, with residential paraphernalia. Furthermore, I cannot be certain that the boundary vegetation would be retained for the lifetime of the proposed development. The loss of this screening would expose the development to greater view.
21. I therefore conclude that the proposal would be harmful to the character and appearance of the area. Accordingly, in this respect, the proposal would be contrary to Policy DBE3 of the Local Plan, which seeks high quality design that has regard to, amongst other things, the character, setting and context of the site and the impact on local townscape character.

Designated habitats sites

22. The Thanet Coast and Sandwich Bay SPA (TCSBSPA) includes a wide variety of coastal habitats. These support an important breeding population of little tern and important wintering populations of golden plover and turnstone, which together comprise its qualifying features. The Stodmarsh NNR / SSSI is internationally important for its wildlife and is consequently designated as a SPA, Special Area of Conservation (SAC) and Ramsar site. The qualifying features of the SPA are its assemblages of waterbirds and breeding birds; great bittern, gadwall, northern shoveler and hen harrier. The Desmoulins whorl snail is the qualifying feature of the SAC.
23. The conservation objectives of these designated sites are, in summary, to ensure that the integrity of the site is maintained in order to protect the habitats and the species that depend on them. Disturbance from recreational activities by visitors to the TCSBSPA is considered by NE to have a likely significant effect on the important bird species. Net additional housing development within the 'zone of influence' is likely to increase recreational pressure with consequent likely adverse impacts on the integrity of the SPA.
24. The nutrient (both phosphorus and nitrogen) levels in some of the Stodmarsh Lake units cause eutrophication and adversely affect the protected habitats and species. Whilst research is ongoing, the designated sites are therefore thought to be at risk from additional nutrient inputs, including from new developments coming forward in the Stodmarsh catchment. Although there remains some uncertainty, NE has adopted a precautionary approach and is of the view that a likely significant effect on the designated sites due to the increases in wastewater from such new development cannot be ruled out.

25. The proposal is for nine new dwellings and would therefore be likely to result in increased recreational use of the TCSBSPA. The appellant's nutrient assessment indicates that the proposal would also result in increases in nutrient load of both phosphates and nitrates. Although these increases would be very small in isolation, in combination with other small windfall developments, the increase would be significant.
26. I therefore find that the proposal would be likely to have a significant effect on the integrity of the designated sites in combination with other plans and projects. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require the decision maker to undertake an Appropriate Assessment (AA) before giving any permission where there are likely significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. In undertaking the AA I can have regard to potential mitigation measures.
27. A Strategic Access Monitoring and Management Strategy has been produced for the TCSBSPA. This sets out mitigation measures including a wardening / visitor engagement service, education activities, signage, interpretation and monitoring. As these measures are supported by NE, I am satisfied that, if secured, they would provide adequate mitigation for the recreational effects of the proposal. These measures are funded through financial contributions from developers based on a tariff in accordance with Policy SP6 of the Local Plan.
28. The appellant has submitted a UU for the requisite contribution towards these mitigation measures. These contributions meet the tests of Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) and as set out in paragraph 57 of the revised Framework. Although the Council contends that the original UU itself is deficient in a number of ways, the UU has been subsequently amended. I am satisfied that the amended UU would be effective and I have taken it into account in my decision. With this contribution the proposal would not adversely affect the integrity of the TCSBSPA.
29. As regards Stodmarsh, it is my understanding that discussions are ongoing between the affected Councils and NE to develop a strategy to resolve the nutrients issue. However, I have no details of such a strategy before me nor any definitive date by which a strategy could be employed for the appeal proposal. At this point in time, therefore, I cannot be certain if or how this strategy would allow the likely significant effects of the proposal on the Stodmarsh designated sites to be avoided or mitigated.
30. I therefore conclude that the proposal would be harmful to the integrity of the Stodmarsh designated habitats sites. Accordingly, in this respect, the proposal would be contrary to the Habitats Regulations and Policies SP6, LB5 and LB9 of the Local Plan. Policies LB5 and LB9 restrict development which may have an adverse effect on the integrity of a SPA or Ramsar site. It would also conflict with the policies of the Framework on biodiversity.

Other Matters

Housing Land Supply

31. The Council's Housing Land Supply Statement 2019/20 indicates that the Council can demonstrate 6.62 years' supply of deliverable housing sites. The appellant, however, refers to the 2020 Housing Delivery Test measurement for

the Council being 87% and contends that there are issues with the deliverability of several strategic sites, with the Council consequently being unable to demonstrate a 5-year housing land supply.

32. Both the appellant and Council refer to previous appeal decisions in which the Inspectors came to different conclusions on whether the Council could demonstrate a 5-year housing land supply based on the evidence before them at that time². However, housing land supply is not static and the position can only ever be a snapshot in time. The most recent of the appeal decisions cited dates from February 2020 and given the passage of time and changes in circumstances since, I give little weight to the conclusions of these previous decisions.
33. If there is a shortfall in housing land supply as contended by the appellant, paragraph 11 d) of the Framework would be engaged. However, paragraph 11 d) i) sets out that planning permission should be granted unless the application of the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 confirms that these include those for designated habitats sites.
34. I have found above that the proposal would be harmful to the integrity of the Stodmarsh designated habitats sites and thus the application of paragraph 180 of the revised Framework provides a clear reason for refusing the development proposed. Therefore, even if the Council could not demonstrate a 5-year housing land supply the presumption in favour of sustainable development would not apply in this case in accordance with paragraph 182 of the Framework. Furthermore, as the proposal does not represent sustainable development, it does not accord with Policy SP1 of the Local Plan which promotes sustainable development in accordance with the Framework.
35. The adopted Local Plan is less than 5 years old and the most important policies for the determination of this appeal, as identified above, are broadly consistent with the revised Framework. Having regard to paragraph 219 of the revised Framework I have therefore given the conflict with these policies substantial weight in my determination.

Other considerations

36. The proposal would generally accord with the Government's objective of significantly boosting the supply of homes, representing a modest contribution to the housing supply in the district. The Framework recognises the important contribution of small and medium sites to meeting the housing requirement of an area and requires support to be given to the development of windfall sites.
37. The site constitutes previously developed land and the proposal would be an opportunity to remediate the likely contamination from previous and current activities on the site. The proposal would result in limited economic benefits and on-site biodiversity enhancements. These factors lend support to the scheme.
38. However, in addition to setting out that significant harm to biodiversity should be avoided, the Framework supports a plan-led system and sets out that developments should be sympathetic to local character. These considerations weigh against the proposal.

² APP/J2210/W/18/3216104, APP/J2210/W/19/3229319 and APP/J2210/W/19/3221989

39. I acknowledge that no objections to the proposal have been raised by interested parties, but equally there are no representations in support. This is therefore a neutral factor in my determination.

Conclusion

40. The proposed development would conflict with the development plan taken as a whole. The factors in favour of the scheme are not sufficient to outweigh the conflict with the Council's adopted spatial strategy and the harm to both the character and appearance of the area and to the integrity of the Stodmarsh designated habitats sites that I have identified above. There are therefore no considerations, including the policies of the Framework, that indicate that a decision should be made other than in accordance with the development plan.

41. For this reason, and having regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR