



Appeal Decision

Site visit made on 17 August 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/J2210/W/21/3266281

May Tree Paddocks, Hawthorn Corner, Herne Bay, CT6 6TL

- 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 James Woodward against the decision of Canterbury City Council.
 - The application Ref CA/20/01652, dated 3 August 2020, was refused by notice dated 24 September 2020.
 - The development proposed is a detached two-storey dwelling with detached single-storey car port.
-

Decision

1. The appeal is dismissed.

Main Issues

2. These are:-
 - Whether the proposed dwelling would be in a suitable location having regard to local policies and the accessibility of services and facilities;
 - The effect on the character and appearance of the countryside;
 - Whether the design of the proposed dwelling would be of an exceptional quality or innovative nature; and
 - The effect on the integrity of the Thanet Coast and Sandwich Bay Special Protection Area and the Stodmarsh Special Area of Conservation.

Reasons

Location

3. The appeal site is a rectangular piece of land of 0.72 hectares. An enforcement notice requires the removal of, amongst other things, the existing static caravan, shipping container and parked cars. The proposal should therefore be assessed on the basis that this unauthorised development is no longer present.
4. Policy SP4 of the Canterbury District Local Plan of 2017 sets out the strategic approach to the location of development. It establishes that the urban areas of Canterbury, Herne Bay and Whitstable will continue to be the principal focus. In the open countryside development will only be permitted if required for agriculture and forestry purposes. Therefore a single dwelling outside the defined urban area boundary of Herne Bay as proposed would not comply with the broad objectives for the District.

5. There are no specific Local Plan policies that guide the location of development in relation to access to services and facilities. Policy SP1 largely reiterates the presumption in favour of sustainable development in the National Planning Policy Framework. However, the Framework provides that opportunities to promote walking, cycling and public transport should be pursued and patterns of growth managed accordingly.
6. There is a bus stop about 550m from the appeal site which could be accessed on foot. Five services operate along the route on a twice hourly basis to various destinations including larger towns and Canterbury. Details have also been given of amenities within 2km of the site including schools and a supermarket. However, these are outside the 800m distance commonly accepted as realistic for people to walk to and back from. Furthermore, they are somewhat scattered which is unlikely to encourage trips on foot, especially as the initial part of the journey would be along roads. Although not unsafe this would not be an especially attractive proposition.
7. To the west of the site there is a major allocation for 1,300 new homes, an extension to an existing business park as well as retail, community and education facilities. An application for 900 dwellings and other uses was refused and is at appeal and there is reference to two applications under consideration. Whilst it can be expected that this strategic site will eventually be delivered there is no clear idea of when this would be. Furthermore, there is nothing to indicate where the services anticipated would be provided in relation to the appeal site or exactly what they would comprise.
8. Having regard to recent caselaw and the cluster of development at Hawthorn Corner, the proposal would not be an isolated home in the countryside. Consequently the provisions of paragraph 80 of the Framework do not apply. However, this finding does not settle the question of whether it would be sited where the use of sustainable transport modes would be encouraged. Although some opportunities for this exist and these might increase in future, the reality is that future occupiers would probably use a car for many of their journeys.
9. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Furthermore, the proposal would have a similar relationship to nearby services and facilities as other residential properties nearby. However, the clear thrust of national policy is to promote sustainable transport rather than to replicate existing patterns of development. Overall it cannot be said it would be easy, and therefore likely, for essential and day-to-day services and facilities to be accessed without recourse to the car.
10. Therefore, having regard to the locational strategy for development and the accessibility of services and facilities, the proposed dwelling would not be suitably located. It would not be consistent with Policy SP4. However, given its small scale, the effect on the strategic aims of the Local Plan and on reducing car reliance would be at the lower end of the spectrum of harm.

Character and appearance

11. The proposed dwelling would be set well back into the site on a similar alignment to The Brambles to the east. The garage would be further forward. The new house would be a modern design of simple form with an asymmetrical pitched roof. Main materials would be lime render with sawn weatherboarding

above and coated steel sheets for the roof. The overall result would be subdued and visually attractive.

12. Views of the site are limited by existing planting and by the bund along the lane. This would be supplemented by additional landscaping. The main glimpses of the proposed house would be from the front and from some of the surrounding footpaths. However, because of its enclosure, the proposal would not be prominent or intrusive in the local scene. Compared to an open field there would nevertheless inevitably be some urbanisation and domestication of the land although this would not be readily apparent.
13. The Framework recognises the countryside's intrinsic character and beauty. However, the surrounding landform is fairly flat and uninspiring. The proposed dwelling would be closely associated with the group of buildings at Hawthorn Corner. Moreover, it would be positioned between the Thanet Way and the railway line and close to the water treatment works. This is not an area of pristine countryside. There is no strong rural character and so, when assessed objectively, its overall landscape value is quite low. Whilst that does not mean anything goes, there is nonetheless a degree of tolerance before a negative impact would occur. In this context, the proposed dwelling would fit in well.
14. To sum up, there would be some detriment in that an open area would be built on. However, having regard to the considerations in Policy DBE3 the proposal would be integrated into the landscape and would respect the character, setting and context of the site. The visual impact would be limited and the design would be of a high quality. There would therefore be no conflict with the policy and the harm to the character and appearance of the countryside would be slight.

Design

15. The proposed dwelling has been designed to be zero carbon in construction and use and it is claimed that it would be the first dwelling to achieve this in the United Kingdom. No concrete or cement would be used and in terms of energy efficiency it would meet the Passivhaus plus standard of generating more energy that it uses over a year. There are only five certified Passivhaus plus houses in the country. None of the environmental credentials detailed in the Design and Access Statement are disputed.
16. Policy HD4 allows for new dwellings in the countryside if the design of the development is of an exceptional quality or innovative nature. The Council contends that the proposal does not fall into either category. It is acknowledged that no new technology would be introduced as all the materials, components, processes and skills are tried, tested and available. However, the project would show that carbon neutral buildings can be achieved now. Furthermore, as the first of its kind, it cannot be denied that the proposal would be innovative.
17. There are some other aspects of the scheme that are also in its favour. As an exemplar of sustainable construction the completion of the dwelling would be likely to act as a catalyst for other schemes by demonstrating what can be accomplished. To that end, the techniques used are repeatable so that they could be adopted by others. Whilst this cannot be controlled through the planning system, it is also intended to include a small display area to provide information to the public about the technologies and methods used.

18. The Framework indicates that the planning system should support the transition to a low carbon future as part of meeting the challenge of climate change. More specifically, it indicates that new development can help to reduce greenhouse gas emissions through location, orientation and design. Furthermore, paragraph 134 stipulates that significant weight should be given to innovative designs which promote high levels of sustainability. The proposed development would be consistent with all these policies.
19. The proposal also includes the creation of a habitat area by a native reed bed filtration system, additional tree planting, native and nectar rich planting and bat and bird boxes. In this way opportunities to improve biodiversity in and around the development have been integrated into the design as supported by the Framework. This gives further support to its acceptance.
20. In summary, the build process of the dwelling would solely use sustainable materials as well as simple, low waste and repeatable construction methods. It would also have a much lower energy demand than a standard dwelling. The design of the proposal would be of an innovative nature. Because of this, it would accord with one of the circumstances set out in Policy HD4 when new dwellings in the countryside will be granted.

Integrity of the Special Protection Area and Special Area of Conservation

21. The Thanet Coast and Sandwich Bay Special Protection Area (SPA) provides habitats for overwintering birds. Because it would be within the zone of influence the proposal has the potential to affect its features of interest. In combination with other development, it would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPA.
22. To mitigate this impact the Council expects that a financial contribution is made to the Strategic Access Management and Monitoring Strategy. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. A unilateral undertaking has been submitted by the appellant which has been revised to take account of comments by the Council.
23. However, the Land Registry entry shows that a second person has an interest in the land. Notice was also served on that person as part of the appeal in January 2021. Evidence has been provided to show that the appeal site is to be formally transferred to the appellant but there is no indication that this has been done or that a request to update the Land Registry records has been submitted. These records should be treated as conclusive for this purpose.
24. Section 106(1) of the Act allows any person with an interest in the land to enter into an obligation but it is only enforceable against that person or anyone deriving title from that person. Therefore it is not clear that the payment of a financial contribution could be enforced against the second person leading to a risk that it could be avoided. There is no evidence that this is intended but a high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. So because all parties with an apparent interest in the land are not signatories, it is not possible to be sure that the intended mitigation would take place and hence be effective.
25. As a result, following an appropriate assessment, the proposal would adversely affect the integrity of the SPA and would be contrary to Policy LB5 which

establishes that sites of international conservation importance must receive the highest levels of protection. The mitigation expected by Policies SP6 and LB9 would not be satisfactorily secured. Moreover, in these circumstances, section 63(5) of the Regulations precludes the proposal from proceeding as it can only be agreed if it has been ascertained that it will not adversely affect the integrity of the SPA.

26. The Council also raises concerns about the effect on the Stodmarsh Special Area of Conservation (SAC) due to an increase in overnight stay accommodation. However, the property would drain into a private wetland system where wastewater is cleaned in situ before being released. If, in time, the property was to connect to the public sewer, discharge from Catchment Area 1 of the May Street treatment works is into the sea. In either scenario there would therefore be no consequences for water quality at Stodmarsh and no likely significant effect on the SAC.

Final assessment

27. The proposed dwelling would fall within the parameters of Local Plan Policy HD4 because of its innovative nature. As this policy accepts such dwellings in the countryside it must logically be the case that it would not undermine the overall strategy for the location of development. This is even though it is not specifically allowed for in Policy SP4. The proposal would meet the design expectations of Policy DBE3.
28. Set against this, the dwelling would not be particularly well located to promote sustainable modes of transport and there would be slight harm to the character and appearance of the countryside. These disadvantages are countered by the significant positive contribution that would be made by the sustainable nature of the construction and future use of the dwelling and the biodiversity benefits that would ensue.
29. However, because of failings with the submitted unilateral undertaking the proposal would adversely affect the integrity of the SPA. This is an overriding consideration and means that that proposed development would be contrary to the development plan.

Conclusion

30. For the reasons given, the appeal does not succeed.

David Smith

INSPECTOR