
Appeal Decision

Site visit made on 1 September 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal Ref: APP/J2210/W/20/3264599

Caladesi House, Littlebourne Road, Canterbury, CT3 4AF

- 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 and Mrs G Thapa against the decision of Canterbury City Council.
 - The application Ref. CA/20/00815 dated 26 March 2020, was refused by notice dated 8 June 2020.
 - The development proposed is a two-storey detached dwelling together with single-storey detached garage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs G Thapa against Canterbury City Council. This application is the subject of a separate Decision.

Preliminary matters

3. During my initial consideration of this case I became aware of other appeal sites where the council had notified the Planning Inspectorate that advice had been received from Natural England (NE) concerning the Stodmarsh Nature Reserve (Stodmarsh). I therefore asked for clarification as to whether the issue also affected this appeal site. The council confirmed that it did indeed come within the formal advice from NE. The appellants were informed of this and were able to comment on the matter.
4. Stodmarsh Nature Reserve is protected under European Law and is managed by NE. NE has identified that the water quality in the lakes there has deteriorated and this is linked to the discharge of wastewater from new homes into the wastewater treatment works within the Stour Valley river catchment area. This appeal site falls within this catchment area. In line with NE advice, any development resulting in additional overnight accommodation must be nutrient neutral, otherwise the proposal will cause impacts upon the integrity of Stodmarsh. The council informs me that, as yet, there has been no resolution of this matter. Whilst Stodmarsh did not feature as a reason for refusal on the council's decision notice or in its appeal statement, it is a matter that I must take into account; hence it is part of the main issues set out below.

5. The appeal documentation included a report from consulting engineers, with a specialism in transport and traffic engineering. This introduced new elements of the proposal that were not part of the application considered at the time of refusal. The council has subsequently taken account of the current intention to close the access to Caladesi and has consulted the highway authority on this point. Since there would be no intensification of the use of the access, the highway authority has withdrawn its objection and the highway reason for refusal is no longer pursued.

Main Issues

6. The main issues in the case are: i) the suitability of the site for residential development, having regard to the rural area and backland situation, the housing land supply position, and the stated intention that the appeal dwelling would be 'self-build'; ii) the need for mitigation with regard to the Stodmarsh Nature Reserve.

Reasons

The site and surroundings

7. The appeal site is situated behind two houses, Highfield and Summerfield, that front onto Littlebourne Road, although it is part of the garden of the appellants' house Caladesi. Caladesi also fronts onto Littlebourne Road, although it is set well back into its curtilage. This curtilage is extensive, running behind the 2 houses already mentioned and also behind another property, Woodside, on the road frontage. The appeal site is triangular in shape, being land running to the north of a track which is the main vehicular access to Caladesi itself.
8. The access track to Caladesi just mentioned runs from a roughly surfaced track from Littlebourne Road, alongside Highfield. This track also gives access to other properties that appear in the main not to have a direct frontage to the road. At the rear of the development just mentioned, in the vicinity of Caladesi and the access track, is the Polo Farm Sports Club, an extensive area of recreational facilities. All the described properties are on the northern side of Littlebourne Road (the A257), which otherwise has sporadic development until about 340m to the west, beyond the entry to Polo Farm Sports Club, where there is more concentrated development, including recent housing. The southern side of Littlebourne Road is open farmland.

The rural area and backland situation

9. The starting point is the development plan and its policies for the area: the Canterbury District Local Plan 2017 (CLP). The main policies against which this issue should be judged are policies SP1, SP4 and HD4. Policy SP1 carries the presumption in favour of sustainable development as set out in the National Planning Policies Framework (the Framework). Policy SP4 sets the strategic approach to the location of development. The urban areas of Canterbury, Herne Bay and Whitstable will continue to be the principal focus for development, with a particular focus at Canterbury, together with development at the rural service centres and local centres. It lists service and local centres and villages and hamlets where development may be permitted; the appeal site is within none of these.
10. The appeal site is beyond any defined settlement, and therefore is within the countryside where policies of constraint apply. Policy HG4 sets out four

circumstances when planning permission will be granted for new dwellings in the countryside: for rural workers, for the re-use of heritage assets, for the re-use of existing buildings and when design is exceptional or innovative. It is common ground that the appeal proposal does not come within any of these 4 circumstances. To deal with 2 small points arising from the representations, the appeal site is not "isolated" nor, in my judgement, is it within a 'settlement'.

11. The surroundings are clearly within the 'open countryside', albeit that the open sports grounds and the sporadic development served by the access track mean that it is not of the quality of the agricultural landscape on the other side of Littlebourne Road. However, it is the totality of the character of the landscape that should not be eroded, which would be contrary to policy HD4 of CLP. These policies are clearly in accord with the Framework which requires, at paragraph 174 b) (was 170 in the 2019 version), that decisions should contribute to and enhance the natural and local environment by "*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services*". The 'backland' nature of the site adds to the policy objection since the new dwelling would be set well back from the frontage and would further erode that character and beauty of the countryside.
12. Furthermore, the appeal site is not a sustainable location. For the appellants it is stated that whilst the site is located beyond the built confines of the urban area of Canterbury, it is well-related to the settlement and served by regular bus services in both directions along the A257. No nearby shops or other services in the vicinity have been drawn to my attention, and nor did I observe any within a mile of the site. The bus stops mentioned are on either side of the road by the entrance to Polo Farm Sports Club, some 340m away and just beyond the end of the footpath along the carriageway, running from the west, that finishes at the entrance to the dwelling 'Almora'. Therefore public transport is not likely to be an attractive option for anything but very infrequent journeys, and I consider that the great majority of trips for shopping, public services, etc, would be undertaken by motor vehicle.

The 'tilted balance'

13. The appellants counter this on 2 main grounds – the 'tilted balance' of Framework paragraph 11d, as a result of a lack of housing supply and delivery, and on the basis of policy for self-build homes. On the first of these it is said that the council cannot demonstrate a 5-year housing land supply, and note that the 2020 Housing Delivery Test results, published on 19 January 2021, show for the council that for the last 2 years, 2018/19 and 2019/20, 1,724 homes were required but only 1,046 were delivered. It is also said that the percentage of 87% of requirement met was heavily bolstered by performance in 2017/18, and if the current decline continues in 2021, the presumption in favour of development would apply.
14. The council responds to the 5-year point by stating that it can demonstrate a 6.2 year supply as shown in the most recent Housing Land Supply Statement and Annual Monitoring Report (2019-2020). I also note that, in the 'consequence' column of the 2020 HDT, 'action plan' rather than 'presumption' is identified. However, one of the appeal decisions that has been drawn to my attention on behalf of the appellants (reference 20/3259181 dated 9 July 2021) was for a site at Rough Common. The 2 day hearing included an examination of

the council's housing land supply. For the reasons set out in the Inspector's decision, he concluded that the Council is not currently able to demonstrate a robust deliverable 5-year housing land supply. A written representations appeal, such as this current case, is not a suitable vehicle to test evidence on this matter. It thus appears that it is reasonable for me to adopt the conclusion of the Inspector just referred to.

15. Framework paragraph 11(d) begins: "*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*". There follows 2 components to this paragraph which I will examine in turn.

Paragraph 11(d)(i) - Stodmarsh Nature Reserve

16. Paragraph 11(d) part (i) requires granting permission unless "*the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed*". The footnote to this indicates that habitat sites are one of these areas or assets of particular importance. Thus, in such a situation, the presumption in favour of sustainable development does not apply unless it can be concluded that the plan or project will not adversely affect the integrity of the habitats site (paragraph 182 [177 of the 2019 version]). There is every indication from NE and the council that the Stodmarsh matter amounts to a clear reason for refusing permission for the appeal development under Framework paragraph 11(d)(i), and until there is agreement on any effective mitigation, the law prevents the competent authority from granting further planning permissions for new homes within the affected areas, including this appeal site.

Paragraph 11(d)(ii)

17. The second component of paragraph 11(d)(ii) is that permission should be granted "*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*". There are 2 matters requiring consideration.

The 5-year housing land supply

18. The first and obvious benefit of the proposal is that it would produce an extra dwelling into the housing supply in the city. This would be a social benefit. The dwelling would carry with it the economic benefit of employment during the construction phase, albeit purely short term, and the possibility of more trade to any business in the locality. I cannot see that any objective of environmental enhancement or improvement would be secured.
19. The Inspector's conclusion, referred to in paragraph 14 above, that the council cannot demonstrate a 5-year supply, did not include a statement as to the actual number of years supply that could be demonstrated. The appellant in that case argued that the correct figure was 4.7 years (see that DL paragraph 45). Accepting the 4.7 years as the only indication that I have, I need to bear in mind that the shortfall found was due to a lack of progress on strategic sites (the appeal proposal having the advantage of course that small sites often produce dwellings faster than larger sites), so that the unsatisfactory position for the council, which is relatively small, is quite likely only a temporary circumstance. I conclude from this that the addition of 1 additional dwelling is

extremely small, and that the economic and social benefits do not amount to much. I am therefore only able to afford limited weight to these matters.

Self-build homes

20. Turning to the matter of self-build homes, it is the intention that the appeal proposal would be self-built, as shown by the submitted s106 planning obligation, dated 21 June 2021, signed by the appellants. The covenants in this deed provide that the dwelling would only be a self/custom build house, for the first 3 years would only be occupied by family members, and (unrelated to self-build) the closure of the existing rear access.
21. There is doubt about the form of this obligation. In its letter of 30 April 2021, the council includes the following statement: *"A draft Section 106 legal agreement has since been prepared to secure the site as a self/custom build and to secure that the existing vehicular access from the Private Drive to Caladesi is permanently closed. It has been prepared in the form of s.106 agreement, rather than unilateral undertaking. The council has no authority to enter into s.106 agreement and any planning obligation agreement secured at the appeal would have to be prepared in a more appropriate form of Unilateral Undertaking. In addition, not all owners of those with interest in the land have been included as party to the agreement. Further, one of the drawings submitted with the draft agreement is unnamed."* The appellants' response to the councils letter did not make any further reference to this matter. I have therefore not placed any reliance on the submitted deed, other than that it indicates an intention to accept a restriction of the kind indicated, and I will consider the merits of the arguments about self-build.
22. The appellants' case is that significant weight should be given to the need to meet the self-build/custom-build duty under Section 2A of The Self Build and Custom House Building Act 2015 (as amended by the Housing and Planning Act 2016). This places a duty on local planning authorities to grant sufficient permissions to meet the demand for self-build and custom house building. This legislative requirement is also encapsulated in the PPG.
23. The appeal decision drawn to my attention by the appellants, already referred to (reference 20/3259181), included a proposal for 7 plots for self-build and custom build dwellings. Since this decision is well known to both parties, I need not go into detail, save to say that the Inspector, in respect of self-build, set out the background legislation and noted that, in the preamble to policy HD2 of the Local Plan, paragraph 2.33 states that the Council will support self-build plots and custom build housing. However, he considered that the Council's approach to be only partially compliant with the advice in the Framework, particularly when the Council had determined 'local' to be confined to its own administrative boundaries rather than the area used for the Strategic Housing Marketing Assessment 2009, which defines Canterbury as being in the East Kent marketing area.
24. Furthermore, he was not persuaded of the justification for the imposition of the local connection test, or why the register was unmanageable without such a test in place; and the council's record of suitable permissions included those that were for replacement dwellings. He concluded that there was ambiguity in the council's case as to the level of self-build need or provision in the area and that there is an unmet need for self-build plots. Since this is from a recent decision of an Inspector who had been able to test the evidence before him, I

feel once again that I am able to adopt his conclusion. I therefore place weight on the unmet need in Canterbury City and the contribution that the appeal proposal would bring.

Other matters

25. A number of appeal decision have been drawn to my attention, in addition to the decision that I have dealt with at some length. I find these of little assistance: App/J2210/W/19/3221989 and 18/3204617 do not have similar circumstances in relation to existing settlements; 18/3216104 was compliant with housing location policy but failed on highway safety grounds; and 20/3245449 was in an area of existing development, where permission had been granted for 10 dwelling and a strategic mixed use development site was close by.
26. A submitted representation makes clear that the access to the appeal site from Littlebourne Road is owned by Polo Farm Sports Club, but to the extent that this may present a difficulty for the proposed development, it is a civil matter and does not play a part in my decision on this case.

Overall conclusions

27. The appeal proposal is not in a sustainable location and is in conflict with policies SP1, SP4, and HD4 of the CLP (paragraphs 9 to 12 above). The advice of NE in relation to Stodmarsh Nature Reserve means that until there is agreement on any effective mitigation, the law prevents the competent authority from granting further planning permissions for new homes within the affected areas (paragraph 16), which include this appeal site. The council cannot demonstrate a 5-year housing land supply, but the addition of 1 dwelling is extremely small, and the economic and social benefits do not amount to much. I am therefore only able to afford limited weight to these matters (paragraph 19). In respect of self-build homes, I place weight in favour of the appeal proposal on the unmet need in Canterbury City and the contribution that the appeal proposal would bring (paragraph 24).
28. Drawing all these matters together, there are very substantial reasons which point towards the refusal of planning permission. The proposal contravenes policies of CLP, Stodmarsh remains a matter of such considerable importance that planning permission cannot be granted for a dwelling until such time as an agreed scheme of mitigation is in place. Factors in favour of the proposal are that it would provide an additional dwelling in the face of the lack of a 5-year supply of housing land, and there is an unmet need in the council's area for self-build development. The advantages of 1 dwelling are minimal and can only be accorded limited weight, but weight can be accorded to a proposal for self-build. However, even that weight, together with the limited weight of the addition to the housing supply, cannot overcome the Stodmarsh matter at present, and in any event the planning policy objection, which must be accorded substantial weight, means that this is not an appropriate place for the development of a dwelling.
29. For these reasons I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR