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## Appeal Decision

Hearing held on 20-21 April 2021

Site visit made on 5-6 May 2021

**by Phillip J G Ware BSc DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 December 2021**

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**Appeal Ref: APP/E2205/W/20/3256388**

**Land off Norman Road and Romney Marsh Road, Ashford TN24 0SD**

- 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 Quinn Estates Ltd against the decision of Ashford Borough Council.
  - The application Ref 19/00709/AS, dated 10 May 2019, was refused by notice dated 27 February 2020.
  - The proposal is the development of 234 flatted units, in six blocks, new vehicular and pedestrian access, internal estate road, footpaths and car parking, earthworks, creation of a new section of active floodplain and floodplain compensation for the development, sustainable drainage systems, open space and hard and soft landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. After the close of the Hearing the National Planning Policy Framework was updated (July 2021). The main parties were given the opportunity to comment on any implications, and their responses have been taken into account.
3. Two unilateral planning obligations, both dated 6 May 2021, were submitted after the close of the Hearing. The drafts had been the subject of discussions at the Hearing. I will return to these below.

### Main issues

4. There are three main issues in this case:
  - The effect of the proposal on the Ashford Green Corridor in policy terms.
  - The effect of the proposal on the Ashford Green Corridor in visual terms.
  - The effect of the proposal on the Ashford Green Corridor in wildlife terms.

All in relation to policies SP1 and ENV2 of the Ashford Local Plan (LP) 2030 and the Ashford Green Corridor Action Plan 2017 (AGCAP).

5. After planning permission was refused Natural England raised concerns about the increasing levels of nitrates and phosphates at the Stodmarsh designated sites. This is a matter I deal with below.

### **The site, the surrounding area, and the proposal**

6. The site is a rectangular area, with the long axis running north-south, comprising about 2.67ha of land. It is in the south central part of Ashford. It is bounded by a belt of trees to the east adjacent to Romney Marsh Road (with the Ashford Designer Outlet retail park on the far side of the road), the River Stour on the west (with dwellings beyond), Norman Road to the south and a pedestrian footbridge to the north.
7. It is an area of open grassland with a tarmac foot/cycle path running through it. The path is the only public access to the site, and the remainder of the land is fenced off. The land is generally level although towards the river it rises slightly and forms a bund to the river – along which there are a few trees.
8. The parties agree that the appeal site is within the Ashford urban area and is in a highly sustainable location. It is close to the town centre, the international railway station, and is close to bus services and a range of cycle routes. There is therefore no issue regarding the sustainability of the proposal.
9. The scheme is fully described in the application documents and in the Statement of Common Ground (SOCG). In summary the proposal is for 212 apartments in 6 blocks of varying forms running along the long axis of the site. The existing bund would be repositioned east of its current position to increase the size of the floodplain.

### **Policy context**

10. The development plan includes the Ashford Local Plan 2030 (LP), adopted in 2019. The SOCG lists a range of policies which may be of relevance to the appeal. Of particular importance, as they were included in the reasons for refusal, are LP policy SP1 (Strategic Objectives) and LP policy ENV2 (The Ashford Green Corridor).
11. Policy SP1 sets out a range of strategic objectives. Part of the policy refers to the conservation and enhancement of the Borough's natural environment. This includes designated and undesignated landscapes and the promotion of a connected green infrastructure network that should play a role in managing flood risk, delivery of net gains in biodiversity and improve access to nature.
12. LP policy ENV2 deals with the Ashford Green Corridor (GC) which sets, as a key objective, the protection and enhancement of the GC. The policy does not preclude development in the GC, but sets out a number of criteria, to which I will return below.
13. In addition the AGCAP was adopted in 2017 and was used to inform the preparation of the LP and is referred to in LP policy ENV2. It sets out the benefits of the GC and references the benefits of having a welcome break between various parts of the town. Although not having the status of a Supplementary Planning Document (SPD), the parties agree that it has some weight. Particularly given the fact that the development plan policy states that proposals must take account of the AGCAP I consider it is a material consideration of some weight.

14. The site is located in Wing C1 of the GC. There are references to the site being a key approach to the town centre and the Designer Outlet Centre, and references are made to opportunities to improve the area and mention is made of the scope for new development. The role of the area as an important buffer is stated.
15. Reference has been made to the Landscape Character Study (2005). Although this document is SPD, it is of a certain age and much has happened in the area since it was adopted. I accordingly give it limited weight.

### **The effect on the GC in policy terms**

16. The GC is a network of spaces alongside the Great and East Stour Rivers and the Aylesford Stream, which were apparently originally areas left undeveloped due to flood risk as the town grew. However they have clearly become much more than that in policy and practical terms.
17. There are two initial points to make. Firstly it is clear that, although some of the areas in the GC are fully accessible, others have limited or no access, but which nevertheless have value as undeveloped spaces. In the case of the appeal site the only public access is the footway/cycleway, but there is requirement in policy which only protects fully accessible land. The second matter is that there is no policy prohibition on development in the GC – rather any proposal needs to demonstrate that it will not impair the role and functioning of the GC.
18. I will now turn to consider the proposal in the light of the two key policies referenced above.
19. LP policy SP1 considers the position at a strategic level and plays an important role in identifying the principles which underly the green infrastructure network. Particularly flood risk, biodiversity and access to nature. However it is less use in considering the precise way in which a particular proposal relates to the policy approach.
20. LP policy ENV2 is more detailed and accordingly more helpful in considering this appeal. It provides that development in the GC will be permitted “...provided it is compatible with, or ancillary to, the principal open space use or other existing uses, and it can be demonstrated that the proposal would not cause significant harm to the overall environment, biodiversity, visual amenity, movement networks or functioning of the Green Corridor...”. So development must be compatible with or ancillary to the principal open space use and not cause significant harm to the Corridor (my underlining).
21. ‘Compatible’ and ‘ancillary’ are not defined, but I am happy to adopt the dictionary definitions put forward by the appellant - ‘able to and exist or occur together without problems or conflict’ and ‘subordinate, subsidiary’ respectively. The proposed built development would occupy slightly more than one third of the site if the footprint of the development is the only measure – leaving around one third as parkland (in the appellant’s wording) and the remainder the SuDS area.
22. In terms of footprint, the proposed blocks of flats would not be the primary land use. However this is an over-simplistic assessment and does not allow for the scale of the high density development and the way the blocks would run

along one of the long edges of this relatively narrow site – indeed there are pinch points where the flats would intrude significantly into the remaining open area. Considered in three dimensions, which is how people would view the development, I cannot agree that the proposal would be compatible with, and certainly not ancillary to, the principle open space use of the GC. I will return to this matter below in dealing with the visual effect of the proposal.

23. The other element of LP policy ENV2 is that proposals (not on brownfield or allocated sites) should not cause significant harm to the overall environment, biodiversity, visual amenity, movement networks or functioning of the Green Corridor. I will return below to the visual effect, but note at this point that I consider that the proposal would harm this aspect of the GC. In relation to biodiversity the proposal would, at least, cause no significant harm. There is no suggested harm to movement networks.
24. Overall the existing site, as acknowledged by the appellant, is an important undeveloped gap. However, as I discuss below, I do not agree with the appellant's conclusion that its contribution is at most low to medium. The proposed high density major residential development would neither be compatible with or ancillary to the main open space use. It therefore conflicts with the LP and the AGCAP.

### **The effect on the GC in visual terms**

25. Two initial points need to be made. Firstly that there is no dispute between the parties related to the detailed design of the proposal based on the relevant design policy. Secondly that, in pure landscape terms, there is no evidence or objection from the Council based on the relevant landscape policy.
26. This second point merits a short further comment. The visual issue discussed below relates to the effect of the proposal on the sense of openness and the buffer function of the site, not issues related to particular landscape features. The appellant has stated that the Council's closing comments introduced a landscape objection not founded in evidence, and to the extent that this is correct, I have not taken account of those comments.
27. The visibility of the site is considerable – as referenced in the Landscape Character Study and the appellant's Landscape and Visual Impact Assessment. From surrounding roads and properties the site and the function which it currently performs is clearly apparent. The site is partly screened from the east by a belt of trees, but I am conscious that the Council has pointed out that these trees are not under the appellant's control and that therefore their retention is not guaranteed. This limits the weight to which I give their screening effect.
28. Of particular note is the visibility of the site to those who pass through it on the footpath/cycleway. When I visited the site the country was still in the grip of the pandemic, and the entire area was very quiet. However there is no dispute between the parties that the route is generally well used in happier times, and I have no reason to doubt this. Those passing through the site have a clear and unobstructed view.
29. Though not possessing any particular features, aside from the river bund, the site in its current form is surprisingly tranquil given the wider urban surroundings. I do not agree with the appellant who considers that, whilst

accepting the role of the site as a visual gap with a sense of openness, that the surrounding urbanised environment diminishes the contribution which the site makes to the area. Rather I consider it plays an important role as a buffer between the housing to the west beyond the river and the road/Designer Outlet to the east. The absence of any structures plays a very important role in defining its character.

30. The appellant accepts that the proposal, by introducing built form into the currently open site would affect the perceived sense of openness. This is self-evident. However, as referenced above, it is not only the footprint of the site and the fact that, particularly at pinch points, the development would substantially narrow the open area. It is also the visual effect of six blocks of flats running along the eastern part of the area and visually dominating the remaining land. In my view this would be a high degree of change with correspondingly high significance.
31. I appreciate the landscape proposals would introduce significant planting into the remaining area, and this is obviously a benefit. However I do not consider that this comes close to compensating for the loss of the openness of the site and its buffer function. I cannot accept the appellant's conclusion that the introduction of a substantial residential development and managed parkland would lead to a heightened degree of tranquillity. Nor do I agree that the effect of the proposal would be highly localised, as the buffer function extends well beyond the site boundary.
32. For all these reasons I consider that the proposal would cause significant harm to the principal open space use of the GC, and conflict with LP policies SP1 and ENV2 and the AGCAP.

### **The effect on the GC in wildlife terms**

33. This issue can be dealt with rather more briefly, largely due to the disparity in the volume and expertise of the ecological evidence submitted by the main parties. The appellant had undertaken a detailed Ecology Appraisal and was represented at the Hearing by an appropriately qualified and experienced professional in the field. In contrast the Council's position was less well supported by evidence or expertise. I have to come to my judgement based on the evidence and, in this respect, the appellant's position was significantly better supported.
34. Helpfully the parties agree that the habitat surveys undertaken in 2018 provide a robust baseline to inform consideration of the proposal.
35. What is clear and largely undisputed is that the GC provides a largely continuous area of green infrastructure through the town, and that it forms a series of wildlife corridors. The appeal site is a connection between wildlife sites AS27 to north and AS19 to south, and this connection is already narrow, with the effective wildlife corridor being limited to the functional habitat along the river. These sites are mainly of significance for riparian species. This emphasises the fact that the habitat of ecological significance is generally related to the River Stour. Away from the river the site is largely species poor grassland, with very limited ecological significance.
36. The proposal includes the extension of the floodplain and the provision of an increased habitat area. This would be a habitat benefit.

37. That said, I am concerned that, although the play area and other facilities would be set back from the river, there could be disturbance arising from the introduction of a substantial residential population onto the site. This especially the case as the width of the wildlife corridor, though enlarged generally, would narrow significantly at a couple of pinch points. However the appellant's largely unchallenged evidence is that the species which might be especially sensitive to disturbance have a limited presence in the corridor.
38. I appreciate there is a contribution proposed to ecological improvements elsewhere. This would add to the wildlife credentials of the proposal.
39. Overall the proposal would not harm the GC in wildlife terms, and would not conflict with LP policies SP1 and ENV2. But overall, due to my concern with potential disturbance, this matter is neutral in the planning balance.

**Other matter – the effect on the Stodmarsh designated sites**

40. Given that I am dismissing the appeal on other grounds, the issue of nutrient neutrality need not be considered further. However, for clarity, if the outcome of the appeal were to have been the grant of planning permission, an Appropriate Assessment would have been necessary.

**Other matter - the implications of the location in Flood Zone 3**

41. This matter was not the subject of a reason for refusal, but I need to touch on it briefly. It should be noted that although the Council's witness was not able to assist in explaining the position, the Council's closing comments appeared to set out a position not based in evidence. I have based my decision on the evidence before me.
42. The site is within Flood Zone 3 (largely 3(a)) which means that there is a higher probability of risk from flooding – necessitating the submission of a Flood Risk Assessment. The sequential test, dealing with whether there are any other suitable/available/appropriate sites with a lower probability of flooding, has been accepted by the Council. I have no reason to disagree. The exception test looks to wider sustainability benefits outweighing flood risk and a demonstration that the development would be safe from flooding. The Council accepts that the development would be safe and would diminish flood risk elsewhere and that it meets the exception test. Again, I have no reason to disagree.
43. However, as noted by the Council, this does not mean that the grant of planning permission is automatic. The authority states that the proposal is unnecessary and unjustified. However the increased area of flood plain and the absence of any objection from the Environment Agency weigh in favour of the proposal in flood risk terms.
44. The proposal would not conflict with policy and would provide some limited benefit in flood storage terms.

**Other matter - other developments in the GC**

45. The appellant has noted that the Council has previously approved other significant developments in the GC. These are at the Designer Outlet Village and at Tannery Lane. However from the limited information which I have on these developments, it seems that one is an allocated site and the other



appears to be significantly different to the appeal scheme. Aside from confirming that there is no blanket prohibition on development in the GC, which is not in dispute, these decisions do not assist my considerations.

### **Other matter – housing land supply**

46. The position regarding the supply of land for housing changed in the period leading up to the Hearing. But at the Hearing it was confirmed by the Council that, for the purposes of the appeal, there was a 4.8 year supply – a small shortfall beneath the 5 year supply at which point the 'tilted balance' in the Framework would normally come into play. The authority stated that the potential constraining effect on housing delivery brought about by the Stodmarsh issue could not be assessed. On the evidence before me, I agree with that position.
47. However, the Framework provides that the tilted balance would only apply if and when an appropriate assessment had concluded that the proposal would not adversely affect the integrity of the protected sites. Given my conclusions on the harm which would be caused by the proposal, and the position above on an appropriate assessment, I have made the assumption that there could be a positive assessment, and that the tilted balance applies. This obviously is an assumption which benefits the appellant as the losing party in this case.
48. The only additional matter to note is that the development is agreed to be a windfall scheme within the ambit of LP policy HOU3a. This lends support in principle but, as set out above, the proposal fails to meet the policy in relation to layout and compatibility with the character of the area.

### **Obligations and conditions**

49. Planning obligations have been submitted dealing with the provision of offsite wetlands and a wide range of social and environmental contributions. These are most notably related to the GC, highways matters and on/off site open spaces. The provision of an element of affordable housing is included.
50. A number of these matters are intended to meet the needs of future occupiers of the development or to provide mitigation related to some of the issues occasioned by the development. However others go beyond this and provide a benefit for the wider community – I do not disagree with the appellant's position on these matters.
51. One matter is worthy of specific mention. It is agreed that there is no requirement to provide affordable housing as part of a flatted development under LP policy HOU1. Despite this the proposal includes 10% affordable housing in one of the blocks, and this is a factor weighing significantly in favour of the proposal.
52. Overall, leaving aside the elements of pure mitigation, the obligations are directly related to the proposed development and are necessary to make the development acceptable in planning terms. The Obligations meet the policy in the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken them into account.
53. I have considered the conditions put forward and largely agreed between the parties. However these would not overcome the harm I have identified above.

### **Planning balance and conclusion**

54. The scheme offers benefits in highways, social and economic terms. Some of these, most notably the provision of market and affordable housing in an area with demonstrable housing need, are very significant benefits. Others, for example the widening of the flood plain and storage capacity, are more limited benefits.
55. However overall the harm to the policy and visual aspects of the GC provide a clear reason for refusing the development. In coming to this conclusion I have applied the tilted balance but consider that that the conflict with an up to date local plan is such that permission should be refused.
56. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector



**APPEARANCES****ASHFORD BOROUGH COUNCIL**

|                                            |                                                 |
|--------------------------------------------|-------------------------------------------------|
| Jeremy Baker<br>MA(Cantab)                 | Principal Solicitor                             |
| Matthew Durling<br>RTPI                    | Deputy Team Leader, strategic applications team |
| Daniel Carter<br>MRTPI                     | Spatial Planning Manager                        |
| Donna Lee<br>(in relation to s106 matters) | Deputy Principal Solicitor                      |

**THE APPELLANT**

|                                                         |                                                 |
|---------------------------------------------------------|-------------------------------------------------|
| Reuben Taylor QC                                        | Landmark Chambers                               |
| Ben Geering<br>BSc(Hons) MA MRTPI                       | Development Director, Quinn Estates             |
| Peter Keenan<br>BSc(Hons) DipTP MRTPI                   | Director, Q+A Planning                          |
| Dan Maughan<br>BSC(Hons) MA MCIEEM                      | Associate Director, Aspect Ecology              |
| James Morton<br>BA(Hons) MA CMLI                        | Principal Landscape Architect, Aspect Landscape |
| Guy Laister<br>MSc Eng BSc(Civil) CEng CEnv MCIWEM CWEM | Director, Water Environment                     |

**INTERESTED PERSON**

|               |  |
|---------------|--|
| James Ransley |  |
|---------------|--|

**HEARING DOCUMENTS**

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|-------|-------------------------------------------------------------------|
| Doc 1 | Note from appellant re.Natural England's position                 |
| Doc 2 | Note from appellant re.pre-commencement conditions                |
| Doc 3 | Email from the Council re. Wetland Unilateral Planning Obligation |
| Doc 4 | Final Main Obligation                                             |
| Doc 5 | Final Wetland Obligation                                          |
| Doc 6 | Council's closing comments                                        |
| Doc 7 | Appellant's closing comments                                      |