



Appeal Decision

Site visit made on 17 January 2022

by E Symmons BSc (Hons) MSc MArborA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH February 2022

Appeal Ref: APP/U2235/W/20/3270846

East of Gleaming Wood Drive, Lordswood, Kent

- 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 Ivan Kingsley Smith (McCulloch Homes and Palm Developments Ltd) against the decision of Maidstone Borough Council.
 - The application Ref 19/504442/FULL, dated 2 September 2019, was refused by notice dated 2 December 2019.
 - The development proposed is erection of 115 dwellings together with associated infrastructure, open space, landscaping and access works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Three reasons for refusal were cited within the decision notice. The reason relating to ecology has been withdrawn and I have proceeded on this basis.
3. The previous appeal¹ allowing outline planning permission was determined within the context of the Maidstone Borough-Wide Local Plan 2000 (LP) and the National Planning Policy Framework, 2012 (the Framework). At that time the Framework stated that "planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland ... unless the need for, and benefits of, the development in that location clearly outweigh the loss". Since determination of this earlier appeal, the Framework has been updated. Policy has been strengthened and paragraph 180(c) now refers to the requirement for 'wholly exceptional reasons' to be demonstrated for the loss or deterioration of ancient woodland (AW) and the presence of a suitable compensation strategy. I have determined this appeal within the context of the current Framework.
4. Standing advice prepared by Natural England and the Forestry Commission titled 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions' (AW Guidance), was revised and published on 14 January 2022. The main parties have had an opportunity to comment upon the revised guidance and these have been considered.
5. The Council suggest that the appeal was submitted one day beyond the six month period. However, upon receipt by the Planning Inspectorate it was deemed valid. I have proceeded on this basis.

¹ APP/U2235/W/14/2227572.

Background and main issues

6. Outline planning permission for the site was granted on appeal in 2015 for a residential development consisting of 89 dwellings, open space, biomass plant and access road (plus emergency access). Within the evidence submitted in support of this appeal, reference is made to this.
7. A joint statement from the Council and appellant has been received to set out the current status of the outline permission. It includes reference to a condition requiring that the development “shall begin not later than two years from the date of approval of the last of the reserved matters to be approved”. This is currently the subject of a Lawful Development Certificate application to confirm whether the development commenced before 18 June 2021. Moreover, application 21/500658/OUT, for variation of condition 14 regarding the biomass plant, is also pending determination.
8. In the context of the appeal before me, which is made under section 78 of the Town and Country Planning Act, pending decisions on the lawfulness of the outline scheme, or matters relating to a variation of condition, are not for me to judge. The appellant is seeking a separate determination from the Council in that regard. In the absence of conclusive evidence that the outline permission is extant, I give limited weight to this as a feasible fallback position.
9. The main issues are:
 - the effect of the proposal on the character and appearance of the open countryside, and
 - whether the proposal would lead to loss and deterioration of AW.

Reasons

Character and appearance

10. The settlement boundary of Maidstone is defined as running to the south of Lordswood along Gleaming Wood Drive. To the east of Lordswood there are two areas of AW, Lords Wood to the north and Reeds Croft Wood to the south. The appeal site is on the eastern side of Reeds Croft Wood and outside the settlement boundary within a landscape gap separating Lordswood and Hempstead.
11. This gap area is classified in the Maidstone Landscape Character Assessment 2012 as ‘Dry valleys and Downs and the Bredhust and Stockbury Downs Landscape Character Area 1’. This study notes that towards the southwest of this gap there are pockets of built development including residential housing and also mentions AW as a distinct feature. Guidance is to ‘restore and improve’ distinctive features and conserve blocks of AW. The Kent Downs Area of Outstanding Natural Beauty (the AONB) lies 340 metres to the south separated from Lordswood and the appeal site by the M2 motorway.
12. The Maidstone Landscape Capacity Study (MLCS) 2015 provides an appraisal of the site which is in area HO-146 West of Sindals Lane and north of Westfield. The landscape character sensitivity of this area is high, as is its landscape value. There is specific mention of the AW and within the woodland areas, low visual sensitivity noted. The area’s capacity to accommodate housing was low

- and inappropriate in areas of AW and areas covered by Tree Preservation Orders (TPO), adding to the 'piecemeal erosion of the green wedge'.
13. The appeal site comprises two former grazing fields, A to the north and B to the south. There is an area of rough ground, B1, to the southwest which is mounded with fly-tipped materials present. It has natural regeneration apparent and has gated vehicular access to Westfield Sole Road. Part of Reeds Croft Wood separates fields A and B and an outgrown hedge and scrub regeneration separates field B from area B1. The appeal site is separated from Sindal's Lane, Public Right of Way (PRoW) KH37 and the countryside to the east by a dense belt of woodland screening. This comprises a mix of deciduous trees and lines of mature Leyland cypress atop an earth bund.
 14. The proposal would construct a development in three parts with housing in areas A, B and B1 each jointed by a link road. It would be accessed off Gleaming Wood Drive, through Reeds Croft Wood and into area B1. An emergency access route would link area B1 on to an existing access on Westfield Sole Road to the south. A non-vehicular link would lead from field A on to PRoW KH37 and Sindals Lane. Except for area B1, the dwellings themselves would be within areas formerly used as grazing fields. Creation of the link routes and required visibility splays however, require removal of vegetation including trees.
 15. The woodland is not currently actively managed and consists of ancient, semi-natural woodland, with the remainder, being plantation on AW. The woodland is protected by TPO 5008/2018 which reflects the visual contribution it makes to the character and appearance of the landscape. In addition to designated PRoW RC40 which runs through the woodland to the north of the appeal site, the woodland has well-used informal paths running throughout.
 16. Policy SP17 of the Maidstone Borough Council Local Plan 2017 (Local Plan) states that there is a presumption against proposals in the countryside unless they accord with other policies in the plan and will not result in harm to the character and appearance of the area. It also seeks separation of settlements.
 17. The proposal would sit to the south of a development at Barrowfields resulting in a significant extension of the built environment southwards into the countryside gap. It would also act to enclose a large area of woodland between two urban areas. The site would be visually separated and isolated from Lordswood by Reeds Croft Wood. In this respect the proposal would conflict with the general aim of Policy SP17.
 18. The proposal, with the exception of the access road, would be screened from Gleaming Wood Drive by woodland. From the south and east, the site is currently well screened by the presence of the bund and associated planting. However, the conifers would be removed resulting in the potential for filtered views of the dwellings from this direction, particularly in winter. This would, in all probability, include filtered views of lights from dwellings and vehicles. However, proposed additional planting and improved woodland management would mitigate this in the medium to long term. With regard to the woodland management and proposed coppicing in particular, this could potentially open

- up views into the site. However, the Draft Ancient Woodland Management Plan² acknowledges this and mitigates for the impact.
19. From within the woodland, particularly in winter, it would be likely that filtered views of dwellings would be gained by users of PRow RC40. To mitigate this, a 5 metre wide thicket and additional tree planting would be included. This would substantially reduce any negative impacts in visual terms.
 20. The Council suggest that woodland management could be actioned without the need for this proposal and I acknowledge that this may be the case. However, should the proposal be constructed the improved management, which could be secured through a planning obligation under Section 106 of the Town and Country Planning Act 1990 (S106) or a planning condition, would provide mitigation in visual terms and must be considered within the balance.
 21. The proposed access routes and associated visibility splays onto Gleaming Wood Drive and Westfield Sole Road would have a greater impact. On Gleaming Wood Drive the access would break up the existing continuous woodland boundary. This is described in the LVIA as having a moderately negative landscape effect. The impact of this opening would become less over time once new tree planting on either side matured and on approach in longer views it would be concealed by the dense vegetation. However, the direct impact of the entrance on properties directly opposite and passers-by, although modest, would still be present.
 22. The current gap onto Westfield Sole Road would be surfaced and more formal and would represent a change from the current situation. However, Westfield Sole Road has no footway for pedestrian access and when travelling towards the road in a vehicle the entrance would be screened by mature vegetation. In this context its impact would be minimal.
 23. The Council raises concern regarding design aspects of the development. This relates to the amount of open space, visibility of car parking in the streetscene and the quantity of hard-standing. However, no detail on the level of open space shortfall has been given, nor are these reasons expanded with reference to conflict with policy or guidance. I have therefore given these issues little weight within my decision.
 24. The proposal would be situated in the countryside. However, although it would be separate from Lordswood, it would link with development to the north and due to the existing and proposed level of screening, would not significantly harm the character and appearance of the wider area including from the AONB.
 25. The development would be mainly within former grazing land. When viewed from outside the site the predominant impression of woodland would, with exception of the access routes, be retained. The access routes would not be seen within distant views, and the separation between settlements sought by Policy SP17 would be retained.
 26. The proposal would introduce dwellings into an area enjoyed as open countryside and outside the settlement boundary as acknowledged by the Inspector within the previous appeal. Despite mitigation of the visual impacts, it would erode the scale of the green wedge contrary to advice within the MLCS

² Bioscan. Lordswood Urban Extension Draft Woodland Management Plan. Bioscan Report ref: E1739r4. January 2018.

and result in localised harm to the character and appearance of Gleaming Wood Drive. This harm would conflict with Policy SP17.

Ancient woodland

27. The proposal involves removal of trees from within areas classified as AW. Local and national policy and guidance is clear that AW is an irreplaceable habitat and proposals should not result in its loss or deterioration. Policy DM3 of the Local Plan seeks that development protects and enhances the natural environment including AW and enhances, extends and connects designated sites of importance for biodiversity, priority habitats and fragmented AW.
28. AW Guidance recommends criteria which can be used to assess the effect of proposals. In summary, it requires direct and indirect effects of construction and site operation to be assessed. In this case, the proposal could have both a direct and indirect impact due to construction, introduction of roads, paths, structures and associated activity.
29. A Tree Survey and Impact Assessment³ (AIA) and Tree Protection Plan (TPP) have been submitted. However, the assessment of the proposal's impact on the AW is based upon a comparison between the previous outline scheme and this proposal. The direct impacts of the current scheme before me are not specifically identified.
30. The AIA identifies individual trees and several tree groups which, either in whole or part, would need to be removed for construction of access and link routes and associated visibility splays. This would represent a direct impact upon the AW and the level of loss has not been quantified, particularly when considering some of the groups.
31. The AIA concludes that although in places there may be some incursion into the root protection areas (RPAs) of retained trees, long-term harm is not anticipated. However, construction of the access roads would, in all probability involve excavation which could affect soil structure and availability of ground water. It is unclear whether the impact of construction has been considered in this respect. Consequently, although the position of protective fencing is indicated on the TPP, it is not clear whether this includes a sufficiently sized buffer zone over and above the tree RPAs. Such a buffer would allow sufficient working space for and mitigate the wider effects of construction and avoid damage to adjacent trees and soil structure.
32. In some cases, a suitably worded planning condition could seek supplement to, and amendment of tree protection details. However, given the uncertainty regarding construction and the buffer for the access and link road, there is no certainty that this is feasible.
33. As observed during my visit, and as subsequently indicated by the appellant, clearance and translocation of an area of AW which corresponds to the proposed access from Gleaming Wood Drive has occurred. A further area of clearance corresponding to the position of an internal link road is also indicated.

³ McCulloch's Homes, July 2018. Tree Survey and Impact Assessment for land at Gleaming Wood Drive, Lordswood Kent.

34. Notwithstanding this, the scale of these works, and whether further clearance would be required to implement the appeal scheme, is in question. In the absence of this information, I must consider the possibility that additional loss of trees could occur. The impact of this upon the AW is unknown.
35. Indirect harm could result from increased recreational pressure resulting in, but not limited to, trampling of ground flora, wood gathering and soil compaction. This is acknowledged within the Draft Woodland Management Plan which refers to 'an inevitable increase in recreational pressure' arising from the proposed development. AW Guidance suggests that enhancements and benefits can mitigate development. In this case this would involve a 15m buffer zone including establishment of habitat with local and appropriate native species, an informal recreational route around the site and improved pathways within the woodland to deter disturbance and damage to ground flora or soil compaction.
36. AW Guidance states that although a 15m buffer is the minimum suggested, its size and type should vary depending on the scale and type of development, its effect on AW and the character of the surrounding area. Examples of situations where larger buffer zones are more likely to be needed includes where the surrounding area is less densely wooded or close to residential areas.
37. It is unclear whether the scale of recreational pressure resulting from 115 two, three and four bedroom dwellings, with associated increases in dog walking and informal play close to the dwellings, has been fully considered within this context. It is also unclear how a buffer would be incorporated into the access and link roads to mitigate pollution and dust and allow for maintenance. This adds weight to my concerns regarding the impacts of the proposal on AW.
38. Connectivity of AW, both within the woodland and to and from the wider area, is important to allow movement of plant and animal species. The proposal would sit to the south of the Wheatfields and Barrowfields development. This would result in an extended area of urban encroachment within the AW. It would increase the fragmentation of habitat between the area of woodland to the east of the proposal, woodlands to the northeast and west and other non-urban areas beyond.
39. As discussed earlier, the proposal could provide benefits in the form of additional planting, removal of the uncharacteristic conifer belts and improved woodland management. However, with respect to the compensation, AW guidance is clear that planting new trees and creating new native woodland is not a direct replacement for lost or damaged trees or woodland. When considering whether wholly exceptional reasons for loss of AW exist, it is not appropriate to take any compensation measures into account. Furthermore, although I acknowledge that improved management may be facilitated by this proposal, there may be other ways to secure this.
40. The proposal would cause harm to the AW both directly and indirectly through loss of trees, recreational pressure and habitat fragmentation. There is a policy presumption against development of the site unless wholly exceptional reasons have been demonstrated.
41. The Framework gives examples of the types of situations which would be considered wholly exceptional. These include infrastructure projects (including nationally significant infrastructure, orders under the Transport and Works Act

and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

42. The appellant contends that, either the presence of an extant permission could be considered as a wholly exceptional or, should that be unacceptable, the proposal would be less harmful than the fallback. However, as set out above, the status of the outline consent is uncertain.
43. I acknowledge that the list within the Framework is not closed however, the examples given are situations which would represent benefits on a national scale. The benefits which could be derived from this proposal would not be of the same magnitude. Consequently, they do not represent wholly exceptional reasons which would support the proposal which therefore conflicts with Policy DM3 of the Local Plan and the Framework.

Other matters

44. The proposal is approximately 2.1km northeast of the North Downs Woodlands Special Area of Conservation (SAC) and 3.9km southwest of Queensdown Warren SSSI and SAC. The SAC sites are habitat sites which are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the protected sites. I am the competent authority for the purposes of this appeal. If I were minded to allow the appeal, I would need to undertake an appropriate assessment to confirm that the proposal would not adversely affect the integrity of the sites. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter further.
45. The appellant has submitted a Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990. This would secure a financial contribution towards primary healthcare, education and open space. It would also ensure provision of 40% affordable housing and a woodland management plan. If I were to allow the appeal, I would need to consider the obligation against the relevant statutory tests. However, as I have found conflict with the development plan and the Framework in relation to both main issues, I have not addressed this matter further.

Planning balance and conclusion

46. The proposal would introduce dwellings into an area of countryside outside the settlement boundary. It would adversely affect the character and appearance of the immediate area around its entrance from Gleaming Wood Drive. With respect to the appeal site's position and impact within and abutting an area of AW, both direct and indirect harm would occur. Uncertainty regarding the extent of proposed mitigation and protection of the woodland during construction adds to my concern. Consequently, there would be conflict with Policies SP17 and DM3 of the Local Plan and the Framework.
47. The proposal could deliver a number of benefits by provision of housing including 40% affordable housing; improved management of the woodland; improved footpaths; financial contributions; potential renewable energy options and economic benefits in terms of direct and indirect jobs. It would also include mitigation for the harm to the area's character and appearance in the form of improved screening. I afford significant weight to this.

48. There are some policies within the development plan which the appeal proposal would support. However, I have found conflict with those which are most important in the determination of this appeal. Thus, I find conflict with the development plan as a whole and afford this substantial weight.
49. Within its statement of case the Council cited a 6.3 year housing land supply. This is disputed by the appellant on the basis that this figure includes 89 dwellings which would be delivered by the outline scheme. However, the number of homes required (2016-2019) was 2649 and the number delivered, 3577 with Housing Delivery Test (HDT) results being 135% of target. Furthermore, the Housing Delivery Test results for 2021 were published on 14 January 2022 showing a result of 170%. No further evidence has been provided by the appellant to support the view that the Local Plan is out of date. The presumption in favour of sustainable development as set out in paragraph 11(d) of the Framework, 'the tilted balance', is not engaged. The ordinary planning balance therefore applies.
50. I afford moderate weight to the localised harm to the character and appearance of the area and consider that this would be outweighed by the benefits the proposal could bring. However, with respect to the second main issue, AW is an irreplaceable habitat. Both local and national policy has a presumption against development which results in its loss or deterioration. Several potential benefits, mitigation and compensation for harm have been proposed. However, it has not been sufficiently demonstrated that the proposal would have no direct and indirect impact on AW. Wholly exceptional reasons for allowing the proposal have not been demonstrated. I give substantial weight to this conflict.
51. Although the conflict with the development plan relating to the proposal's effect upon the character and appearance of the area can be outweighed by the benefits identified, this is not the case regarding AW policy. Material considerations do not indicate that decisions should be taken otherwise than in accordance with the development plan. Consequently, and on balance, the appeal is dismissed.

E Symmons

INSPECTOR