



Appeal Decision

Site visit made on 14 March 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 April 2022

Appeal Ref: APP/E2205/W/20/3261486

Land at Bybrook Builders Yard, Canterbury Road, Kennington, Ashford, Kent, TN24 9QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Susan Toms against the decision of Ashford Borough Council.
 - The application Ref 19/01435/AS, dated 9 October 2019, was refused by notice dated 20 December 2019.
 - The development proposed is described as outline permission for houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline for the principle of the development, with details of access, layout, appearance, landscaping and scale reserved for future consideration. However, the application includes an access point and shows where dwellings would be located so I have considered these aspects now.
3. The Council advertised the application and made its decision for '5 dwellings'. However, the appellants flood risk assessment¹ (FRA) refers to 'up to 5 dwellings' and I have determined the appeal on this basis.
4. The address in the banner above is taken from the application and appeal forms. The Council has also used 'Land rear of Stourfields, Kinneys Lane, Kennington, Kent'. Both describe the broad position of the site, which is shown definitively in the site plan.
5. The appellant was unable to provide access to the site from Kinneys Lane or across private land owned by Ashford Rugby Club. I was able to see the site from public vantage points around it. I am satisfied that I saw the entire site.
6. In its appeal statement the Council has referred to the Stodmarsh Lakes European Site. I deal with this consideration in 'other matters' below.

Main Issues

7. The main issues are:
 - whether the site would be a suitable location for the proposed development, having regard to flood risk and the Sequential Test;

¹ Herrington Consulting Limited, May 2019

- the effect of the development on controlled waters, having regard to the risk of pollution;
- its effect on the character and appearance of the area; and
- whether it would make satisfactory provision for protected species and habitat.

Reasons

8. The site adjoins some residential development in a sustainable location within Ashford. Part of the site would be developed for up to 5 dwellings with an access point from Kinneys Lane. The Council does not object in principle to suitable windfall housing on suitable land.

Flood risk

9. A majority of the site is in Flood Zones 2 and 3 (mostly 3a) so it has, respectively, a medium and high probability of flooding, in this case from the Great Stour River (the Kennington Stream and a drainage ditch are also nearby). For the purposes of the National Planning Policy Framework (the Framework) the development is for a 'more vulnerable' dwellinghouse use².
10. The FRA seeks to manage and mitigate flood risk by siting dwellings beyond a 'design flood event level', towards or along the north boundary of the site. While this includes some land in Flood Zone 1, other parts would be in Flood Zone 2 and the access to the site includes land in Flood Zone 3. The Sequential Test (ST) must, therefore, be applied to begin with.
11. The Framework states that the ST seeks to direct new development to areas with the lowest risk of flooding from any source. In addition, that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding (paragraph 162). Planning Practice Guidance (PPG) advises³ that the aim is to steer new development to Flood Zone 1 and where there are no reasonably available sites in Flood Zone 1, to consider sites in Flood Zone 2. It also sets out that the area to apply the ST across will be defined by local circumstances relating to the catchment area for the type of development proposed⁴.
12. However, the FRA does not include a ST in these terms. While land in Flood Zone 2 would be at lower risk of flooding than in Flood Zone 3, it would not have the lowest risk of flooding, nor has it been shown that there are no reasonable alternative sites. The Council considers that it can demonstrate a 5 year housing land supply and that its Ashford Local Plan, adopted February 2019 (the LP) allocates available sites for housing development in the Borough, including at Ashford. This is not disputed by the appellant and in the absence of any evidence to the contrary, I have no reason to disagree.
13. Taking all of the above into account, I am not satisfied that the site is a suitable location for the proposed development having regard to flood risk. It would not comply with LP Policy ENV6 which includes that the ST will be strictly adhered to and development preferably be located in Flood Zone 1.

² Framework Annex 3: Flood risk vulnerability classification

³ PPG paragraph ID: 7-019-20140306

⁴ PPG paragraph ID: 7-033-20140306

14. PPG confirms that the Exception Test (ET) should only be applied if required, and after the ST, and that both elements need to be satisfied to grant planning permission⁵. Given my findings on the ST, it is not necessary for me to consider the ET.

Controlled waters

15. The site is near a watercourse and above a principal or secondary aquifer. These controlled waters are therefore particularly sensitive to pollution. There is no evidence that the site is in use as a builders yard but the appellant maintains it was a former use. There is, therefore, a risk that potential contamination could be disturbed during development works and there is sufficient reason to suspect that this could pollute these controlled waters.
16. The Framework requires that sites should be suitable for their proposed use taking account of ground conditions, including contamination and former activity, with assessment informed by adequate site investigation prepared by a competent person (paragraphs 183 a) and c)). Assessment can be proportionate to a decision at outline stage, but sufficient to give confidence that permission in full can be granted at a later stage.
17. However, there is no report on a desk study and site walk-over and no site investigation or risk assessment. I cannot, therefore, be certain that the site is not contaminated. Moreover, I cannot conclude that the development would not pollute controlled waters given the absence of any necessary proposed remediation or mitigation.
18. As a result, I am not satisfied that the appellant has demonstrated that the proposed development would not adversely affect controlled waters, having regard to the risk of pollution. It would not comply with LP Policies SP1 and SP6 which include that development should conserve the natural environment, respond positively to efficient use of natural resources and reduce pollution. It would also conflict with the Framework which requires that development should not contribute to unacceptable levels of water pollution (paragraph 174 e)) and be appropriate for its location, taking into account likely effects of pollution on health and the natural environment (paragraph 185).

Character and appearance

19. The site is a large grass field with wide, more densely vegetated shrub or hedgerow margins along its north and west sides and similar habitat along the narrow corridor that connects it to Kinneys Lane. The other two sides seamlessly border grass fields, including sports pitches at Ashford Rugby Club. Visually and spatially it forms part of a long, wide swathe of mainly undeveloped land on lower ground which extends to the south and south east. Though not in a Green Belt or an Area of Outstanding Natural Beauty, this land, including the appeal site, is in the Ashford 'Green Corridor'. It's open, verdant semi-rural aspect separates areas of development in this part of the town and is locally distinctive.
20. There would be sufficient space on the site to provide an internal access road, turning area and parking for up to five dwellings. A layout could also locate up to five dwellings and gardens along or towards the north edge of the site. Arranged as a row they could reflect a similar linear pattern to the rows of

⁵ PPG paragraph ID: 7-035-20140306

houses on higher ground to the north in Canterbury Road and to the west in Kinneys Lane. A large part of the site could remain undeveloped.

21. However, the proposal would fundamentally change part of the site, from open to developed and reduce the extent, or result in loss, of the more densely vegetated parts. Even if the dwellings were bungalows there would nonetheless be appreciable built form and associated works where none exists at present.
22. This would amount to an undesirable encroachment of residential development in depth, in a back-land position behind the perimeter of houses in Canterbury Road and Kinneys Lane with a large gap to the houses in George Williams Way to the north east. Most of these houses face onto these roads with rear gardens bordering and defining this edge of the Green Corridor. Furthermore, it would unduly erode spaciousness and the landscaped homogeneity of the site, incompatible with its location in the Green Corridor. This would seriously diminish its innate value in these regards and detract from the overall integrity of the Green Corridor.
23. Even a single dwelling and associated development on the site would be in plain public view from parts of Kinneys Lane, Frank Edinger Close as well as a significant part of the public footpath and cycleway that meanders from the north east to the south east of the site. Some development would also be glimpsed in views from the pavements through gaps between houses along Canterbury Road, which on one side are elevated above this road. While in some views it would be seen in the context and back-drop of some of the surrounding residential development, it would nonetheless, be visually and spatially detached from it.
24. Considering the above, I find that development of the appeal site by up to 5 dwellings would cause significant harm to the character and appearance of the area. It would not, therefore, be possible to resolve suitable details of layout or scale in any future reserved matters application and such details, even combined with appearance and landscaping, would not overcome this harm. It would not comply with LP Policies SP1, SP6, HOU3a and ENV2. These policies include that development should promote a sense of place and respond positively to, and be compatible with, the prevailing character of the area and distinctiveness or avoid loss of land that contributes to the local character of the area. It should also avoid significant harm to landscape interests, including the environment and visual amenity of the Green Corridor.
25. It would also conflict with objectives of the Framework to ensure well-designed places by development that adds to the overall quality of an area, is visually attractive as a result of good layout, sympathetic to local character, including the surrounding built environment and landscape setting and maintains a strong sense of place (paragraphs 130 a), b), c) and d)). Additionally, it would not protect a valued landscape (paragraph 174 a)).

Protected species

26. In light of the dense vegetation on parts of the site, or the proximity of watercourses, there is a reasonable likelihood of one or more protected species⁶ being present on the site. Circular 06/2005⁷ states that the presence

⁶ Wildlife and Countryside Act 1981

⁷ Circular 06/2005: Biodiversity and geological conservation – statutory obligations and their impact within the planning system

of a protected species is a material consideration when development would be likely to result in harm to the species or its habitat (paragraph 98). Moreover, it is 'essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision' (paragraph 99).

27. Notwithstanding that most details of the development are reserved matters for future approval, the proposal is not informed by a protected species habitat survey. Consequently, it cannot be concluded with any certainty at outline permission stage that there would not be any harm to protected species or habitat or that any necessary suitable and appropriate mitigation or at least compensation is possible. Framework paragraph 180 a) states that if significant harm to biodiversity cannot be avoided, adequately mitigated or compensated for then planning permission should be refused.
28. In these circumstances, I am not satisfied that the development could make satisfactory provision for protected species and habitat. It would not, therefore, accord with LP Policies SP1, HOU3a, ENV1 and ENV2. These policies include that development should conserve, incorporate and enhance biodiversity and avoid significant harm to protected species, having regard to mitigation, including in the Green Corridor. It would also conflict with Framework paragraph 174 d) which seeks to minimise impacts on, and provide net gains for, biodiversity.

Other Matters

Stodmarsh Lakes European Site (the ES)

29. The ES is a nationally and internationally designated site⁸. Its features and significance, worthy of protection, have not been explained to me in this appeal. The development would, though, be in the catchment of the River Stour or would discharge to waste water treatment works within its catchment area. As a result, a significant adverse effect on the integrity of the ES habitat from increased levels of nitrates and phosphates would be likely to occur from the proposed increase in dwellings alone (even a single dwelling) or in combination with other plans and projects. There are no details of any proposed mitigation measures or any appropriate means to secure these before me. I return to the ES below.

Access

30. The part of the site that connects to Kinneys Lane is about 5m wide and gradually widens into the site. This access point would provide a satisfactory visibility splay in both directions and vehicle speeds are low, restricted to 10mph. The access would be wide enough for two-way traffic with a shared pedestrian and cycle surface or a single vehicle lane with a dedicated pedestrian footway. Accordingly, subject to the approval of suitable details at a reserved matters stage, the access point would minimise the scope for conflict so as to provide safe and suitable access to the site for all users, including delivery and emergency vehicles. I note that the Council did not object to this access point or to traffic generated by up to five dwellings.

⁸ The Conservation of Habitats and Species Regulation 2017

Appearance and landscaping

31. It would be possible to design up to five dwellings that were satisfactory in appearance, including high quality design and external materials, in-keeping with nearby residential development. The site would also be large enough to provide new landscaping, including around its boundaries. Subject to the approval of suitable details at a reserved matters stage, the development would be acceptable in appearance and landscaping. I note that the Council did not object for these reasons.

Housing tenure

32. The application form indicates that the proposal would include a market sheltered house and some affordable housing for rent and ownership. However, there is no mechanism before me in this appeal to secure this provision, such as a suitable planning obligation.

Other interested party comments

33. The effect of development on a private view is not a material planning consideration and noise or disturbance from construction works would be a temporary situation. There is no objective evidence before me that the site is part of any formal sports pitch, playing field or recreational land for public access or use or that local infrastructure, including services and facilities, would not have sufficient capacity to serve the development. Whether or not traffic associated with the development would have a legal right of way along Kinneys Lane, which is not an adopted public highway, would be a private matter between the respective parties.

Previous development

34. I have been referred to two planning permissions granted by the Council for development at 'Bybrook Builders Yard'⁹. On the evidence before me, the extent of this site and the details of these developments are not clear, thus whether they are comparable to the current appeal. Both decisions were, anyway, made some time ago and in a different development plan and national planning policy context. I also note that the appellant has concerns with how the Council considered the current appeal application but this is not relevant to my decision. I have, in any event, considered the development and the appeal on its individual planning merits.

Planning Balance

35. In terms of benefits, the provision of up to 5 dwellings, which would adjoin existing housing in a sustainable location, would make a modest, but notable, contribution to housing supply. It would be aligned with the objective of the Framework to significantly boost the supply of homes. The social, economic and environmental benefits associated with building and occupying the dwellings, which could be satisfactory in appearance, are factors which carry moderate weight in the proposal's favour. There would be no benefit arising from the provision of sheltered or affordable housing.
36. There would be a satisfactory point of access to the site and traffic generation would be acceptable. There would be sufficient space for the provision of car

⁹ 97/0702/AS granted in 1997 and one unreferenced for three houses built in 2002

parking and landscaping and up to five dwellings could be designed and sited to avoid adverse impact on the living conditions of existing occupiers of nearby houses. The absence of harm in these regards, and compliance with the Council's development plan or the Framework, are neutral factors in my decision.

37. However, while the Framework recognises that small windfall sites can make an important contribution to meeting housing requirements, it also seeks to avoid inappropriate development in areas at highest risk of flooding and to ensure that it is an acceptable use of land having regard to the risk of pollution. It also aims to achieve well-designed places, conserve the natural environment and protect and enhance biodiversity. The proposal would conflict with the Council's relevant development plan policies and diminish the Council's objectives in these respects. These are consistent with aims of the Framework to balance meeting housing needs with these other objectives of sustainable development. Consequently, I give substantial weight to the significant harm that would be caused in each of these considerations.
38. Notwithstanding that the benefits would be aligned with the Framework the adverse impacts of the proposed development would therefore outweigh the benefits.
39. Since I intend to dismiss the appeal for these reasons, there is no need for me to consider the ES any further.

Conclusion

40. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
41. Therefore, for the reasons given above I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR