



Appeal Decision

Hearing held on 15 February 2022

Site visit made on 16 February 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Appeal Ref: APP/A2280/W/21/3274932

Orchard Kennels, Meresborough Road, Rainham, Gillingham ME8 8QJ

- 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 Scoop La Rocca Limited against the decision of Medway Council.
 - The application Ref MC/20/1705, dated 15 July 2020, was refused by notice dated 5 March 2021.
 - The development proposed is for up to 66 residential dwellings with associated parking and landscaped areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval being sought for layout. Matters relating to access, appearance, scale and landscaping have been reserved. I have dealt with the appeal on this basis.
3. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. With relation to the Council's decision notice updated Framework paragraph numbers were agreed at the hearing. I have had regard to the revised Framework in reaching my decision.
4. The appeal site has been subject to a previous refused planning application and dismissed appeal (Ref: APP/A2280/W/19/3240339) for up to 133 residential dwellings with associated parking and open space. This proposal differs to that of the previously proposed scheme in that it proposes up to 66 dwellings. The proposal before me seeks to address the concerns and conclusions reached by the previous Planning Inspector and pre-application advice provided by the Council.
5. The Statement of Common Ground indicates agreement between parties that Policy T2 of the Medway Local Plan 2003 (the Local Plan) referred to in the second reason for refusal set out on the Council's decision notice has been withdrawn. This was further confirmed to be the case by the parties at the hearing. For clarity, I have not taken Policy T2 into consideration in reaching my decision.
6. The appeal is supported by two Unilateral Undertakings, both providing for 25% affordable housing and various financial contributions.

Main Issues

7. The effect of the proposed development upon: -
- a) The landscape character and appearance of the countryside, Mierscourt/Meresborough Area of Local Landscape Importance (ALLI) and the Public Right of Way (PROW); and
 - b) The highway network.

Reasons

Issue a): Character and appearance

Policy context and valued landscape

8. The appeal site is outside the urban area boundary and is within the countryside. Policy BNE25 of the Local Plan indicates that development in the countryside should only be permitted where it maintains the countryside's character, amenity and functioning, amongst other matters. Policy BNE34 of the Local Plan requires development within the ALLI to be permitted only where it does not materially harm the character and functioning of the landscape, unless the harm is outweighed by economic and social benefits.
9. Paragraph 174 of the Framework requires planning decisions to contribute to and enhance the natural and local environment by, amongst other matters, protecting and enhancing valued landscapes and recognises the intrinsic character and beauty of the countryside.
10. Natural England and Kent County Council have produced landscape character assessments of the area within which the appeal site sits. However, those assessments cover a wider area and are, therefore, more generic in their content in respect of landscape character.
11. At a more local level the Medway Landscape Character Assessment (the LCA) includes the Moor Street Farmland character area, of which the ALLI forms part. However, the LCA covers an area larger than that of the Mierscourt/Meresborough ALLI. The LCA notes the presence of detracting features within the landscape, such as conifer belts, and makes an assessment that the conditions of the area's landscape is poor. Examples of such conifer belts are present at the appeal site and within the landscape south of the site. The LCA judges the landscape to have a moderate degree of sensitivity and stated actions are to restore and create landscape character.
12. The character and functioning of each designated ALLI is listed in the supporting text of Policy BNE34. Mierscourt/Meresborough ALLI is identified as an *"area of traditional Kentish farm landscape with country lanes on the eastern periphery of the borough. It is important as a buffer zone, helping to counteract outward pressure of urban sprawl and maintaining the separation of settlements"*.
13. The condition of the ALLI is considered poor through a decline in landscape condition and the introduction of equine activities. Within the Mierscourt/Meresborough ALLI landscape there are paddocks, some small blocks of woodland and lines of trees and hedges, along with areas of orchard and regularly shaped fields. The roads that traverse the ALLI are narrow single track rural lanes. Whilst equine related uses are not agricultural in character,

they nevertheless are uses that are generally found in rural settings. Despite hosting paddocks, I saw that the ALLI has a distinctly undeveloped rural character that enjoys a countryside tranquillity within its rural environment.

14. Policy BNE34 has designated the Meirscourt/Meresborough Road ALLI as a 'valued landscape'. The ALLI seeks to recognise the value of the area's landscape. Protecting this landscape, which would include that of the appeal site, is in line with the Framework. Given the landscape characteristics of the ALLI, I agree that the ALLI is a 'valued landscape'. I note that the previous Inspector also concluded this to be a valued landscape.
15. I have been directed to Box 5.1 that sets out guidance relating to the assessment of landscape visual impact assessments (third edition). The appellant's LVIA concludes that this is not a valued landscape because it does not meet the criteria of Box 5.1. However, within the guidance Box 5.1 appears under the heading of 'Undesignated Landscapes'. The supporting text to Box 5.1 suggests that a starting point is to look toward existing landscape character assessments and associated planning policies as these can provide a good indicator as to why a particular landscape is valued. The appellant has undertaken an assessment of the landscape of the site having regard to the criteria set out in Box 5.1. Nonetheless, the fact that the site is within a designated ALLI within the Local Plan is a clear indication of its local value and its recognition as a valued landscape.

Impact upon the landscape

16. The appeal site is divided up into different sized areas comprising open grassed areas, overgrown orchard, surfaced parking areas, and other areas used in association with the kennels. Whilst there are some structures that relate to the kennels, these are few and overall the site hosts an open undeveloped character. Amongst this, are established trees, hedges and shelter belts. PROW GB12 traverses the northern part of the site separating a triangular area of undeveloped land from the main part of the site.
17. I have had regard to the landscape assessments provided by both parties, which undertake character assessments of the Mierscourt/Meresborough ALLI and the appeal site. The appeal site does contain some detracting features which include the parking areas, structures and storage associated with the kennels. However, these are relatively small areas when looking at the site in its entirety. The majority of the site is laid to grass or orchards and there is a regularity to the field pattern within the site. Despite a small part of the site having some urban development related to the kennels, the majority of the site hosts those characteristics of the wider ALLI landscape. The site has a landscape character that visually relates to and functions as part of the wider ALLI.
18. To accommodate the development the existing orchards, hedgerows and shelter belt would be removed, although some existing boundary hedgerows and trees would be retained. The proposal would bring about permanent change to a relatively limited part of the overall ALLI landscape. Nonetheless, the presence of a housing development would urbanise the site and substantially change its largely open and undeveloped character and appearance. The proposal would be harmful to this valued landscape for this reason.

19. There would be some visual benefits in terms of the removal of the existing utilitarian fencing that runs either side of the PROW. However, the path itself would be formalised with a hard surface and the route would require users to cross the development's access road. The PROW would lose much of its existing rural character and adjoining rural environment. Its environmental value would be degraded to its detriment as it would become a route through a housing development rather than a rural PROW.
20. The landscape buffer strategy would consist of layers of orchards, hedgerow, trees, meadows and boundary hedgerow around the north, east and south of the site. Considerable effort has been made to screen the proposed development. Whilst this would incorporate features established to be present in the ALLI landscape, the lengthy narrow strips of orchard, tree belts, meadow would have a managed regimented form to its appearance. The extent and managed nature of the planting buffer strategy would appear as a contrived feature within the ALLI landscape. It would not create a visually acceptable transition between the urban development and the rural landscape.
21. Over time the planting buffer would reduce the visibility of the development in both short and longer distance views of the site and from the PROW. However, I do not consider the buffer landscaping would completely shield the visibility of the two-storey development, either in short views from the surrounding area, including the PROW and where it traverses the development access road, or in some longer views of the site. In these views the development would appear as a major incursion into the undeveloped countryside beyond the existing built-up urban area. Furthermore, the landscaping would take many years to establish, and the harm arising from the proposed development would be clearly visible over this time.
22. The proposal would see the removal of existing non-native eucalyptus trees and rows of conifer trees. I accept that the tall eucalyptus trees and leylandii trees are uncharacteristic landscape features within this rural landscape, and this provides some justification for their removal. The removal of the leylandii trees would be welcome as they are an alien feature in the local landscape context. That said, the eucalyptus trees are striking trees that are visible from a wide area and make a significant contribution to the landscape character of the ALLI landscape. Indeed, the previous Inspector found them to be positive features that contributed to the landscape character.
23. The appellant's own Arboricultural Impact Assessment (AIA) has assessed the groups of eucalyptus trees to have moderate quality and value able to make a significant contribution to the site because of their arboricultural merits and positive contribution to the wider landscape. The AIA also identifies the medium sized eucalyptus tree (T9) to be of particularly good quality. The loss of the eucalyptus trees resulting from the proposed development would have a detrimental impact on the landscape. During the hearing I was provided a revised layout plan for the site that would avoid development impacting upon the eucalyptus trees. Whilst this revised layout could potentially overcome my concerns relating to the eucalyptus trees, it would not overcome my other landscape concerns.

Other considerations

24. The Council has granted planning permission for developments at Manor Park and The Maltings outside of the settlement boundary contrary to Policies BNE25

and BNE34 of the Local Plan. Indeed, both Manor Park and The Maltings are within the Mierscourt/Meresborough ALLI. These developments project to a lesser extent from the existing urban settlement than the proposed development. I saw that much of those developments are visually contained and separated from the ALLI by a buffer of trees and vegetation. Whilst those developments have encroached into the ALLI, this does not provide a justification for further encroachment.

25. The site is abutted to the north by housing within the existing urban settlement and to the west by recent expansion of the urban settlement. The existing urban edge is reasonably well screened to the north and west. Nonetheless, those developments can be seen in vistas from within the wider ALLI and in views from Merescourt Road. This is particularly so in those months when the existing boundary trees are not in leaf.
26. The proposed built development would not extend further south than that of the Manor Park development or further east of the existing northerly development and in some wider views of the site the development would be seen against the backdrop of the existing settlement. However, the proposed development would project beyond the landscape buffers of those developments that contains the urban edge of those developments. In close range views the development would be filtered by intervening vegetation of the proposed surrounding landscaping. In longer range views from the ALLI the development would be visible, particularly that of the roofs, much in the same way the existing development within the urban settlement and the development at Manor Park is visible. The effects of the proposal would be visible and would create development in the countryside that would undermine the buffer zone that is part of the purpose of the ALLI.
27. I have been directed to other housing developments that have been permitted by the Council, but those are in other locations where the circumstances are different and, therefore, the considerations will not be fully the same.

Conclusion on character and appearance

28. For the above reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the countryside, ALLI and PROW and this brings the proposal into conflict with the aims of Policies S4, BNE6, BNE25, BNE34 and L10 of the Local Plan and paragraphs 92, 100 and 177 of the Framework.

Weight to be attributed to relevant policies

29. There is dispute between parties as to the weight to apply to Local Plan Policies BNE25 and BNE34. The Council, when considering the development at Manor Road and Otterham Quay Lane gave limited weight to Policies BNE25 and BNE34.
30. Policy BNE25 seeks to prevent development in the countryside. As such, this places a restraint upon new housing outside the existing urban areas. However, the Council does not have a 5-year supply of housing sites. In view of this Policy BNE25 cannot be considered to be up-to-date or consistent with the aims of the Framework. Nonetheless, Policy BNE25's aim with regard to seeking to protect the countryside is broadly in line with the Framework's approach of recognising the intrinsic character and beauty of the countryside.

Policy BNE25 therefore should carry some weight, although this is less than full weight.

31. Local designation ALLIs are at the lower end of the designated landscape hierarchy. Nonetheless, the Framework requires protection to be given to them. It is suggested that Local Plan Policy BNE34 acts as a restraint policy toward housing. In its aim to protect the character of the landscape it will have some impact on housing delivery. But in its primary aim to protect the character of the landscape Policy BNE34 would be consistent with the Framework. For this reason, it should be given full weight.
32. With regard to the previous appeal at the site the Inspector saw no reason why the conflict with Policy BNE34 should be given anything less than full weight. A very recent appeal decision has been brought to my attention pertaining to a residential development at Upnor Road, Upper Upnor (Appeal Ref: APP/A2280/W/21/3276221). My colleague in that case attributed full weight to Policy BNE34. On the evidence available to me, I see no clear reason why Policy BNE34 should not continue to carry full weight.

Issue b): Highway network

33. Policy T1 of the Local Plan sets out that in assessing the highway impact of development, the proposal will be permitted provided that the highway network has adequate capacity to cater for the traffic which will be generated by the development, amongst other matters. Paragraph 111 of the Framework indicates that development should only be prevented or refused on highway grounds if the residual cumulative impacts on the road network would be severe. However, there is no definition of 'severe' impact in the Framework.
34. The Council's concern relates to the traffic impact in relation to the A2/Mierscourt Road junction. The appellant's Transport Assessment (the TA) builds upon information and traffic data produced to inform the previous proposal for up to 133 dwellings at the site. The junction assessment demonstrated that it is already operating significantly over theoretical capacity with Degree of Saturation (DoS) values of over 140% in the AM peak and slightly under 140% on all 3 approaches. The addition of the development traffic would add 14 vehicles to the queue at High Street (A2 east) Ahead Left in the AM peak.
35. There are A2 junction improvements proposed but there was some doubt cast at the hearing as to what those junction improvements might entail and whether or not the improvements would materialise. Therefore, any junction improvements relating to the A2 cannot be relied upon as offering support for the proposal.
36. Three surveys provided by the appellant undertaken in 2015, 2018 and 2019 show that traffic flow between Meresborough Road and Mierscourt Road reduced at AM and PM peak hours. However, this does not specifically demonstrate the impact that such a reduction would have on the operational capacity of the A2/Mierscourt Road junction.
37. The Council's Medway Aimsum Model (MAM) indicates that the junction of the A2 and Mierscourt Road is already operating near or above practical reserve capacity in advance of a number of committed developments coming to

fruition. Notwithstanding the MAM the Council expect the appellant to assess the committed and pending sites to establish the predicted vehicles movements to travel through the junctions in question. In respect of an appeal decision that I have been referred to at Pump Lane, Rainham (Appeal Ref: APP/A2280/W/20/3259868) for a large residential development, I note the Inspector did not find there to be a severe impact upon subnetwork 3, of which this junction forms part. That decision was made in November last year when the Leigh Academy at Otterham Quay Lane had commenced hosting pupils.

38. The Council acknowledge that not every development will generate its peak traffic movements within the same peak hour. The existing kennels would generate some degree of vehicle movements however, it is not clear how many would take place at the AM and PM peaks and in reality, this is likely to be low.
39. The Council comments that just because a junction is overcapacity this does not automatically mean that the impact is severe. However, it considers that any large development would likely result in a severe impact as a result of traffic potentially blocking back through adjacent junctions, in this case, the signal controlled staggered crossroads junction of the A2 with Otterham Quay Lane and Meresborough Road. However, this comment relates to a different junction further along the A2 to that of the Mierscourt Road/A2 junction to which the refusal reason relates.
40. Notwithstanding the above, the previous scheme was found to be acceptable in highway terms despite it being a proposal for up to 133 dwellings, 67 more dwellings than is proposed presently. If permitted, that development would have come forward alongside those committed and planned residential development within Medway. The Council's highway statement of case has referred to text from the Council's committee report relating to that previous planning application. This says, *"Although traffic from the application site and other proposed development in the area would have an impact on the performance of the junctions, it is considered that the additional traffic flows are within the typical day to day traffic fluctuations"*. Whilst a Section 106 contribution was sought toward highway improvement measures along the A2 between Otterham Quay Lane and Mierscourt Lane, that development was nonetheless considered to show that the overall impact of the development on the local network would not be severe.
41. Severe cumulative impacts on the road network relate to its operational performance and levels of congestion. As I see it, there is some capacity constraint at the A2/Mierscourt Road junction at peak times. However, from the evidence before me this does not result in a severe impact that would clearly demonstrate the junction to have inadequate capacity to cater for the traffic that would be generated by the proposed development. Furthermore, the previous scheme that was for a substantially larger number of dwellings was found to be acceptable in highway terms. I, therefore, conclude that the proposal would not conflict with Policy T1 of the Local Plan or paragraph 111 of the Framework.
42. I have been referred to an appeal at Sutton Courtenay, Abingdon (Appeal Ref: APP/V3120/W/17/3187947) in which the Inspector found the harm to the

highway network was severe. That appeal related to a different administrative area where different development plan policies will have applied. Also, the circumstances of that case will differ as it would relate to a different highway network. This case can and should be considered on its own merits.

Other Matters

Benefits of the development

43. The provision of up to 66 dwellings would go some way to making up the Council's unmet housing need with 25% of those being affordable housing that would assist meeting this particular housing need. The proposal would also make use of a partly brownfield site and the development could be built out quickly. The emerging Local Plan is some way from adoption. The Council is making significant efforts to address the housing shortfall. Nonetheless, the scheme would boost the supply of housing and this benefit carries significant weight in favour of the proposal.
44. The proposal would bring about economic and social benefits in the form of employment, through spend locally supporting services and facilities as well as during construction of the development. The economic and social benefits carry moderate weight in favour of the proposal.
45. In terms of environmental benefits, the site as it exists is not conducive to hosting significant ecology. The landscape buffer and waterbodies, along with removing contamination at the site, would provide improved habitat, biodiversity and wildlife benefits. This carries moderate weight in favour of the proposal.
46. Access to the PROW (GB12) would be maintained and this route provides connectivity between the urban settlement and the countryside. The proposal would also provide accessible green spaces within the development. Access to outdoor environments provides the opportunity to positively impact upon health and wellbeing. These are moderate benefits of the scheme to which I attribute moderate weight.
47. The site is within walking distance of local services and amenities within Rainham District Centre as well as public transport services and education facilities. This could reduce the occupier's reliance on private vehicle. This is a benefit of the scheme that holds moderate weight.

Section 106 obligations

48. The legal obligations are complete and would secure affordable housing, and financial contributions towards library facilities and equipment, PROW signage, improvement and information, nursery, primary, secondary and sixth form school provision, foundation and development of Rainham locality Primary Care Network, open space facilities and bird mitigation measures. I have no substantive reason before me that would indicate that these obligations would not satisfy the relevant legal tests as set by Regulation 122 of the Community Infrastructure Levy Regulations 2010. Nonetheless, these financial contributions are necessary to mitigate the development's impact.

Local Representations

49. There are letters of both support and objection to the proposed development. I have taken these into consideration.

Planning balance

50. The Council currently has a 3.64 year's supply of housing sites representing a significant shortfall. If there is not a five-year supply of deliverable sites in place, the provisions of paragraph 11d) of the Framework should be applied.
51. Given the site's location in the countryside and its harm to the countryside, ALLI and PROW the proposed development would be contrary to Policies S4, BNE6, BNE25, BNE34 and L10 of the Local Plan. Despite my finding in favour with regard to highway matters, the harm to the character and appearance of the area brings the proposal in conflict with the development plan when read as a whole.
52. On the other hand, the Government's objective is to significantly boost the supply of homes. Weighing significantly in favour of the proposal is the benefits of providing up to 66 dwellings comprising both open market and affordable housing that would respond to an identified need. Weighing moderately in favour of the scheme are the social, economic and ecological and wildlife environmental benefits. However, the harm that I have identified to the countryside, ALLI and PROW is not outweighed by the contribution to housing land supply or those other social, economic and environmental benefits. This is so, despite the reduced weight that I have given to Policy BNE25.
53. Paragraph 11d) of the Framework is engaged given the lack of five-year housing supply being in place and Policy BNE25 carrying less than full weight. This indicates that planning permission should be granted unless one or other of the two sub-paragraphs relating to paragraph 11d) applies. Sub-paragraph i. provides that the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Given the site forms part of an ALLI valued landscape paragraph 174 of the Framework provides a clear reason for refusing the proposed development. Even considered against sub-paragraph ii. the adverse impacts of the proposal on the character and appearance of the countryside, ALLI and PROW would significantly and demonstrably outweigh the benefits identified, when taken in isolation or collectively. As a result, the presumption in favour of sustainable development does not apply and, therefore, does not justify the grant of planning permission.

Conclusion

54. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provision of the Framework and what I heard at the hearing, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

Nicola Davies INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Henderson, Landmark Chambers
Graeme Warriner, Barton Wilmore
Lisa Toyne, Barton Wilmore
Darren Kitchener, Milestone
Graham Cole, Scoop La Rocca
Paul Sheddon, Pod Architects

FOR THE LOCAL PLANNING AUTHORITY:

Peter Canavan, Carter Jonas
Jon Etchells, Jon Etchells Consulting
Karen Smith, Sanderson Associates
Robert Neave, Medway Council

DOCUMENTS AND PLANS PROVIDED TO INFORM THE HEARING

Appeal Ref: APP/A2280/W/21/3276221;
S106;
GVLIA pages 83, 84 and 85;
Updated AM and PM Peak Hour Flows;
A2/Mierscourt Road Junction data analysis;
Design option to avoid Eucalyptus trees;
Proposed accompanied site visit itinerary and associated drawing number LN-LP-068;
Drawing number LN-LP-06 Revision A Figure 5; and
Jon Etchells Consulting photograph viewpoint and direction of view.