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# Appeal Decision

Site visit made on 4 May 2022

**by Guy Davies BSc (Hons) DipTP MRTPI**

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

**Decision date: 19<sup>TH</sup> May 2022**

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**Appeal Ref: APP/E2205/W/21/3289129**

**Land at The Nursery, The Street, Hothfield TN26 1EH**

- 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 Robin Blake against the decision of Ashford Borough Council.
  - The application Ref 20/01644/AS, dated 26 November 2020, was refused by notice dated 16 June 2021.
  - The development proposed is the construction of two 1.5 storey dwellings and car ports including access, parking, landscaping and other associated works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. I have used the address of the appeal site given on the application form rather than that used by the Council, which is '*Land west of 1 to 4 Thanet Terrace, The Street, Hothfield*'. I am satisfied that they both refer to the same piece of land.

## Main Issues

3. The main issues are the effect of the development on:
  - the Stodmarsh nature conservation sites; and
  - highway safety.

## Reasons

### *Nature Conservation*

4. Stodmarsh lakes to the east of Canterbury are internationally important feeding grounds for rare bird populations and other water dependent species and are protected under the Conservation of Habitats and Species Regulations 2017. Natural England has advised that eutrophication from excess nitrates and phosphates in water that drains into the lakes is having an adverse effect on the nature conservation value of the designated sites. New residential development whose wastewater, treated or otherwise, that drains into the area could add to that adverse effect, unless it can be demonstrated that it would achieve nutrient neutrality.
5. Wastewater from the appeal site would drain into the Stodmarsh lakes via the Ashford Bybrook Wastewater Treatment Works and catchment area for the River Stour. Notwithstanding the extant planning permission on the site for one

dwelling, the development would give rise to an increase in wastewater entering the designated sites.

6. While recognising the problem, the appellant has been unable to put forward any way of mitigating the potential harm to the designated sites. The Council is currently investigating whether mitigation can be achieved at a strategic level but has yet to reach an agreed solution. In the absence of any local or strategic mitigation, I cannot be sure that the additional wastewater generated by the development would not contribute to a further deterioration in the water quality of Stodmarsh lakes.
7. Having regard to the precautionary approach taken by the Habitats Regulations, I conclude that the development could have an adverse effect on the nature conservation value of the Stodmarsh lakes, and would as a result conflict with Policies ENV1 and ENV8 of the Ashford Local Plan 2030, which oppose development that would have an adverse effect on the integrity of protected sites.

### *Highway Safety*

8. Access to the site is gained via a narrow, single width drive from The Street. The drive is approximately 56m long between The Street and the site of the first dwelling. An amended site plan includes a passing bay within the site approximately 60m from the access onto The Street.
9. As well as accessing the appeal site, the drive provides access to the rear gardens of 2 neighbouring properties according to the appellant, or 3 according to a local resident<sup>1</sup>. There is also an extant planning permission for 1 dwelling on the site<sup>2</sup>. The proposed development would therefore result in a total of 4 or 5 dwellings using the driveway.
10. The Highway Authority has advised that while the drive is appropriate for use by 1 dwelling it is unsuitable for use by 2 dwellings. However, that advice is inconsistent with the current situation, and the previous grant of planning permission for a dwelling on the site. It is also inconsistent with recent development to the north of the site where dwellings and an existing garage court gain access from a single width drive. I have therefore assessed the proposal on its own merits, taking account of the trip generation rates provided in the appellant's appeal statement.
11. The number of vehicle movements along the drive is low and would remain so even with the additional dwelling. The likelihood of conflicting movements would therefore also be low. On the infrequent occasions when a vehicle would have to stop on the highway to let another exit, the wait would be short and is unlikely to cause an obstruction of any significant length of time. Visibility is good at the access point and The Street is subject to a 30mph speed limit so vehicles are moving at moderate speeds.
12. The Street is used for on-street parking along one side at this point and therefore road users are used to negotiating other vehicles on the road. There is no record of any pattern of incidents on this section of The Street.

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<sup>1</sup> Representation by Mr G Cox, letter dated 14 January 2021

<sup>2</sup> 19/01544/AS, dated 22 January 2020

13. Although no written dimensions have been given for the width of the access road, the Council's application report notes that it is approximately 4.2m wide at the front reducing to just over 3m at its narrowest point. It is therefore sufficient to enable a fire tender to access the site.
14. I conclude that the proposal would not compromise highway safety or obstruct other road users to any material extent and would therefore accord with Policies HOU5 and TRA7 of the Ashford Local Plan 2030, which require new development to be safely accessed and avoid giving rise to significant traffic delays.

### **Other Matters**

15. The site lies partly outside the defined village boundary. However, Policy HOU5 of the Ashford Local Plan 2030 allows development adjoining or close to the built up confines of certain settlements, including Hothfield, subject to a number of criteria. The Council concluded that the development met the terms of those criteria and was therefore compliant with the approach to the location of new development in the Local Plan. Notwithstanding the concerns expressed in some representations, including that by Hothfield Parish Council, I see no reason to disagree with that conclusion.
16. Part of the site lies within the Hothfield Conservation Area with the remainder adjoining it. The significance of the Conservation Area lies in the walled parkland of the now demolished Hothfield Manor and its relationship with the buildings along The Street. In a previous appeal for a single dwelling on the site<sup>3</sup>, the Inspector concluded that it would have little if any visual impact on views into or out of the Conservation Area. Given that both dwellings proposed in the current appeal would be of modest height and would sit behind Thanet Terrace and other houses fronting The Street, I consider that they also would cause no harm to the visual or historic qualities of the area. The proposal would therefore preserve the character and appearance of the Conservation Area and its setting.

### **Conclusion**

17. The Council acknowledges that it cannot demonstrate a 5 year housing land supply. In such circumstances, paragraph 11 of the National Planning Policy Framework says that permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal. The protection of designated habitats sites is one such national policy. Given the potential for harm to be caused to designated habitats sites, the 'tilted balance' contained in paragraph 11 of the Framework is not engaged in this case.
18. Although I have found that highway safety would not be compromised by the development, it would have the potential to cause harm to the nature conservation interests of the designated sites at Stodmarsh lakes. For that reason, I conclude that the proposal would conflict with the development plan when taken as a whole. As there are no material considerations which suggest otherwise, it follows that the appeal should be dismissed.

*Guy Davies* INSPECTOR

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<sup>3</sup> APP/E2205/W/18/3203483