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# Appeal Decision

Site visit made on 3 May 2022

**by G Pannell BSc (Hons) MA MRTPI**

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

**Decision date: 24<sup>th</sup> May 2022**

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**Appeal Ref: APP/U2235/W/21/3286695**

**Cocketts, Bimbury Lane, Stockbury, ME9 7QX**

- 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 S Bricani against the decision of Maidstone Borough Council.
  - The application Ref 21/503774/FULL, dated 20 July 2021, was refused by notice dated 22 September 2021.
  - The development proposed is demolition of existing house and outbuildings and construction of new house.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Although not a reason for refusal, the effect of the proposal on protected species is potentially a determinative issue. Therefore, I have elevated this matter as a main issue.

## Main Issue

3. The main issues in this appeal are the effect of the proposed development on protected species and on the character and appearance of the area, having particular regard to the location of the site within the Kent Downs Area of Outstanding Natural Beauty (AONB).

## Reasons

### *Biodiversity*

4. Paragraph 99 of Circular 06/2005<sup>1</sup> states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. 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 any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

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<sup>1</sup> Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

5. Paragraph 180 a) of the National Planning Policy Framework (the Framework) advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
6. The appellant has provided a Preliminary Ecological Appraisal Report, which was produced in May 2021. This report recommends further ecological surveys for the presence absence of roosting bats within the buildings to be demolished and reptiles such as common lizard and slow worm. This would inform suitable avoidance, mitigation, compensation and enhancement measures for those species groups.
7. Although the appellant had indicated that these surveys would be carried out in the summer of 2022 and requested that any decision on the appeal is delayed until such surveys are completed, I have had regard to Annex M of the Procedural Guide Appeals – England which advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
8. In addition, the further survey work for roosting bats requires two dusk emergence/dawn re-entry surveys between May and September with surveys to be spaced at least 2 weeks apart. Furthermore, the survey works required for reptiles requires seven visits to be undertaken on non-consecutive days with artificial cover objects being left for at least 10 days prior to the first survey visit. This leads to a degree of uncertainty of the length of time it would take to complete the survey work and produce a report. Notwithstanding the length of time it may take for the surveys to be submitted, the results of the survey could require a need for mitigation and/or revisions to the scheme. Therefore, I have dealt with the appeal on the basis of the submitted evidence.
9. In conclusion, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to protected species. This would be contrary to policies DM1 and DM3 of the Maidstone Borough Local Plan 2017 (LP) which together require ecological evaluation of development sites to take full account of the biodiversity present and to protect and enhance any on-site biodiversity and geodiversity features or provide sufficient mitigation measures. For similar reasons, the proposal would not accord with the Framework, including paragraphs 174 and 180.

#### *Character and appearance*

10. The appeal site is located on the corner of Bimbury Lane and South Street Road, and comprises a detached bungalow and a number of existing outbuildings. The site is screened from the road by existing landscaping and has no direct frontage access, with the access being located at the far end of the site. All of the buildings on the site are in a state of disrepair. The area is characterised by a sporadic pattern of dwellings in large plots spaced along Bimbury Lane.
11. Policy DM32 of the LP accepts, outside of settlement boundaries, the replacement of a dwelling in the countryside, provided that the mass and volume of the replacement dwelling is no more visually harmful than the original dwelling and would be visually acceptable in the countryside.

12. It has been put to me that the increased height of the proposed two storey dwelling, which would increase significantly from that of the original dwelling, would be visually harmful. The supporting text to the policy indicates that in considering the mass and visual prominence of the resulting building, the volume will be more critical than its footprint. However, the policy does not prevent increases in the mass and volume of replacement dwellings provided that there is no greater visual impact arising from the development.
13. The scale of development would be similar to that of the neighbouring dwelling and as such would not be incongruous when viewed within the immediate context of the site and would be visually acceptable within the wider countryside.
14. Furthermore, the site benefits from extensive screening and the submitted landscape strategy demonstrates how this can be retained and enhanced as part of the redevelopment of the site. The proposed dwelling would be partially screened as a result. The dwelling would also be sited centrally within the plot, whereas the original dwelling is located closer to the junction of Bimbury Lane and South Street Road. This in combination with the existing screening will result in the dwelling being no more visually harmful when viewed from the existing junction.
15. Therefore, having regard to the scale of the surrounding development and the proposed siting of the dwelling, in combination with the existing landscaping, I conclude that the proposed replacement dwelling, despite its increased height, would result in a development which is visually acceptable in the countryside and would not be more visually harmful than the original dwelling.
16. The site is located within the Kent Downs AONB where policy SP17 of the LP states that great weight should be given to its conservation and enhancement. and the National Planning Policy Framework places great weight on protecting and enhancing landscape beauty in AONB's which have the highest status of protection in relation to these issues.
17. I have been referred to the Kent Downs AONB Management Plan (MP) which echoes the requirements of the Framework, in seeking to ensure that AONBs are conserved and enhanced. Policy SD2 of the MP requires the local character, qualities and distinctiveness of the AONB to be conserved and enhanced in the design, scale, setting and materials of new development.
18. The overall design and appearance of the proposed dwelling would incorporate features which are reflective of existing buildings within the locality, including a hipped and tiled roof, weatherboarding and red stock bricks. The development would enhance the appearance of the site as it would result in the clearance of the existing buildings. The replacement with the proposed scheme with materials and a colour palette more appropriate to its rural location, would take into account the local character and its location within the AONB.
19. In addition, the extent of the existing outbuildings are visible, in particular from South Street Road. Whilst I accept that these buildings are single storey, their overall footprint and sprawl across the depth of the site are significant and are detrimental to the appearance of the wider area. Therefore, the replacement of this sprawl of outbuildings with the proposed dwelling would result in a consolidation of the built development on site and lead to a limited enhancement of the AONB.

20. I therefore conclude that the proposed development would not harm the character and appearance of the area or the landscape quality and setting of the AONB. It would not conflict with policies SS1, SP17, DM1, DM5 and DM30 of the LP which together seek to ensure high quality design which is of a type, siting, materials, density and design which reflects the character and appearance of an area, maintaining or where possible enhancing local distinctiveness and requires great weight to be given to the conservation and enhancement of the Kent Downs AONB.

## **Other Matters**

### *Setting of Listed buildings*

21. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.
22. I have considered the effect on the Grade II Listed Building Beaux Aires Farmhouse which is within the vicinity of the site. Beaux Aires Farmhouse is contained within its own landscaping, as such, even developed, the site would not have a significant impact on how the listed building would be appreciated or the elements that form its setting. Therefore, I conclude that the development would not result in harm to the setting of the listed building Beaux Aires Farmhouse.

## **Conclusion**

23. In conclusion, whilst I have found no demonstrable harm to the character and appearance of the area, in the absence of sufficient evidence to the contrary, the proposal would potentially cause unacceptable harm to protected species.
24. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

*G Pannell*

INSPECTOR