
Appeal Decision

Site visit made on 31 August 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/J2210/W/22/3291653

Unit 7 The Old Hop House, Hoath Farm, Bekesbourne Lane, Canterbury CT3 4AB

- 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 Ms J Edwards against the decision of Canterbury City Council.
 - The application Ref CA/21/02517, dated 19 October 2021, was refused by notice dated 8 December 2021.
 - The development proposed is demolition of existing commercial building along with removal of commercial yard and erection with two dwellings, together with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the banner heading above is taken from the planning application form. At Part E of the appeal form, it is stated that the description of development has not changed, but a different wording has nevertheless been entered. While this reflects the description stated on the Council's decision notice, neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issues

3. The main issues are:
 - i) whether or not the development would be in a suitable location having regard to its position within the countryside, its accessibility, and the overall spatial strategy for the area;
 - ii) the effect of the proposal on the character and appearance of the area; and
 - iii) the effect of the proposal on the integrity of the Stodmarsh Special Protection Area, Special Area of Conservation and Ramsar Site.

Reasons

Suitability of the Location

4. The appeal site includes a commercial building and yard which sit on the edge of a cluster of buildings around Hoath Farm. There is no dispute between the main parties that the site is within the countryside in planning policy terms.

5. In 2020, planning permission was granted at appeal for 2 dwellings on land immediately to the south of the appeal site¹. Within that appeal decision, the Inspector found that the dwellings would be physically and functionally closely linked to the existing Hoath Farm farmstead, and would not give rise to isolated homes in the countryside. The same would be true of the proposal before me, and I find that the dwellings would not be isolated within the meaning of paragraph 80 of the National Planning Policy Framework ('the Framework').
6. Nevertheless, Policy SP4 of the Canterbury District Local Plan 2017 ('the CLP') advises that development in open countryside will be permitted if required for agriculture and forestry purposes. The proposed dwellings would not be required for agriculture or forestry purposes. The appellant further accepts that the development would not strictly accord with any of the circumstances under which Policy HD4 of the CLP provides that permission for new dwellings in the countryside may be granted. The site is not therefore a location where new dwellings would generally be supported by Policies SP4 or HD4 of the CLP.
7. In addition, services or facilities near to the site are very limited. The distance to the outskirts of Canterbury is not great and there are bus stops on the A257 to the north of the site. However, there are no footways or lighting to the route along Bekesbourne Lane to reach these. Other connecting rights of way are also unlit. In combination with the distances involved, this would be likely to discourage travel by walking, cycling and public transport, and I consider that future occupiers of the development would consequently be likely to rely largely on travel by private motor vehicles. To this extent, there would be conflict with the environmental aims of the Framework insofar as it seeks accessible services to meet needs and highlights a requirement to actively manage patterns of growth to support objectives including promoting opportunities for walking, cycling and public transport use.
8. Be that as it may, I have been provided with details of a decision by the Council that prior approval was not required for a proposal to convert the building on the site to 3 dwellings under permitted development rights² ('the PA Scheme'). The dwellings now proposed would be larger in area than those in the PA Scheme. However, the number of households occupying the site would reduce from 3 to 2. Given this reduction, I consider that overall comings and goings and private vehicle usage as well as access to services would be likely to be similar to, if not less than, levels associated with the PA Scheme.
9. I cannot be sure that the PA Scheme would be implemented, but I have no firm reason to doubt that there is a real prospect that it could come forward. I give significant weight to this fallback position as an alternative to the appeal scheme, and find that it would support the proposal notwithstanding the accessibility of the site and its location in the countryside contrary to the overall spatial strategy for the area. In this context, I conclude that there are material considerations which would outweigh the conflict with Policies SP4 and HD4 of the CLP, and with the environmental aims of the Framework.

Character and Appearance

10. The area near to the appeal site is generally characterised by dispersed buildings or small groups of buildings set within open fields, paddocks,

¹ Appeal ref APP/J2210/W/19/3237912

² Application ref CA/21/00492

orchards and woodlands, and has a distinctly rural quality. The cluster of buildings around Hoath Farm adjoins open fields and orchards and includes 2 Grade II Listed 18th Century houses close to Bekesbourne Lane known as The Manor House and Orchard House. It also includes a converted Grade II Listed timber framed barn known as Highlands, supporting curtilage listed buildings with similar features, and further dwellings, including the 2 allowed on appeal to the south of the site which were under construction at the time of my visit and which have the appearance of former agricultural buildings. For the most part, the layout of the buildings facing the access from Bekesbourne Lane and courtyards branching from it together with their traditional appearance gives the impression of a cohesive farmstead group. However, the building on the appeal site is positioned away from the access and appears to stand somewhat apart from others in the cluster. It is further set visually apart by its contrasting utilitarian appearance.

11. The proposed dwellings would be of larger scale and footprint than the existing development on the site, and would result in a greater overall spread of buildings. However, the increase would be predominantly towards the south and west boundaries where the site adjoins other development within the Hoath Farm cluster. The dwellings would extend closer to the boundaries of the site with the adjoining orchard to the north and east than the closest parts of the existing building, but only slightly so, and significant separation would be maintained to these boundaries.
12. I acknowledge that domestic gardens would extend beyond the dwellings, and that the boundary of the appeal site is larger than the boundary of the PA Scheme site. Even so, the boundary broadly reflects the extent of the existing commercial site which includes a yard with large areas of hardcore and which at the time of my visit was used for outdoor storage. In addition, the appellant's evidence indicates that the PA Scheme layout included parking to the north west of the building, which would result in hard landscaping and vehicles close to the boundary with the adjacent orchard. In contrast, the appeal scheme includes gardens or soft landscaping extending up to the north and east boundaries with the orchard. Planning conditions could require sympathetic landscaping treatment of these areas, and I consider that they would provide for a spacious open setting appropriate to the rural character of the area. Indeed, the replacement of hardstanding and open storage with gardens would in my view provide for a softer transition to the surrounding open countryside.
13. Given these factors, I find that there would not be a significant spread of development encroaching towards open countryside. Moreover, the dwellings have been designed to appear as a thatched barn and a brickwork granary. They would be of traditional architecture and external materials, and would be positioned in a courtyard-style layout which would be in keeping with other development at Hoath Farm. In my judgement, these factors would result in a more sympathetic visual connection between the development on the appeal site and other nearby buildings, and the dwellings would relate better to their neighbours and appear less sporadic and isolated than the existing building does. As a consequence, I find that the proposal would be less prominent in its surroundings, and this would offset the visual impact of the greater scale and spread of development on the site.

14. For these reasons, the proposal would not result in a detrimental incursion of development into the surrounding countryside nor would it be unduly urbanising, and I conclude that the character and appearance of the area would not be harmed overall. Accordingly, I find no conflict with Policy DBE3 of the CLP which broadly seeks to protect and enhance the distinctive character, diversity and quality of Canterbury including through high quality design and development appropriate to its setting, local context and distinctiveness. The proposal would also accord with requirements within the Framework seeking development that is sympathetic to local character and that functions well and adds to the overall quality of the area.

Stodmarsh Sites

15. The Stodmarsh Special Protection Area ('SPA'), Special Area of Conservation ('SAC') and Ramsar site are designated habitats sites protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). The information before me indicates that the importance of the Stodmarsh sites relates mainly to the wetland, reedbeds, grazing marshes and alder-carr habitats which support varied plant and invertebrate species and which provide wintering and breeding habitats for wetland birds. Stodmarsh is also a Site of Special Scientific Interest ('SSSI') and a National Nature Reserve ('NNR').
16. Advice provided by Natural England³ identifies high levels of nitrogen and phosphorus input to the Stodmarsh environment, and points to evidence that these nutrients are causing eutrophication at part of the designated sites which is impacting on their integrity. Given current uncertainty over whether discharge from wastewater treatment works associated with new development will cause further deterioration, Natural England advise that housing development across the Stodmarsh catchment has the potential to exacerbate existing impacts putting the future conservation status of the designated sites at risk. In advance of wider solutions to address nutrient loading at Stodmarsh being implemented, the advice highlights that one way to address risk to the Stodmarsh sites is for new development to achieve nutrient neutrality, and provides a methodology for calculating how neutrality can be achieved.
17. The proposal includes overnight accommodation that would generate wastewater, and given the location of the site within the catchment area with a hydrological connection to the Stodmarsh sites, there would be a potential pathway to Stodmarsh which would increase nutrient levels.
18. The appellant states that there is no mains sewer connection in the vicinity of the appeal site, and that the development would be served by small package treatment plants. They indicate that there are currently 3 plants present, one of which is associated with the appeal site, but that one would be removed. However, it is unclear from the information before me whether or not the 2 remaining plants could then receive higher loads of wastewater, and consequently I am not persuaded that a reduction in the number of plants can in itself necessarily be assumed to equate to a reduction in effluent overall.
19. Moreover, the Nutrient Assessment submitted by the appellant includes calculations of the total nutrient loads from the proposed development undertaken in line with Natural England advice. The calculations indicate that

³ Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites – for Local Planning Authorities November 2020

both nitrogen and phosphorus loads from the site would be increased from existing levels. The increases would be smaller if maximum efficiency percentages for the package treatment plants were assumed. However, firm details to demonstrate that maximum efficiency would be achieved at the site have not been provided, and I therefore consider it would be more appropriate to use the average figures. In any event, there would still be an uplift even where maximum efficiency percentages were assumed. The appellant also comments that the increases would be reduced if the 20% precautionary buffer were not applied, but this is part of the methodology recommended by Natural England in recognition of the uncertainty inherent in the calculations of nutrient loads, and I have no substantive basis to find that it should not be applied here.

20. The appellant suggests that the 2 dwellings proposed together with the 2 allowed at appeal to the south would result in less total wastewater discharge from the sites than when they were formerly in full commercial use. However, the Natural England advice states that commercial development not involving overnight accommodation will generally not be included in calculation of nutrient budgets. This is because it is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated by that person can be calculated using the population increase from new homes and other accommodation. On this basis, I am not persuaded that the removal of the commercial activity would lead to an overall net reduction in nutrient loading within the catchment since anyone working there would be assumed to also live in the catchment.
21. I also recognise that the proposal would result in one fewer dwelling on the site than under the PA Scheme. Nevertheless, the evidence before me does not indicate that the PA Scheme has been implemented. I have already found no firm reason to doubt that this would be possible and that the PA Scheme represents a fallback position. Even so, I cannot be sure from the evidence before me that it would necessarily be implemented. As a consequence, there remains some uncertainty that the PA Scheme would in reality result in 3 dwellings on the site. In exercising my duty to protect the designated sites, I must adopt a precautionary approach. This provides a different context to that which applied in my assessment of the first 2 main issues, conferring a requirement for greater certainty. In this context, I find that I am unable to disregard the potential situation that the PA Scheme would not come forward, and given this doubt, I do not consider that it would be appropriate to take the fallback as an alternative baseline against which to assess the nutrient load of the appeal proposal.
22. I accept that the annual increases in nitrogen and phosphorus loads resulting from the appeal scheme alone would be relatively small. However, I find taking a precautionary approach that a likely significant effect on the Stodmarsh sites through additional nutrient loading as a result of the proposal, either alone or in combination with other plans and projects cannot be ruled out. It would therefore be necessary for me as the competent authority to consider the effect of the proposal on the integrity of the Stodmarsh sites within the framework of an Appropriate Assessment, taking account of any mitigation.
23. In order to offset the nutrient loads of the development and mitigate the effects of the proposal, the appellant advises that they would be willing to establish permanent grassland or greenway areas with tree/shrub/scrub planting. They point to land to the south west of the site which is within their

ownership as a suitable site for this. However, the information before me does not clearly define the likely effect of such measures on nutrient loading, nor demonstrate that the available area would offer adequate scope to neutralise the additional nutrient burden associated with the development. Accordingly, I can have little confidence that this would offer effective mitigation.

24. I have also considered the appellant's suggestion that they would be willing to pay to remove treated effluent from the on-site package treatment plants and dispose of it at a Waste Water Treatment Works outside of the Stodmarsh catchment area, and that this could be achieved by the imposition of a condition. However, I have not been provided with details of an alternative Treatment Works receptor for wastewater from the site, far less assurance that wastewater from the site would be accepted, both initially and on an ongoing basis. In this context, a planning condition would fail the tests of reasonableness and enforceability, and I find that there is insufficient certainty that this approach would mitigate the effects of the proposal as intended.
25. The appellant refers to the Council's approval of details of foul and surface water drainage for the 2 dwellings to the south of the site, and comments that the same principles would apply on the development. However, that does not alter my findings above regarding the likelihood of additional nutrients associated with the proposed development reaching the Stodmarsh sites.
26. For the reasons above, I am not sufficiently satisfied that adverse effects on the integrity of the Stodmarsh SPA, SAC and Ramsar site can be excluded. In these circumstances, I conclude that Regulation 63(5) of the Habitats Regulations precludes the proposal from proceeding. There would also be conflict with Policies LB5 and LB6 of the CLP which, amongst other things, indicate that permission will not be granted where development would have an adverse effect on the integrity of a SAC, SPA or Ramsar site or where the scientific or nature conservation interest of sites including SSSIs and NNRs would be materially harmed. It would also be contrary to the Framework's objectives for the protection of biodiversity and the conservation of the natural environment.

Planning Balance

27. The Council maintains that it is able to demonstrate a 5 year supply of housing despite an appeal decision referred to by the appellant where this was found not to be the case. However, the Council accepts that the results of the Housing Delivery Test mean that the policies which are most important for determining the proposal would in any case be deemed out of date in accordance with paragraph 11 and footnote 8 of the Framework. Paragraph 11 therefore sets out that permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
28. I acknowledge that the proposal would make effective use of the site and would add 2 family dwellings to the supply of housing locally. The Framework seeks to significantly boost the supply of housing, and recognises that small sites such as this can make an important contribution to meeting the housing needs of an area. In light of clear objectives within the Framework and the past shortfall in housing delivery indicated by the results of the Housing Delivery Test, this is an important benefit and I afford it great weight. That said, the very modest scale

of the proposal would limit the contribution made to the overall supply of housing, and consequently the extent of the benefit.

29. There would be direct and indirect social and economic benefits, both short-term during construction and longer-term on occupation of the development. These would include employment opportunities related to construction, and expenditure by future residents that would be likely to help to support local services and facilities and contribute to the economy. I also note suggested environmental sustainability measures including provision of an air source heat pump and electric vehicle charging, use of reclaimed and locally sourced materials, insulation and water harvesting, as well as potential for soft landscaping on the site. However, these benefits would also be limited by the small scale of the development, and I give them modest weight.
30. I have found that there would not be harm to the character or appearance of the area. Given the more sympathetic design and relationship of the dwellings to the Hoath Farm group and transition to the surrounding countryside, I consider that there would also be some enhancement to the setting of the listed buildings within the group, albeit that this would be very modest.
31. The appellant has also suggested that the proposal would remove traffic noise and dust associated with the commercial use of the site, but I have little substantive evidence demonstrating that there is existing detriment caused to neighbouring living conditions which limits the weight that I afford to this as a benefit of the development.
32. Neighbouring occupiers and the Hoath Farm Residents Association have made comments in support of the proposal, and the Council raise no objection in relation to the living conditions for future or neighbouring occupiers, highway safety or contamination. The development would also meet standards relating to the internal space of the dwellings, provision of outdoor space and refuse and cycle storage. However, the absence of harm in these regards is a neutral factor and weighs neither for nor against the proposal. While I have also found that the dwellings would not be isolated, nearby services would be limited and I am not persuaded from the evidence before me that the accessibility of the development would be a benefit of the proposal.
33. On the other hand, I have found that the proposal would adversely affect the integrity of the Stodmarsh SPA, SAC and Ramsar Site. Accordingly, policies within the Framework relating to habitats sites would in this case provide a clear reason for refusing the development, and the presumption in favour of sustainable development at paragraph 11 of the Framework would not apply.
34. Notwithstanding the past housing delivery shortfall and the benefits of the proposal, I find the adverse effect on designated nature conservation sites and conflict with the Habitats Regulations is a matter of overriding concern.

Conclusion

35. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR