



Appeal Decision

Site visit made on 6 September 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/J2210/W/21/3278449

Five Acres, Calcott Hill, Sturry CT3 4ND

- 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 P Roper against the decision of Canterbury City Council.
 - The application Ref CA/20/02311, dated 19 October 2020, was refused by notice dated 8 January 2021.
 - The development proposed is Removal of existing barn and erection of a two bedroom bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged Natural England (NE) has updated its advice in relation to nutrient level pollution in a number of river basin catchments¹ including for the Stodmarsh Special Area of Conservation, Special Protection Area (SPA) and RAMSAR site (herein Stodmarsh). It has clarified there could be effects upon the SPA designation, which was not referred to in the Council's second reason for refusal. The 2021 Housing Delivery Test (HDT) results were published on 14 January 2022. The Council and the Appellant have been given the opportunity to comment upon the implications of these matters for their cases, which I have taken into account in determining this appeal.

Main Issues

3. The main issues are:
 - whether or not the proposed development would be in a suitable location having regard to policies for the location of new housing and the location of services and facilities; and,
 - the effect of the proposed development upon Stodmarsh and the Thanet Coast and Sandwich Bay Special Protection Area (the TSSPA) as habitats sites.

¹ Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

Reasons

Policies for housing

4. Policy SP4 of the Canterbury District Local Plan (2017) (the Local Plan) sets out the strategic approach to the location of development. The pre-text explains it adopts a sequential approach to the sustainable location of new development, with a settlement hierarchy based upon their size and range of services. New development will be focussed towards named settlements proportionate to their size and hierarchy position. The appeal site is located within Calcott Hill, which I am informed is one of a number of hamlets not listed in the hierarchy.
5. The site is not in an isolated location. However, being significant distances away from named settlements, it is open countryside under SP4. Settlements listed in SP4 appear to have done so following the Settlement Hierarchy Study (2011) based upon their size and range of services. Despite the appellant's views upon settlement classification, there is not substantive evidence that would lead me to conclude the approach and hierarchy in this adopted plan policy is not well-reasoned having regard to its aim of providing a sequential approach to the sustainable location of new development.
6. Policy HD4 restricts new dwellings in the countryside, stating permission for new dwellings will only be granted in specified circumstances. While stated as being required in connection with an adjacent equestrian business which has recently changed to a stable with stud services, the appellant has stated that they are not seeking permission for a new rural worker's dwelling. A family member has taken over the business, and it is being separated from the dog grooming business run from the adjacent bungalow, with plans for improvement and potential expansion. I am informed it is dependent upon someone living at the site for security, the safety of visiting mares, and foaling.
7. The surrounding land associated with the stable is limited in size with a modest stable yard and structures. There is little evidence before me in respect of the current or future business, and no substantive evidence that there is or would be an existing viable business that necessitates a rural worker living at the site. Therefore, it is not demonstrated it is essential for a rural worker to live at or near their place of work, so does not meet this exception of HD4.
8. As a matter of fact, this proposal is for the replacement and not a re-use or conversion. Even if it were classed as a re-use or conversion as suggested it should be by the appellant, the existing building makes a neutral contribution to the character and appearance of the area. The scale, design and appearance of the new dwelling would not be out of keeping with the character and appearance of the area. However, its merits are such that the proposal would have a neutral effect. There is not the substantive evidence that demonstrates landscaping or other measures would lead to an overall enhancement of its immediate setting. It is not of exceptional quality or innovative nature. Consequently, the development conflicts with Policy HD4.
9. I saw a convenience store approximately 1.1km from the appeal site and farm shop and a butcher further south. These, and other services, facilities and the train station were further into Sturry, accessed via the A291. Commercial premises are approximately 1.2km north, a garden centre 2km, and many services and facilities at Herne Bay or Canterbury significantly further. Footways along the A291 are narrow in places, are unlit for significant lengths

and not continuous on either side of the road. The carriageway was busy at the time of my visit and relatively narrow. This and elevation changes suggests walking or cycling to services and facilities would not be particularly attractive or convenient.

10. The bus stops along the A291 including those close to the site suggest it is a route between Herne Bay and Canterbury including Sturry, providing access to a wide range of services and facilities. However, I have not been provided with any substantive up to date information of the frequency and duration of bus services. Neither stop had a shelter or lighting which would reduce their appeal. There is nothing of substance that demonstrates this would be viewed as a particularly attractive or convenient option for future occupiers.
11. The proposed development would be likely to result in a number of vehicular trips and miles generated and associated emissions for occupiers to access all necessary services and facilities. Sustainable transport opportunities between rural and urban areas vary. However, given the limited transport options and distances to services and facilities, the development would not be well located to access services and facilities by sustainable transport modes. There is very little detail on the nature and likely trip generation of the business and vehicular miles before me. It is not demonstrated that the avoidance of the need to commute to the equine business would off-set the adverse effects of trips generated by occupiers of a new dwelling. Therefore, I attach little weight to this matter.
12. For the reasons set out above, the proposed development is not in a suitable location having regard to policies for the location of new housing and the location of services and facilities. It conflicts with Policies SP4 and HD4 of the Local Plan. In combination and amongst other things these aim to sustainably locate new dwellings at named settlements. It would also conflict with the aims of paragraphs 8 and 105 National Planning Policy Framework (2021) (the Framework) which aim to use natural resources prudently, minimise pollution, and focus development towards locations that limit the need to travel.
13. Policy SP1 of the Local Plan refers to the Council taking a positive and proactive approach and applying the presumption in favour of sustainable development in accordance with the Framework. Therefore, it is of less relevance to this main issue than the policies I have set out above.

Habitats sites

14. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a significant effect on a European site (in this case the Stodmarsh and the TSSPA), a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
15. The appeal site lies within the catchment of Stodmarsh. Its importance is due to its wetland habitats, reed beds and grazing marshes. The designated features are its assemblages of wetland plants, wetland invertebrates including the Desmoulin's Whorl Snail, and rare wetland birds, including wintering and/or breeding Bearded Tit, Bittern, Gadwall, Hen Harrier, and Shoveler. The site is

also within a zone of influence of the TSSPA. It includes a range of coastal habitats used by a large number of migratory and wintering birds. It supports an important breeding population of Little Tern and wintering populations of Golden Plover and Turnstone, which comprise its qualifying features.

16. The conservation objectives of Stodmarsh and the TSSPA are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features and species, the population of the qualifying features and species, and the distribution of the qualifying features and species within the sites.
17. Nutrient levels (phosphorus and nitrogen) are resulting in eutrophication in Stodmarsh, adversely affecting the protected habitats and species, such that some of the lake units are in an unfavourable condition. While research is ongoing, Stodmarsh is thought to be at risk from additional nutrient inputs, including from new developments within its catchment. NE has adopted a precautionary approach that LSEs on Stodmarsh and its designated features and species due to increases in wastewater from new development, cannot be ruled out².
18. This proposal would result in an additional dwelling within the catchment for Stodmarsh, so could result in LSE due to increased nutrient inputs. NE has been consulted upon the appeal proposal. They have advised that the attainment of nutrient neutrality is a way of securing mitigation for any adverse effects, and have updated advice with a new methodology to calculate it. NE is of the view that the suggested package treatment plant and other drainage details it is put to me could be secured by planning condition, would still result in a net increase of nutrients via the discharge of foul water. Moreover, potential impacts associated with surface water run-off need to be considered.
19. I have not been provided with evidence demonstrating the appeal site is not within Stodmarsh's catchment, or a calculation and detailed measures demonstrating nutrient neutrality can be achieved. Therefore, it is not demonstrated the appeal proposal would not result in increases in the nutrient load of nitrates and phosphates in the catchment. Although the increase from a single dwelling would be small, based upon the evidence before me, alone and in-combination, the development would result LSEs that would be harmful to the integrity of Stodmarsh.
20. There is evidence from studies³ that recreational activities cause disturbance to important birds and a number of parts of the TSSPA are in an unfavourable condition. The proposed development would introduce a further dwelling within the zone of influence, in which it is identified that future new housing is likely to result in increased visitors and recreational disturbance to the TSSPA and its qualifying features. Therefore, the effects of this scheme alone and in combination with others would have LSEs on the TSSPA.
21. The Council has a Strategic Access, Management and Monitoring Plan for the TSSPA setting out mitigation measures (SAMMs) delivered through a joint project, to ensure that development, does not have an adverse effect on its integrity. Mitigation measures include surveys, wardening, signage,

² Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites - For Local Planning Authorities (November 2020).

³ Strategic Access Management and Monitoring Plan In respect of the Thanet section of the Thanet Coast and Sandwich Bay SPA, Main Report (April 2016).

- interpretation, and education measures, funded by a per-dwelling tariff. NE is satisfied that subject to a contribution to the SAMMs being secured, adverse effects on the integrity of the TSSPA can be mitigated. I am satisfied that subject to a payment being secured against this scheme that ensures a direct link between the monies and scheme, the measures would overcome the LSEs.
22. The Council and appellant agree a planning obligation is required to secure mitigation. The appellant has indicated a willingness to make the contribution. The Procedural Guide: Planning Appeals – England (2022) states that if an appellant intends to submit an obligation and wants to be certain it will be taken into account, this must be submitted within 7 weeks of the start date. However, as the competent authority, I do not have a planning obligation before me, or other alternative measures to mitigate the effects of the scheme. Therefore, it makes no provision to mitigate the recreational disturbance impacts and thus maintain or restore the integrity of the SPA.
23. That the development is not considered to result in significant environmental impacts for the purposes of the Town & Country Planning (Environmental Impact Assessment) Regulations (2017) does not demonstrate there would not be LSEs on designated habitats sites under the Habitats Regulations. These are different legislative regimes with different duties and thresholds for the consideration of effects.
24. Applying the precautionary principle, in the absence of appropriate mitigation being secured, the appeal scheme would have significant adverse effects on the integrity of the TSSPA and on Stodmarsh. For this reason, the appeal scheme would fail to adhere to the conservation objectives. No other substantive mitigation measures are secured. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the TSSPA and Stodmarsh.
25. For the reasons set out above the proposed development would conflict with the Habitats Regulations and Policies SP6, LB5 and LB9 of the Local Plan. In combination and amongst other things these policies seek to avoid a net loss in biodiversity and state that development that may be likely to have an adverse impact upon the integrity of the habitats sites will not be permitted unless adequate mitigation measures are secured to ensure there would be no adverse effect upon their integrity. It would also conflict with paragraph 180 of the Framework which states that if significant harm to biodiversity cannot be avoided or adequately mitigated, then planning permission should be refused.

Other Matters

26. I do not have the full detail, evidence and circumstances before me before the Inspector for the nearby appeal decision provided by the Council⁴. It was for nine dwellings on land which I am informed was used as a builder's yard. Therefore, while I have had regard to its contents it is not directly comparable to this appeal proposal, which I have considered on its own merits and impacts.

Planning Balance

27. I am not aware of the Council's current housing land supply position (HLS), but the 2021 HDT results indicate that the Council has only delivered 65% of its required number of dwellings over the previous 3 years. On the application

⁴ APP/J2210/W/20/3258168.

form the proposal is for a market dwelling, but a Community Infrastructure Levy exemption form declaring the proposal is for a self-build dwelling accompanies the application. However, there is no planning obligation to secure a custom or self-build dwelling. Even if its status were secured, and there was an acute shortage of both serviced plots and need for additional dwellings to meet HLS and HDT requirements in the Council area, the provision of a new single plot and new dwelling would attract limited weight.

28. When applying footnote 8 of the Framework, the presumption in favour of sustainable development would normally apply given the Council's HDT result. However, paragraph 11d)i) states that planning permission should be granted, unless the application of the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. Footnote 7 confirms that these include those for designated habitats sites. Therefore, the tilted balance does not apply.
29. There would be a small economic benefit during construction and the evidence suggests once complete a modest sustained benefit to the local economy and support to rural services and facilities, through the occupiers and the equine business. This attracts limited weight in favour of the scheme. Supporting representations do not raise material issues in support of the scheme. There is no substantive evidence demonstrating biodiversity enhancements secured by the Council's suggested planning condition would be anything other than a limited benefit, attracting limited weight.
30. Were I to agree the development is or could be made compliant with policies in respect of matters such as design, materials, resource and energy efficiency, the living conditions of future and neighbouring occupiers, highway safety and parking, cycle and refuse storage, these would be neutral matters in the balance. Based upon the evidence before me, compliance with policies in respect of the character and appearance of the area are also a neutral matter.
31. Overall, the policy compliance and benefits of the development attract limited weight in favour of the scheme. The development conflicts with policies for the location of new housing and the location in relation to services and facilities. It would adversely affect the integrity of Stodmarsh and the TSSPA. These are matters that attract significant weight against the scheme, which significantly and demonstrably outweigh the benefits of the development. Moreover, Regulation 63(5) of the Regulations state that, the competent authority may only agree to the plan or project only after having ascertained that it will not adversely affect the integrity of a habitats site.

Conclusion

32. For the reasons set out above, the proposed development would be contrary to the development plan and the National Planning Policy Framework taken as a whole, and the Habitats Regulations. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan or the Framework. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR