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## Appeal Decision

Site visit made on 15 March 2022

**by Grahame Gould BA MPhil MRTPI**

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

**Decision date: 12 December 2022**

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**Appeal Ref: APP/X2220/W/21/3277868**  
**101 Sandwich Road, Ash CT3 2AH**

- 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 James Bowey against the decision of Dover District Council.
  - The application Ref 20/01311, dated 4 September 2020, was refused by notice dated 30 March 2021.
  - The development proposed is a chalet bungalow.
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### Decision

1. The appeal is allowed and planning permission is granted for the proposed chalet bungalow at 101 Sandwich Road, Ash CT3 2AH in accordance with the terms of the application, Ref 20/01311, dated 4 September 2020, subject to the conditions set out in the Schedule of Conditions below.

### Procedural matters

2. The appellant's final comments refer to planning permission (21/00440) having been granted on 1 July 2021 for the permanent siting of a static caravan within the site for the appeal development. I saw during my site visit that a static caravan had been sited.
3. The development would involve the construction of a four bedroom, detached chalet bungalow (the dwelling), with a new 5.4 metre wide access/drive off Collar Makers Green (CMG). To facilitate the creation of that access the submitted block plan<sup>1</sup> shows the removal of four 'shrubs', identified as being five metre tall common hawthorns in the appellant's arboricultural report. The appellant's appeal statement refers to the removal of '5 trees'<sup>2</sup>. The removal of the hawthorn shrubs/trees, whether that be four or five in number, being identified as a concern in the Council's first reason for refusal. When I undertook my site visit, I saw that a number of hawthorn shrubs/trees had been removed and replaced by timber fencing forming part of a longer fence. While the development subject to this appeal has not been commenced, I have had regard to the partial removal of the hawthorn hedge.
4. The Council's third reason for refusal concerns the effect of elevated nutrient levels on the conservation status of the Stodmarsh Lakes Special Protection Area (the SPA), Special Area of Conservation and Ramsar site. However, the Council has confirmed that insofar as the matter of elevated nutrient levels relates to the Council's administrative area, following a dialogue between it

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<sup>1</sup> P06/10/19 Revision A

<sup>2</sup> Last paragraph on page 3

and Natural England, there is no longer a need for it to be demonstrated that new developments would achieve neutrality. There has therefore been a significant change of circumstances relating to the issue underlying the Council's third reason for refusal. I am therefore of the view that there is no need for me to consider the issue of elevated nutrient levels in determining this appeal.

5. In relation to the issues raised by the Council in its first and second reasons for refusal, I have sought the appellant's and the Council's views about the potential securing of a width reduction for the drive at its junction with public right of way EE108A (the PRoW) through imposing a planning condition. I have taken account of the comments received from the appellant about that matter.
6. A revised version of the National Planning Policy Framework was published by the Government in July 2021 (the Framework), postdating the Council's decision and the appeal's submission. The changes to the Framework concerning this case relate to the Framework's paragraph numbering and in my reasoning below I have relied on the updated Framework.

### **Main Issue**

7. The main issue is the effect of the development on the character and appearance of the area, including how the provision of visibility splays might affect the hedgerow adjoining the PRoW.

### **Reasons**

8. The dwelling would occupy part of the rear garden of 101/'Collar Makers Hole' Sandwich Road (No 101), a mid-eighteenth century, grade II listed, detached dwelling. No 101 is sited at junction of Sandwich Road with CMG.
9. The site is elevated around 1.5 metres above CMG's carriageway level<sup>3</sup>. The boundary with CMG is marked by a five metre tall hawthorn hedge, with the 22 trees<sup>4</sup> forming that hedge having been classified as category 'C' (trees of low quality) by the appellant's arboriculturist, as per the classification used in BS5837:2012<sup>5</sup>. The PRoW passes between No 101's side boundary and CMG's carriageway and the PRoW therefore immediately adjoins the hawthorn hedge.
10. CMG forms part of a residential estate of around 50 dwellings that lies to the south-west of No 101. To the south and east of No 101 there is undeveloped land and the boundary between that land and No 101 is marked by a row of C category poplar trees, as recorded in the appellant's arboricultural report.
11. The formation of the access would result in there being a permanent gap in the hedgerow, shown as being 5.4 metres wide on the application block plan. Notwithstanding that I consider the new dwelling, apart from its drive, would largely be screened from view in CMG and from the PRoW. Given that I consider the dwelling, of itself, would not be detrimental to the streetscene.

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<sup>3</sup> Based on the levels quoted on drawing P07/10/19

<sup>4</sup> Not allowing for any trees that have already been removed

<sup>5</sup> "Trees in relation to design, demolition and construction – Recommendations" published by the British Standards Institution

12. The Council has not disputed the appellant's category C classification for the hedge under BS5837:2012 and I consider it notable that the hedger is not subject to a tree preservation order. That said the hedge has a pleasant appearance and contributes positively to CMG's streetscene. As the drive would only serve a single dwelling it is unclear why it would need to be 5.4 metres wide, most particularly at its junction with the PRoW. A drive of that width being similar to the carriageway width for a residential estate road. I am of the view that a 5.4 metre wide drive, at least at its junction with the PRoW, would be unnecessary, with a width of 3.0 metres being more appropriate under the circumstances. However, in the interests of pedestrian safety to ensure drivers emerging from the drive could see pedestrians walking up or down the PRoW, on the occasions when those eventualities coincided, I consider there would be a need for vision splays of 2.0 metres by 2.0 metres on either side of the drive to be available.
13. With a drive 3.0 metres wide at its junction with the PRoW and 2.0 metre by 2.0 metre visibility splays on either side, the gap in the hedge would need to be no more than 7.0 metres, as opposed to 9.4 metres with a 5.4 metre wide drive. I consider a 9.4 metre wide gap in the hedge would be excessive in the circumstances, with a 7.0 metre gap being more appropriate. The reduction of the drive's width and vision splay provision could be secured through the imposition of a planning condition in the event of this appeal being allowed. Accordingly, I sought the appellant's and the Council's views about the imposition of condition stating:

*"Notwithstanding the width of the drive shown on drawing P06/10/19 Revision A, prior to the first occupation of the dwelling hereby permitted details for a drive of no more than 3.0 metres in width at the junction between the drive and the public right of way EE108A must be submitted to and approved in writing by the local planning authority. The details to be submitted pursuant to the requirements of this condition shall include the provision of visibility splays of 2.0 metres by 2.0 metres on each side of the drive at the junction between it and the public right of way and there must be no obstruction of sight exceeding 0.6 metres in height above the level of the drive within the visibility splays. The drive shall be constructed in accordance with the details approved under the requirements of this condition and the visibility splays must be available prior to the first use of the drive and be retained thereafter."*

14. The appellant has advised<sup>6</sup> it has no objection to the imposition of such a condition.
15. While there would be some incursion into the root protection areas for the trees to be retained as part of the development, the appellant's arboriculturist has assessed those incursions as being within the tolerances for the affected trees. The Council has presented no specialist arboricultural evidence disputing the appellant's assessment. I therefore see no reason why I should not rely on the assessment made by the appellant's arboriculturist.
16. The site lies beyond the settlement boundary for Ash and Policy DM15 of the Dover Core Strategy of 2010 (the CS) discourages new development in the countryside. However, as the site forms part of No 101's garden it is excluded

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<sup>6</sup> Email to the Planning Inspectorate dated 2 December 2022

from the CS's definition for the countryside<sup>7</sup>. Given that there is no conflict with Policy DM15 of the CS in terms of either loss of or effect on the character or appearance of the countryside.

17. The dwelling would be within the setting for No 101, accordingly special regard is to be paid to the desirability of preserving the setting of that listed building. Although the dwelling would occupy part of No 101's garden, I consider there would be sufficient distance between No 101 and the new dwelling for the former to continue to be appreciated as a historic dwelling set within a garden. I am therefore of the view that the listed building's setting would be preserved and that there would be no harm to this designated heritage asset.
18. With the imposition of the drive condition referred to above, I conclude the development would not adversely affect the character and appearance of the area. I am therefore of the view that the development would accord with paragraphs 130 and 174 of the Framework<sup>8</sup> because with the partial loss of the hedge this development would be in sympathy with local character and history, including the surrounding built environment and landscape setting and would recognise the intrinsic character of the countryside. I am further of the view that it would be possible to provide vision splays to safeguard pedestrian safety, resulting in there being no conflict with paragraph 110<sup>9</sup> of the Framework because a safe and suitable access to the site could be achieved for all users.

### **Other matters**

19. The proposed access would serve a single dwelling, which would not be a significant generator of traffic. Although the access would be sited between two traffic calming features in CMG, I consider the access's use would not be prejudicial to the operation of the highway. In that regard I note the highway authority has not raised any concerns about vehicles using the access coming into conflict with other vehicles using CMG.
20. Concern has been raised that the formation of the access would involve land that is neither owned nor controlled by the appellant. Landownership matters are separate to planning considerations and the concern that has been raised is not for my consideration. Nevertheless, landownership is a matter that the appellant would need to address if all of the land required to access the development is neither owned nor within the appellant's control.

### **Conditions**

21. I have considered the need for the imposition of conditions, having regard to the Council's 11 suggested conditions and the provisions of the national policy and guidance for using conditions.
22. Apart from the standard time limit condition, it is necessary that the development, with the exception of the proposed drive, be implemented to accord with the submitted plans for certainty. In my reasoning above I have explained why the drive's width should be reduced and the need for vision splays and I have imposed a condition securing that. Compliance with that

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<sup>7</sup> As explained in the CS's explanatory text at paragraph 1.49

<sup>8</sup> Respectively paragraphs 127 and 170 in the February 2019 version of the Framework

<sup>9</sup> Paragraph 108 Ibid

drive condition would require the submission of revised details for the Council's approval. However, to ensure consistency between the drive condition and the plans condition, there is a need for the latter to include clarification that the width of the drive shown on drawing P06/10/19 Revision A would not form part of the approved development and I have worded the plans condition accordingly.

23. To ensure the external appearance of the dwelling is respectful of the listed status of No 101 it is necessary for conditions requiring details of the dwelling's external materials and any external refuse storage facilities to be submitted to the Council for approval. The seventh suggested condition proposes the submission of hard and soft landscaping details for approval. While there is a need for details of the replacement hedge planting and boundary treatment to be approved to safeguard No 101's listed status and/or the appearance of the surrounding area I consider there is no need for the landscaping scheme to be as wide ranging as envisaged in the seventh suggested condition and I have therefore imposed a more targeted landscaping condition. The Council's eleventh suggested condition seeks to control the future installation of means of boundary enclosure by withdrawing the permitted development rights for such works. To safeguard the appearance of No 101 and the hedge fronting CMG, I consider it necessary to withdraw the permitted development rights for the installation of means of enclosure and I have combined this suggested condition with the landscaping condition.
24. To ensure the availability of on-site parking for the dwelling's occupiers and to safeguard the operation of the public highway a condition requiring the drive's use for the parking and turning of vehicles is necessary.
25. The fifth and sixth of the Council's suggested conditions concern foul and surface water drainage. However, as sewage disposal is controlled under other legislation and elevated nutrient levels affecting the SPA is no longer an issue, I consider the suggested foul drainage condition is unnecessary. I am also of the view that the construction of a single dwelling in this location would not warrant the installation of a sustainable drainage system, with no development plan policy justification for that having been drawn to my attention by the Council.
26. The ninth suggested condition seeks the provision of bicycle storage facilities. However, given the amount of external space that would be available to the dwelling's occupiers, I consider there would be ample opportunity for bicycles to be stored without it being necessary to impose a condition.
27. The tenth suggested condition seeks the removal of permitted development rights for extensions, roof alterations, porches and outbuildings. Given the siting of the dwelling within its plot and its roof design I consider there would be very little scope for it to be extended using Class A, B, D and E permitted development rights. Accordingly, I have not imposed the tenth suggested condition.

**Conclusion**

28. For the reasons given above I conclude that the appeal should be allowed.

*Grahame Gould*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) With the exception of the width of the drive at the junction with the public right of way EE108A shown on drawing P06/10/19 Revision A the development hereby permitted shall be carried out in accordance with the following approved plans: P01/10/19 (proposed ground floor plan); P02/10/19 (proposed first floor plan); P03/10/19 (proposed roof plan); P04/10/19 (proposed elevations); P05/10/19 Revision B (existing site plan and location plan); P06/10/19 Revision A (proposed site plan); and P07/10/19 (proposed site sections).
- 3) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the width of the drive shown on drawing P06/10/19 Revision A, prior to the first occupation of the dwelling hereby permitted details for a drive of no more than 3.0 metres in width at the junction between the drive and the public right of way EE108A must be submitted to and approved in writing by the local planning authority. The details to be submitted pursuant to the requirements of this condition shall include the provision of visibility splays of 2.0 metres by 2.0 metres on each side of the drive at the junction between it and the public right of way and there must be no obstruction of sight exceeding 0.6 metres in height above the level of the drive within the visibility splays. The drive shall be constructed in accordance with the details approved pursuant to this condition and the visibility splays must be available prior to the first use of the drive and be retained thereafter.
- 5) Prior to the first occupation of the dwelling hereby permitted details for the storage of refuse and recycling shall be submitted to and approved in writing by the local planning authority. The approved refuse and recycling storage facilities shall be provided prior to the first occupation of the dwelling and be retained thereafter.
- 6) Prior to the first occupation of the dwelling hereby permitted details of the new hedge/shrub planting and any means of enclosure and gates shall be submitted to and approved in writing by the local planning authority. The hedge/shrub planting details to be submitted for approval shall include planting plans; written specifications; schedules of species, sizes and proposed numbers/densities where appropriate. The details for any means of enclosure and gates to be submitted for approval shall include the location, height, materials and external appearance for those structures. The hedge/shrub planting and the installation of any means of enclosure and gates shall be undertaken in accordance with the approved details prior to the first occupation of the dwelling. Any hedge/shrub plants which within a period of five years from the first occupation of the dwelling die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning

authority give prior written approval to any variation. Following the installation of any means of enclosure and gates approved under the provisions of this condition those structures shall be retained and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no other gates, walls, fences or other means of enclosure shall be erected.

- 7) The drive shall be used for the parking and manoeuvring of vehicles and shall be available for those uses prior to the first occupation of the dwelling hereby permitted. Thereafter the drive shall be kept available for parking and manoeuvring of vehicles at all times and no development, whether permitted or not by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall be carried out on the drive that would preclude the parking or manoeuvring of vehicles.