



---

# Appeal Decision

Site visit made on 3 November 2022

**by R J Jackson BA MPhil DMS MRTPI MCMi**

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

**Decision date: 13 January 2023**

---

**Appeal Ref: APP/X2220/W/21/3278274**

**Land adjacent to The Patch, Station Road, St Margaret's at Cliffe, Kent CT15 6EP**

- 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 Reach Court Developments against the decision of Dover District Council.
  - The application Ref 20/00541, dated 24 May 2020, was refused by notice dated 26 February 2021.
  - The development proposed is erection of four detached dwellings with the creation of a new access from Station Road.
- 

## Decision

1. The appeal is allowed and planning permission is granted for erection of four detached dwellings with the creation of a new access from Station Road at Land adjacent to The Patch, St Margaret's at Cliffe, Kent CT15 6EP in accordance with the terms of the application, Ref 20/00541, dated 24 May 2020, subject to the conditions set out in the Schedule to this decision.

## Preliminary Matters

2. During consideration of the application by the Council, amended plans were submitted, principally dealing with the design of the proposed dwellings. The Council based its decision on the amended plans and I too will use them. Clarification as to the plans was also obtained from the parties who agreed a list. This has formed the basis of the relevant condition.
3. As the site lies within the setting of listed buildings, I have had regard to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Similarly, as the site is within an Area of Outstanding Natural Beauty, Section 85 of the Countryside and Rights of Way Act 2000 (as amended) requires regard to be had to the purpose of conserving and enhancing the natural beauty of that AONB.
4. The Council has published its Regulation 19<sup>1</sup> submission version of the Dover District Local Plan to 2040. Paragraph 48 of the National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans, but the weight depends on the stage of preparation. The Regulation 19 version is still at an early stage and thus I can only give it very limited weight as it may well change in the process towards adoption.

---

<sup>1</sup> Under the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

## Main Issues

5. The main issues are:

- the effect on the character, appearance and scenic beauty of the area, being part of the Kent Downs AONB (the AONB);
- the effect on the setting of heritage assets;
- whether there are any material considerations which indicate a decision should be made contrary to the terms of the development plan.

## Reasons

### *Character, appearance and scenic beauty*

6. The appeal site lies to the northwest side of the junction of Dover Road with Station Road/ High Street, although set slightly northwest of Dover Road with an intervening block of vegetation made up of trees and shrubs. The appeal site forms part of a large field which extends to the northwest. At the time of my site visit, unlike the majority of the rest of the field, the appeal site was not cultivated. The Station Road frontage is also vegetated with trees and shrubs. The southwest boundary is within vegetation and beyond that is a large bungalow known as 'The Patch'.
7. The appeal site slopes down gently to the northwest. Beyond the appeal site the field slopes more sharply to a valley before rising again. This means that longer distance views of the site, with the historic part of village of St Margaret's at Cliffe in the background, can be readily seen from the Nelson Park area of Station Road and in glimpsed views from bridleway ER23 some distance away. From the Nelson Park area of Station Road the wooded setting of St Margaret's at Cliffe is particularly noticeable.
8. There is frontage development on the opposite side of Station Road, predominantly made up of detached dwellings.
9. The proposal is to erect four detached dwellings on the appeal site facing Station Road with the majority of the vegetation retained. Access would be via two new accesses on Station Road and the existing entrance in the southeast corner closed. The dwellings would step down the site with the existing slope. Each dwelling would have three storeys of accommodation, although the top storey would be within a gabled roof slope, and they would be in a contemporary design. Materials would be a grey brick ground floor with tile hanging on the first floor and clay tiles for the roof, although the exact details have yet to be submitted.
10. The appeal site lies within the AONB which extends a short distance to the southeast of Dover Road but does not include the main village of St Margaret's at Cliffe. It does, however, include the area of the properties on the opposite side of Station Road and the designation covers the land to the northwest. The appeal site also lies, for planning policy purposes, outside the settlement of St Margaret's at Cliffe and thus within the countryside.
11. Policy CP 1 of the Dover District Local Development Framework 2010 (the LDF) sets out the settlement hierarchy; St Margaret's at Cliffe is a village. The policy indicates that location and scale of development must comply with this hierarchy. Policy DM 1 of the LDF states that development will not be permitted

- on land outside the rural settlement confines unless specifically justified by other development plan policies, it functionally requires such a location or is ancillary to existing development or uses. The proposal would be contrary to Policy DM 1 but it would not be of a scale that would be out of keeping with the village status of St Margaret's at Cliffe and would thus comply with Policy CP 1.
12. Policy DM 15 of the LDF indicates that development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted if meets five criteria. In any event measures should be incorporated to reduce, as far as practicable, any harmful effects on countryside character. The proposal would not meet any of these criteria, although I will discuss below the degree of harm and how effective any mitigation would be.
  13. Policy DM 16 of the LDF deals with landscape character. This indicates that development which would harm the character and appearance of the landscape will only be permitted if it is in accordance with allocations in the development plan, which it would not be, or it can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.
  14. I have not been directed to any development plan policies relating to the AONB. However, the Framework in paragraph 174 states that planning decisions should protect and enhance valued landscapes which will include AONBs. Paragraph 176 of the Framework indicates that great weight should be given to conserving or enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.
  15. The Council has pointed me to the Kent Downs AONB Management Plan (the MP). This is not part of the development plan but has been adopted by the Council as a Supplementary Planning Document. In light of this I give this document significant weight.
  16. Policies SD1 and SD2 of the MP indicate that there is a need to conserve and enhance the natural beauty of the AONB and its local character, qualities and distinctiveness. Policies SD3 and SD9 of the MP indicate that new development or changes of land use will be opposed where they disregard or run counter to the primary purpose of the AONB and the historic and locally distinctive character of rural settlements will be maintained and strengthened with emphasis on design and materials.
  17. The MP describes the AONB as having a dramatic and diverse topography, including scalloped and hidden dry valleys, expansive open plateaux, with long-distance panoramas across open countryside.
  18. In long distance views from the other side of the valley, the proposal would intrude into the landscape and result in urbanisation. However, it would be set against the existing treed landscape on rising land to the southeast, and against the existing treed landscape to the southwest so that the built form would not extend above the canopy in views from across the valley. This means that any intrusion into the wider landscape would be minimal.
  19. The northwest boundary between the appeal site and the remaining field is currently open and while the proposal would involve planting of both trees and shrubs along this boundary this would take some time to mature.

20. Before this landscaping matures development of the appeal site would be intrusive into the landscape but would be similar to the development on the opposite side of Station Road. During construction this intrusion would be moderately harmful, but this would only be of a short duration before the landscaping was planted. From this point on, there would be limited harm which would reduce to very limited once any landscaping was fully mature. However, this would take longer than the normal 15 year assessment period due to the need for height given the sloping nature of the site.
21. In shorter distance views, subject to protection of vegetation, the retained vegetation would avoid significant harm and the built development would reflect and integrate with frontage development in the immediate area and thus be in keeping with the character of the area and the street scene. In my view harm would be limited even during construction and would reduce to very limited once the landscaping matures having little harmful effect on the setting of St Margaret's at Cliffe.
22. There has been some criticism, particularly from the Kent Downs AONB Unit, about the designs of the buildings. However, it seems to me that they are of an appropriate design and scale in keeping with the area, and while they do have extensive roofs these would not be harmful to the natural beauty and scenic quality of the AONB. Precise details of the materials could be dealt with by planning condition to ensure that they are appropriate. The spacing between dwellings would also be similar to the frontage development on the opposite side of Station Road, which is also in the AONB, so that the proposal would not appear cramped within the street scene.
23. Therefore, there would be harm in the short term to the character, appearance and scenic beauty of this part of the AONB, particularly in longer distance views from the northwest. This harm would reduce over time, but even at the end of the normal assessment period there would be some limited harm.
24. Consequently, the proposal would be contrary to Policies CP 1, DM 15 and DM 16 of the LDF, and would be contrary to the cited policies of the MP all as set out above. It would also be contrary to paragraph 174 of the Framework with great weight given in line with paragraph 176.

### *Heritage*

25. I have not been directed to any development plan policies relating to heritage matters. I will therefore utilise policies set out in the Framework. Paragraph 199 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 200 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.
26. The St Margaret's at Cliffe Conservation Area (the Conservation Area) lies to the south of the appeal site. Due to the existing intervening landscaping and the nature of the use the proposal would have no effect on the setting of the Conservation Area which would therefore be preserved.
27. There are a number of listed buildings in the vicinity, the nearest being Townsend Farm and Donkey Wheel House. However, again due to intervening

vegetation there would be no intervisibility between the appeal site and the listed building, and the use would not affect the setting of these listed buildings in any other way, so that the setting of each of these listed buildings would be preserved.

28. St Margaret's Church is taller than any other building in the vicinity and its tower extends above the tree canopy. At the time of my site visit the tower was enclosed in scaffolding. The church is Grade II\* listed and dates from the twelfth century although the tower dates from the fourteenth century. For the purposes of this appeal, the significance of the listed building is for its importance in the landscape from the north and west marking a focal point in longer distance views.
29. The appeal site can be seen in these same views as the church tower. The appeal proposal would intrude into these views. In the short term the appeal proposal would result in limited harm as these views are of a treed area towards the top of a slope, but only in a small part of the vista. As the landscaping on the northwest boundary matures this harm would reduce but, again due to the need for time to grow, during the assessment period some very limited harm would remain.
30. Given my conclusion above, the proposals would, in the terms of the Framework, result in less than substantial harm to the setting of the Church as a listed building, and thus its significance, and, while some harm would remain, this would reduce over time. That being the case paragraph 202 of the Framework indicates that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal. I will do this below.

#### *Other matters for consideration*

31. Determination of planning applications should be in accordance with the terms of the development plan unless material considerations indicate otherwise. The Framework is one such material consideration.
32. The LDF pre-dates the publication of the Framework. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date simply because they pre-date the publication of the Framework. Due weight should be given to them according to their consistency with the Framework, with greater weight given the closer the policies in the plan to the Framework.
33. The Council acknowledges that Policy DM1 of the LDF is not fully consistent with the Framework as it restricts development in the countryside while the Framework provides a more nuanced approach. In similar way Policy DM15 is also somewhat inconsistent with the Framework in that it is more restrictive and also should be considered out-of-date. In my view these are the most important policies for the determination of this proposal.
34. Paragraph 11 d) of the Framework indicates that, where the development plan policies which are most important for determining the application are out-of-date, then permission should be granted unless the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the proposal, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against

the policies in the Framework taken as a whole. Footnote 7 sets out the policies that protect areas of particular importance. These include designated heritage assets and AONBs.

35. In relation to heritage matters, I am satisfied that the public benefits of the four additional dwellings in social and economic terms are sufficient to outweigh the less than substantial harm to the setting of the Church as a Grade II\* listed building even giving that harm great weight and special attention. This means that the policies of the Framework in respect of heritage do not represent a clear reason to refuse permission.
36. However, there would be limited harm to the AONB and the Courts have made clear that protecting and enhancing valued landscapes, which will include AONBs, of itself can represent a clear reason to refuse permission. This applies whether or not the proposal represents 'major development' for the purposes of paragraph 177 of the Framework. Consequently, the tilted balance set out in paragraph 11 d) does not apply.
37. This does not mean that the appeal should necessarily be dismissed, rather the more conventional balance will apply. I will consider that further below.

### **Other Matters**

38. The Council indicates that the site lies within proximity of the Thanet Coast and Sandwich Bay Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar sites. In this appeal I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations).
39. This means that I would be unable to grant planning permission unless I can be certain the proposal, either on its own or in combination with other plans and projects, will not adversely affect the integrity of the SPA, SAC and Ramsar sites.
40. In the officer report and statement of case the Council indicated, that even in combination, the proposal is of a size that any effects that it may have on the SPA, SAC and Ramsar site would have been mitigated by the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy, which is funded separately. In light of this and Regulation 63(3) of the Habitats Regulations I consulted Natural England as the appropriate nature conservation body.
41. Natural England responded that it did not consider that any additional mitigation measures were necessary but commented that, at the time that the planning application was decided, that only developments of 10 houses or more were required to contribute to the Mitigation Strategy. However, it continued that the most recent version dated September 2022 requires a contribution from all net new development. It continued that it left it to me as Inspector to decide whether this appeal case should be assessed against the old requirements or the new.
42. It is a long held tenet of planning law that planning applications and appeals are determined in light of circumstances pertaining at the time of the decision. I therefore asked both the appellant and the Council for their comments on this and for a copy of the Thanet Coast and Sandwich Bay SPA SAMM Strategy 2022. Neither party made comment but I was provided with a copy of the SAMM Strategy.

43. This SAMM Strategy shows that the appeal site lies outside the Zone of Influence of developments which would have an effect on the habitat sites either on their own or in combination. Therefore, I am able to conclude, to the relevant level of scientific certainty, at the screening stage set out in Regulation 63(1) of the Habitats Regulations, that the proposed development, in combination with other plans or projects, will not adversely affect the integrity of the SPA, SAC and Ramsar site.
44. Local residents have expressed their concern about the access and the ability of vehicles to turn on site. I have noted that Kent County Council as highway authority has no objection to this proposal as amended and I am satisfied that the proposal would not have an unacceptable impact on highway safety or result in severe residual impacts on the road network which are the reasons set out in paragraph 111 of the Framework to prevent development on highway grounds.

### **Planning Balance**

45. The appeal proposal would be contrary to the terms of the development plan taken as a whole. However, the most important policies for determining the application are out-of-date in that they are not consistent with the terms of the Framework and should be given lesser weight. Notwithstanding this, as the proposal would result in harm to the AONB the so called tilted balance set out in paragraph 11 d) of the Framework does not apply.
46. That does not mean that I cannot give significant weight to the policies in the Framework within the conventional balance which seek to boost the supply of housing and paragraph 69 of the Framework relating to the contribution that small and medium sites, such as this, can make. I give them that significant weight, particularly in the light of the most important development plan policies being out-of-date.
47. Even giving special attention and great weight to the effect on the setting of the listed church and great weight to the conservation and enhancement of the natural beauty of the AONB given the very limited harm in the longer term that I have identified, I am satisfied that the benefits of the proposal in social and economic terms outweigh the harms that I have identified, so that the appeal should be allowed.
48. Consequently, while the proposal is contrary to the terms of the development plan as a whole there are material considerations sufficient to outweigh the presumption of determining the appeal in accordance with that plan.

### **Conditions**

49. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. The numbers given in brackets (X) refer to the condition being imposed, with the order being prescribed by the time when the condition needs to be complied with. I can see no reason why some of the conditions suggested need to be pre-commencement conditions. These details can be submitted and approved prior to works taking place above ground level.
50. In addition to the standard timescale conditions (1), I have imposed a condition specifying the relevant drawings as this provides certainty (2).

51. In the interests of highway safety and in order to protect the living conditions of occupiers of nearby dwellings, I have imposed a condition requiring the submission of a Construction Method Statement (3). In order to ensure that any archaeology is appropriately considered I have imposed a condition requiring a written scheme of investigation of archaeology and any necessary field work and reporting (4). In order to protect trees surrounding the site I have imposed a condition requiring an Arboricultural Assessment and Method Statement and its implementation (5). All of these are necessary to be pre-commencement conditions to ensure that their purposes are delivered. These have been agreed by the appellant.
52. As set out earlier in this decision, details of the external materials to be used should be submitted and approved to ensure that they are appropriate for the location (6). This can include details of joinery so no separate condition is necessary.
53. In order to ensure the proper landscaping of the site I have imposed a condition requiring submission of a hard and soft landscaping plan and its implementation. I have, additionally, required its maintenance for 5 years following the occupation of the development (7). Beyond that other legislation can be utilised. I have not included a separate condition relating to boundary treatments as this can be included within the overall landscape scheme. I have however imposed a condition relating to cycle and bin storage in order to ensure provision in the interests of encouraging sustainable methods of transport and the amenities of the area (8).
54. In the interests of highway safety, I have imposed conditions relating to parking and turning on site (9), the provision of a footway link and accesses (10) and visibility splays (11 and 12).
55. In order to protect ecology, the recommendations of the Preliminary Ecological Assessment submitted with the application needs to be delivered (13).
56. I have not imposed conditions relating to ensuring surface water does not egress on to the highway as this is covered in separate legislation nor one relating to a bound material in proximity to the highway as this can be covered in the wider landscaping conditions. I have also not imposed a condition removing permitted development rights. The PPG makes it clear that such conditions should only be imposed in exceptional circumstances and none have been shown, particularly as such rights are more limited in AONBs than elsewhere.
57. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

## **Conclusion**

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

*RJ Jackson*

INSPECTOR

### SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

|                                                                                                                                              |                             |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 200-001 Revision R0                                                                                                                          | Block plan & Location Plan  |
| 200-005 Revision R0                                                                                                                          | Existing Site Plan          |
| T-2020-014-01 Revision 05                                                                                                                    | Access Site Lines           |
| T-2020-014-02 Revision 03                                                                                                                    | Site Plan                   |
| 200-010 Revision R01                                                                                                                         | Proposed Site Plan          |
| 200-011 Revision R02                                                                                                                         | Proposed Roof Plan          |
| 200-012 Revision R01                                                                                                                         | Proposed Landscape Plan     |
| 200-013 Revision R02                                                                                                                         | Proposed Site Sections      |
| 200-020 Revision R02                                                                                                                         | Unit 1 Proposed Floor Plans |
| 200-021 Revision R02                                                                                                                         | Unit 1 Proposed Elevations  |
| 200-022 Revision R01                                                                                                                         | Unit 1 Proposed Car Barn    |
| 200-030 Revision R02                                                                                                                         | Unit 2 Proposed Floor Plans |
| 200-031 Revision R02                                                                                                                         | Unit 2 Proposed Elevations  |
| 200-032 Revision R0<br>This drawing has on it a note which states "R01 Amended fireplace & chimney on unit 02, car port removed CO 20.07.24" | Unit 2 Proposed Car Port    |
| 200-040 Revision R02                                                                                                                         | Unit 3 Proposed Floor Plans |
| 200-041 Revision R02                                                                                                                         | Unit 3 Proposed Elevations  |
| 200-042 Revision R01                                                                                                                         | Unit 3 Proposed Car Port    |
| 200-050 Revision R02                                                                                                                         | Unit 2 Proposed Floor Plans |
| 200-051 Revision R02                                                                                                                         | Unit 4 Proposed Elevations  |
| 200-052 Revision R0                                                                                                                          | Unit 4 Proposed Car Port    |

3. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) temporary traffic management/ signage;
  - (iv) storage of plant and materials used in constructing the development;
  - (v) wheel washing facilities;
  - (vi) measures to control the emission of dust and dirt during construction; and
  - (vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

4. No development shall take place on the site until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted and approved in writing by the local planning authority. The works shall be undertaken in accordance with the approved details.

Following approval of the written scheme of investigation the results of any subsequent field work and assessment report required shall be submitted to and approved in writing by the local planning authority.

5. No development including groundworks and demolition shall take place until an Arboricultural Assessment and Method Statement has been submitted to and approved in writing by the local planning authority. This shall include details of the:
- (i) measures taken to protect existing trees and hedges during demolition, delivery/ storage of materials and machinery, and construction including a Tree Protection Plan;
  - (ii) location and installation of services/ utilities/ drainage;
  - (iii) details of construction and installations including methodologies within a root protection area or that may impact on retained trees;
  - (iv) full specification for the construction of any roads, parking areas, driveways, hard surfacing, including details of no dig specification and extent of the areas to be constructed using no dig surfacing;
  - (v) all arboricultural site monitoring and supervision required for the duration of the development; and
  - (vi) methods to improve the rooting environment for retained and proposed trees and landscaping.

The development thereafter shall be implemented in strict accordance with the approved details and shall be maintained throughout the construction period.

6. No works above ground level shall take place until samples of materials to be used in the construction of the external surfaces, including joinery, of the development 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.
7. No above ground works shall take place until a detailed programme for the implementation of hard and soft landscaping works have been submitted to

and approved in writing by the local planning authority. These works shall be carried out in accordance with the approved details and agreed programme. All soft landscaping, that is planting, seeding or turfing comprised in the approved details of landscaping, shall be carried out in the first planting and seeding seasons following the occupation of the building. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

8. No above ground works shall take place until details of the space to be laid out for the provision of secure, cycle parking facilities and bin storage areas shall be submitted to and approved in writing by the local planning authority. The approved details shall be fully implemented prior to the first occupation of any dwelling and shall thereafter be retained.
9. Prior to the occupation of the development hereby permitted, the vehicle parking spaces, turning areas and car ports shall be laid out and surfaced in accordance with the approved details and shall be retained for such purposes thereafter.
10. Prior to the occupation of the dwellings hereby permitted the footway link and accesses shown on drawing number T2020-014-02 shall be completed and thereafter retained.
11. Prior to the first occupation of the dwellings hereby permitted the visibility splays shown on drawing number T2020-104-02 shall be provided and maintained thereafter. There shall be no obstructions over 0.6 metres above footway level within the splays.
12. Prior to the first occupation of the dwellings hereby permitted the visibility splays shown on drawing number T2020-104-01 shall be provided and maintained thereafter. There shall be no obstructions over 1 metre above carriageway level within the splays.
13. The development shall be carried out in accordance with the details and recommendations as set out in the Preliminary Ecological Appraisal dated 17 April 2020. The recommendations shall thereafter be retained as specified.

END OF SCHEDULE