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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: 1<sup>st</sup> March 2023**

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**Appeal Ref: APP/J2210/W/21/3276978**

**Land adjoining 56 New House Lane, Canterbury CT4 7BJ**

- 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 J Guest against the decision of Canterbury City Council.
  - The application Ref CA/20/02494, dated 9 November 2020, was refused by notice dated 11 March 2021.
  - The development proposed is erection of a detached dwelling (self-build) with associated access and parking.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling (self-build) with associated access and parking at Land adjoining 56 New House Lane, Canterbury CT4 7BJ in accordance with the terms of the application, Ref CA/20/02494, dated 9 November 2020, subject to the following 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: 1:1250 scale Site Location Plan; 1:500 scale Block Plan; Proposed Elevations (Drawing No. 1); Proposed Ground Floor Plan (Drawing No. 2); Proposed First Floor Plan (Drawing No. 3); and Proposed Roof Plan (Drawing No.4).
  - 3) Prior to the first occupation of the dwelling hereby permitted details for on-site parking and manoeuvring for two vehicles shall be submitted to and approved in writing by the Local Planning Authority. The approved vehicle parking and manoeuvring area shall be provided and made available for use prior to the first occupation of the dwelling and retained thereafter and be used for the purposes of parking and manoeuvring for the duration of the occupation of the dwelling.

### Procedural matters

2. There were four reasons for refusing planning permission and the third of those related to a concern about the amount of on-site parking to be provided as part of the development. Further to submissions made by the appellant in connection with its appeal, the Council has advised that its parking concern could be addressed through the imposition of a planning condition. Given that I have determined the appeal on the basis of the third reason for refusal having become uncontested.

3. As part of the appeal a unilateral undertaking (UU)<sup>1</sup> has been submitted containing a planning obligation requiring the proposed dwelling be constructed as a "self/custom build house" for occupation by the appellant or an immediate family member for a period of least three years following the dwelling's first occupation. I refer further to that planning obligation below.
4. 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 only referred to the updated Framework.

### **Main Issues**

5. The main issues are:
  - whether the site would be an appropriate location for a dwelling, with particular regard to policies concerning housing in the countryside;
  - the effect of the development on the character and appearance of the area;
  - the effect of the development on the supply of agricultural land; and
  - the effect of the development on the Stodmarsh Nature Reserve Special Area for Conservation (the SAC) and Ramsar site.

### **Reasons**

#### *Location for a dwelling*

6. The development would involve the construction of a three bedroomed detached dwelling in a field immediately adjoining 56 New House Lane (No 56). New House Lane and the nearby New House Close are streets with around eighty dwellings in them, surrounded by farmland.
7. Policy SP4 of the Canterbury District Local Plan of 2017 (the LP) sets out the strategic approach for the location of new development across the Council's area. Under Policy SP4 the focus for new development is to be the urban areas of Canterbury, Herne Bay and Whitstable, with some new development being acceptable in the rural service centre of Sturry and local centres, villages and hamlets listed in Policy SP4, when development would concern allocated sites or would meet a specific identified need. New House Lane is not part of a local centre, village or hamlet identified under Policy SP4 and it therefore forms part of the "open countryside" where development is permissible if it is for agriculture or forestry.
8. Policy HD4 of the Local Plan specifically concerns new dwellings in the countryside and identifies the circumstances when they will be permissible. Those circumstances being when a dwelling would: be for a rural worker to live permanently at or near their place of work because of an "essential need" for such occupation; be for the reuse of a heritage asset (listed building etc) or would serve as enabling development to secure the future use of a heritage asset; involve the reuse of a redundant or disused building and lead to an enhancement to the immediate setting; or be of a design that would be of an

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<sup>1</sup> Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)

exceptional quality or innovative nature. Paragraph 80 of the Framework also addresses housing in the countryside and states "*Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply*" and then lists five circumstances, which amongst other things, relate to providing accommodation for rural workers and in instances when the design of a development would be of an "*exceptional quality*".

9. Paragraph 5.8 of the appellant's planning statement (PS) confirms that "... *the exceptions provided by both HD4 or NPPF 79<sup>2</sup> are not applicable to this proposal*". That said the PS draws attention to the Court of Appeal's judgement relating to the interpretation of isolated homes for the purposes of the Framework<sup>3</sup>. Given the proximity of so many other dwellings in New House Lane and New House Close I consider that in the language of paragraph 80 of the Framework this would not be an isolated location for a new home. I, however, recognise that currently with no community facilities immediately nearby, it is likely that amongst the occupiers of the dwelling there would be a high dependency on private motor vehicle usage. However, that position could well change with the implementation of the strategic mixed use allocation at Cockering Farm, with the southern extremity of that prospective allocation being within a few hundred metres of No 56. In any event the accessibility to everyday services and facilities for the occupiers of the proposed dwelling would be similar to that for the occupiers of the numerous other dwellings in New House Lane and New House Close.
10. Although the development would be in conflict with the provisions of Policies SP4 and HD4 of the LP, I consider the conflict with those policies would not be of such significance as to warrant the withholding of permission in this instance, given the modest scale of the development. I am of the view that the new dwelling would not be an isolated home in the countryside and that this proposal would not be in conflict with paragraph 80 of the Framework. I therefore conclude that this would be an appropriate location for a dwelling.

#### *Character and appearance*

11. The dwelling would be sited within a 0.1 hectare plot of land situated at the south-eastern extremity of a spur off New House that is lined by seven dwellings<sup>4</sup>. Those dwellings either being bungalows or chalet bungalows. The dwelling would have two floors of accommodation and its external appearance would be inoffensive, while its scale would be compatible with Nos 55 to 58 and the other dwellings further afield in New House Lane. I therefore consider that the dwelling would be respectful of its context and would not appear out of character or give rise to any appreciable encroachment into the countryside.
12. I therefore conclude that the development would not be harmful to the character and appearance of the area. I therefore consider that this development would accord with Policy DBE3 of the LP because the distinctive character and quality of the area would be protected through the development responding positively to its context. I am similarly of the view that there

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<sup>2</sup> Now paragraph 80

<sup>3</sup> Braintree DC v SSCLG, Greyread Limited & Granville Developments Ltd [2018] EWCA Civ 610

<sup>4</sup> Nos 55, 55a, 55b, 56, 57, 57a and 58

would be no conflict with section 16 of the Framework (Achieving well designed places), most particularly paragraph 130, because the development would be sympathetic to character of the area.

#### *Agricultural land*

13. The Council has submitted that under the agricultural land classification system the site is grade 2 and is therefore best and most versatile land (BMVL). Policy EMP12 of the LP protects BMVL for the longer term and states "*... Where significant development of unallocated agricultural land is demonstrated to be necessary to meet a housing, business or community need, planning permission may be granted on best and most versatile land if a suitable site within the urban area or on poorer quality land cannot be identified*".
14. Policy EMP12's wording reflects the policy that was stated in the March 2012 version of the Framework. However, the approach taken to safeguarding BMVL in the current version of the Framework is now more nuanced with it being stated in paragraph 174:

*"Planning policies and decisions should contribute to and enhance the natural and local environment by: ...*

*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland ..."*
15. The front section of the site is occupied by two small storage buildings, which the appellant considers are no longer fit for purposes. Part of the site is used for outdoor storage. From what I saw during my site visit the site was not being used intensively for agricultural purposes.
16. Although the development would relate to 0.1 hectares of BMVL I consider the implications for agricultural productivity would be very minor and would not give rise to any overwhelming conflict with Policy EMP12 of the LP warranting the withholding of planning permission. I am also of the view that the potential removal of the site from agricultural use would not have significant implications for the rural economy and would not give rise to conflict with paragraph 174 of the Framework.
17. I therefore conclude that the development would not unacceptably affect the supply of agricultural land.

#### *Effects for the SAC and Ramsar site*

18. The site is in an area served by the Canterbury wastewater treatment works (the WwTW) which discharges into the Stour valley river catchment area. That catchment area includes the SAC and Ramsar site. The site is therefore hydrologically linked with the SAC. Natural England has identified the SAC's conservation status as being unfavourable because of elevated nitrate and phosphate levels (nutrient loading). The consequences of that is eutrophication which is affecting the wellbeing of the qualifying features for which the SAC has been designated.

19. The primary causes for eutrophication are nitrate fertilisers draining from fields and the generation of animal wastes and human sewage. Providing a dwelling would potentially avoid nitrate fertilisers draining from the site, while generating human sewage needing to be disposed of. Potentially wastewater arising from the dwelling's occupation could affect the SAC's conservation status.
20. The appellant has compared the nutrient levels for the site's current use with an occupied three bedroom dwelling. The development is predicted to reduce the nitrates received at the WwTW by 1.005 kilograms (Kg) per year, which would be a slightly better than neutral effect. The quantity of phosphates received by the WwTW has been predicted to increase by 0.195 Kg per year<sup>5</sup>. Based on "conservative" water usage of 110 litres per person per day the appellant has calculated the WwTW have a total phosphate loading of 5,822 Kg per year. On the appellant's calculations the new dwelling would have the potential to increase the WwTW's phosphate loading by 0.00335% per year.
21. The appellant currently lives in a nearby property<sup>6</sup> and is a member of the existing population contributing to the WwTW's phosphate loading. Given that and the predicted very modest increase in the WwTW's phosphate loading, I consider it likely the proposed development would be unlikely to meaningfully increase the SAC's nutrient loading, with the predicted additional phosphate loading nearing being "immeasurable".
22. I therefore conclude that the development, alone or in combination with others, would not give rise to a likely significant effect on the SAC, a European site for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats regulations) or the Ramsar site. I therefore consider that there would be no conflict with Policy LB5 of the LP because the development would not have an adverse effect on the integrity of the SAC and the Ramsar site. I am further of the view that there would be no conflict with Policy LB6 of the LP because the development would not materially harm the scientific interest of the Stodmarsh Site of Special Scientific Interest.
23. Having concluded the proposed development alone or in combination with others would not have a significant effect on the SAC, planning permission can be granted without the need for me to undertake an "appropriate assessment" under the provisions of the Habitats regulations.

### **Other matters**

24. It is intended the dwelling would be a self-build home (SBH) occupied by the appellant on land owned by another family member. As part of meeting the housing need for different groups in communities section 5 (Delivering a sufficient supply of homes) of the Framework is supportive of the provision of SBHs. To ensure the dwelling would in the first instance be a SBH the UU would obligate it to be built and then occupied as such for three years. Above I have found: this would be an acceptable location for a single dwelling; there would be no harm to the character and appearance of the area; and no unacceptable loss of BMVL. Given those findings, I consider for the purposes

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<sup>5</sup> Technical Note of 4 April 2021 prepared by Considine Civil and Structural Engineers

<sup>6</sup> Based on the appellant's address stated in the executed UU

of the determination of this appeal nothing turns on whether the dwelling would or would not be a SBH or how the extant development plan approaches the provision of SBHs.

25. Accordingly, when regard is paid to Regulation 122 of The Community Infrastructure Levy Regulations 2010 and paragraphs 55 and 57 of the Framework, I consider the SBH planning obligation would not be necessary to make the development acceptable in planning terms. I therefore consider very little weight should be attached to the SBH planning obligation.
26. Given the conclusions I have reached in respect of each of the main issues, whether the Council can or cannot currently demonstrate the availability of a five year housing land supply is not determinative. Accordingly, I need not comment further on that matter.

### **Conditions**

27. I have considered the need for the imposition of conditions, having regard to the Council's three suggested conditions and the provisions of the national policy and guidance for the use of conditions.
28. Apart from the standard time condition, it is necessary that the development be built to accord with the submitted plans for certainty. I also consider it necessary that a condition be imposed requiring the submission of on-site car parking details for the Council's approval prior to the first occupation of the dwelling.

### **Conclusions**

29. While I have identified some conflict with Policies SP4, HD4 and EMP12 of the LP, I consider that conflict would not warrant the withholding of planning permission in this instance. I am therefore of the view that when the LP is taken as a whole the proposed development would be acceptable and accordingly there would be no unacceptable conflict with Policy SP1 of the LP, which addresses sustainable development.
30. I therefore conclude that the appeal should be allowed subject to the imposition of necessary conditions.

*Grahame Gould*  
INSPECTOR