



Appeal Decisions

Site visit made on 10 January 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal A Ref: APP/A2280/W/21/3285742

Land North of Merryboys Road, Cliffe Woods, Rochester

Grid ref Easting: 574198, Grid Ref Northing: 173865

- 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 Peter Lowe against the decision of Medway Council.
 - The application Ref MC/21/1026, dated 7 April 2021, was refused by notice dated 17 June 2021.
 - The development proposed is a 5 bedroom dwelling with ancillary stables and associated landscaping.
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Appeal B Ref: APP/A2280/W/21/3288801

Land North of Merryboys Road, Cliffe Woods, Rochester

Grid Ref Easting: 574198, Grid Ref Northing: 173865

- 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 Peter Lowe against the decision of Medway Council.
 - The application Ref MC/21/2618, dated 7 September 2021, was refused by notice dated 5 November 2021.
 - The development proposed is a 5 bedroom dwelling with double garage and associated landscaping.
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Decisions

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. The proposals in Appeal A and Appeal B are similar in that they both propose a single detached dwelling with an outbuilding within the same appeal site. Aside from differences in the designs of the proposed dwellings, the proposal in Appeal A would include a stable building, areas of woodland and a path and gate leading to paddocks north of the appeal site, whereas the proposal in Appeal B would include a garage building. Due to the similarities between the proposals in Appeal A and Appeal B, the same main issues are relevant to each appeal, and I shall address them together in this decision.

Main Issues

3. The main issues in both appeals are: whether the appeal site would be a suitable location for housing, with regard to the development plan; and the effect of each proposal on the character and appearance of the area.

Reasons

Location

4. The appeal site comprises part of paddocks on the north side of Merryboys Road, west of Perry Hill. In both appeals it is proposed to erect a house with orchards and sustainable drainage system/ecology pond, and an access drive off Merryboys Road. As referred to above, woodland and stables are also proposed in Appeal A, and a garage building is proposed in Appeal B.
5. The appeal site is outside the settlement boundary of Cliffe Woods defined by the Medway Local Plan (2003) (LP) and is located in the countryside, as defined by Saved Policy BNE25 of the LP. This policy states that development will only be permitted in the countryside if it satisfies various criteria, including offering a realistic chance of access by a range of transport modes, and maintaining the character of the countryside, which I shall address in the second main issue. The proposals would not accord with any of those criteria.
6. I have been referred to case law¹, where it was found that a village boundary defined in a local plan may not be determinative for the purposes of ascertaining whether a site is within a village, and that regard should be had to the situation 'on the ground'.
7. Having visited the appeal site, it is seen and experienced as being outside any settlement boundaries on account of it comprising part of open, undeveloped paddocks bordered by further open fields to the north and west. It does not have the appearance of part of any curtilage within a settlement. Taking the situation 'on the ground' into account, I do not consider the appeal site is experienced or seen as part of any village or other settlement. I am therefore satisfied that the appeal site forms part of the open countryside, outside of any built-up area or settlement boundary.
8. Saved Policies S1 and S2 of the LP seek to direct new development to existing urban areas, referring to a focus on a sustainable approach to the location of new development. There is limited information before me to suggest the appeal site is a sustainable location for housing, and it appears that future residents would have to travel long distances for many services and would not have reasonable access to a range of transport modes.
9. Saved Policy H11 of the LP states that unless a site is allocated for housing development in the LP, or an exceptional justification can be made, housing development in the rural area will be restricted to minor development within the confines of specified villages and settlements, including Cliffe Woods. The proposals would therefore conflict with Saved Policy H11, unless any exceptional justification can be made.
10. Taking all of the above into account, the appeal site would not be a suitable location for housing and the proposals would conflict with Saved Policies BNE25, S1 and S2 of the LP, the requirements of which are set out above. I shall address whether any exceptional justification has been made in favour of the proposals, in the context of Saved Policy H11 of the LP, below.

¹ *Julian Wood v SSCLG, Gravesham Borough Council* [2015] EWCA Civ 195

Character and Appearance

11. Merryboys Road forms a physical boundary along the north of the rural settlement of Cliffe Woods. It is defined as an 'important rural lane' by Saved Policy BNE47 of the LP. The supporting text to that policy describes such lanes as having the highest physical landscape, amenity, nature conservation and historic value. The policy therefore seeks to protect those features of Merryboys Road and avoid urbanising alterations to the carriageway and its boundaries.
12. The appeal site is located a short distance to the north-east of Cliffe Woods, abutting what the Council has referred to as an historic hamlet. Recent housing development along the southern side of Merryboys Road has created a linear form of buildings protruding east from Cliffe Woods, stretching past the appeal site by some distance. A small informal collection of more historic houses abuts the appeal site to the east, at the junction of Perry Hill.
13. The appeal site is separate from development on the south side of Merryboys Road and the collection of houses spreading a short distance along Perry Hill. Visually, it forms part of the open countryside, the boundary of which is clearly marked by the edge of the highway and hedgerows along the north side of Merryboys Road. The collection of nearby houses outside the settlement boundary of Cliffe Woods defined by the LP do not read as an historic hamlet, and I have not been provided with sufficient evidence to convince me they should be described as such.
14. The Medway Landscape Character Assessment (2011) (LCA) identifies the appeal site as being within the Cliffe Woods Farmland Area, which includes an undulating and complex mix of arable farmland and orchards which are diverse, small scale and intimate, and dominant poplar shelter belts along lanes, roads and fields providing a strong sense of enclosure. I have also been referred to the LCA's stated aims for the Cliffe Woods Farmland Area which include the restoration of orchards and hedgerows, the promotion of native species, and the resistance of suburbanisation of roadside edges.
15. The appellant's Landscape Analysis and Strategies² refer to the historic development of the area and explain how the proposals would repair the open landscape of the appeal site by reinstating woodland, hedgerows and orchards to provide a new village edge, with no direct sightlines of proposed buildings from outside the appeal site.
16. As an open paddock surrounded by further open fields to the north and west and clusters of housing to the east and south, the proposals would not reinforce immediate landscape characteristics. The proposed woodland in Appeal A and orchards in both appeals would be small in scale and form part of the residential grounds of the proposed dwelling, accommodating gardens and, in Appeal A, a path leading to paddocks to the north. Although the appeal site would be skirted by native hedging, both proposals would appear as an odd, exclusive and uncharacteristic domestic plot. In the context of the open countryside forming the northern border to Merryboys Road and adjacent development east and south of the appeal site, the proposals would comprise a conspicuous and incongruous intrusion into existing wide, open views of

² Rummey design, dated March 2021 and 25 August 2021

countryside, even though those views take in other built features including electricity pylons.

17. At present, suburban forms of development are largely restricted to the south of Merryboys Road. When seen from Merryboys Road, the proposed vehicular access and buildings would further suburbanise what is essentially a rural setting, causing harm to the landscape character and appearance of the area. The proposed planting, which would take time to establish, would not mitigate that harm, even if the species were to accord with the aims of the LCA and reflect local historic landscape characteristics.
18. The proposals would therefore harm the character and appearance of the area, contrary to Saved Policies BNE1 and BNE47 of the LP. I have explained the aims of Saved Policy BNE47 above. Saved Policy BNE1 requires development to be appropriate in relation to the character, appearance and functioning of the built and natural environment by being satisfactory in terms of scale, layout and siting, and by respecting the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area, amongst other things.
19. I have been referred to recent housing developments near to the appeal site and claimed inconsistencies in the Council's descriptions of the surrounding area. The immediate surroundings of the appeal site to the south and east have changed since new housing has been constructed and I have taken this into account when assessing the impact of the proposals on the character and appearance of the area. These recent housing developments do not bring the appeal site within any settlement boundaries and do not significantly alter views of open countryside to the north of Merryboys Road, or otherwise take the appeal site out of a rural setting. I do not therefore find that the presence of those recent housing developments would make the impact of the proposals on the character and appearance of the area acceptable.

Other Matters

20. The appeal site is located within 6 kilometres of the North Kent Marshes Special Protection Area and Ramsar sites. These are defined as European Sites by the Conservation of Habitats and Species Regulations 2017 (as amended). Those Regulations require that, where a project is likely to have a significant effect on a European Site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. As I have found the proposals would be unacceptable for other reasons, it is not necessary for me to undertake appropriate assessments unless if other considerations indicate planning permission should be granted in either appeal.
21. The Council is unable to demonstrate a 5 year housing land supply. Where this is the case, paragraph 11(d) of the National Planning Policy Framework (the Framework) explains that the policies which are most important for determining the application are deemed to be out-of-date, and planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Planning Balance

22. I have identified harm which would be caused by the proposals through their failure to adhere to the strategic aims of the development plan which seek to direct development to land within settlement boundaries. I assign less weight to any conflict with Saved Policies H11 and BNE25 on account of their partial inconsistency with the Framework where they seek to restrict development outside specific boundaries without appropriate justification. However, I have also found the proposals would suburbanise a rural setting and cause harm to the landscape character and appearance of the area. Overall, the harm I have identified in each appeal would be significant and long lasting. I therefore attach significant weight to that harm.
23. The appellant has claimed that the Council's 2020 Housing Delivery Test results show that only 55% of its housing requirement was delivered between 2017 and 2020, which was a shortfall of just over 2,000 units, creating a 3.03-year supply of deliverable housing. These claims have not been challenged by the Council. Even in this context, the provision of a single dwelling would make only a modest contribution towards housing supply.
24. It has been claimed that the proposals would be in a sustainable location, and I noted a low-level of local services within walking distance of the appeal site, but limited evidence has been provided to support the appellant's claim in this regard. Each proposal would be capable of incorporating sustainability features³ with regard to limiting potential energy use, carbon emissions and water use, and could achieve biodiversity net-gains of approximately 20% in Appeal A and 30% in Appeal B⁴. There would also be modest short-term economic benefits during the construction phase and modest local long-term economic benefits throughout occupation. Taken together, all of the benefits would be modest, and I attach moderate weight to them.
25. References have been made to the proposals comprising self-build schemes, and I have been provided with copies of draft, incomplete and unsigned unilateral undertakings. In the absence of a finalised and signed legal agreement which would secure each proposal as self-build housing, I am unconvinced that a condition could meet the necessary tests at paragraph 56 of the Framework to require each proposed dwelling to comprise a self-build scheme in this instance. I therefore attach limited weight to this prospect in favour of the proposals.
26. The Framework refers to the Government's objective of significantly boosting the supply of homes, which should respect the needs of different groups of people. It states that planning decisions should promote an effective use of land in meeting the need for homes, while safeguarding and improving the environment, with the creation of high quality, beautiful and sustainable buildings and places being fundamental to what the planning process should achieve. Good design is therefore a key aspect of sustainable development, which should be sympathetic to local character and history, including surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change. The Framework also explains that planning decisions should contribute to and enhance the natural and local

³ Sustainability Statements by Barron Edwards Ltd, dated January 2021 and September 2021

⁴ Extended Phase 1 Ecological Habitat Survey Reports by Hone Ecology Ltd, dated 31 March 2021 and 15 August 2021

environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

27. Taking all matters raised into account, the adverse impacts of each proposal would significantly and demonstrably outweigh their benefits, when assessed against the policies in the framework taken as a whole. The proposals would not comprise sustainable development, for which the presumption in favour applies. I therefore find no exceptional justification in favour of the proposals with regard to Saved Policy H11 of the LP.
28. References have been made to another Inspector's appeal decision⁵ relating to the proposed erection of 3 self-build houses at a different site. I do not have the full details of that scheme, but it is clear that there were issues which affected that Inspector's reasoning which are not applicable in these appeals. In that case, the Inspector found a lower level of harm and greater benefits compared to those which I have identified in these appeals. That Inspector's findings do not lead me to conclude differently on the main issues in these appeals, and do not convince me that the adverse impacts of these proposals fail to surmount the high hurdle set out at paragraph 11(d) of the Framework.

Conclusion

29. For the reasons set out above I conclude that the proposals would fail to accord with the development plan. There are no material considerations, including the Framework, that indicate planning permission should otherwise be granted in either appeal. The appeals should therefore be dismissed.

L Douglas

INSPECTOR

⁵ APP/A2280/W/21/3266477