



Appeal Decision

Site visit made on 25 April 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Appeal Ref: APP/U2235/W/22/3291373

Woodside, Firs Lane, Hollingbourne ME17 1XJ

- 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 D Finch and Mrs P Forbes against the decision of Maidstone Borough Council.
 - The application Ref 21/501554/FULL, dated 19 March 2021, was refused by notice dated 27 September 2021.
 - The development proposed is demolition of existing dwelling and erection of three detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling and erection of three detached dwellings at Woodside, Firs Lane, Hollingbourne ME17 1XJ in accordance with the terms of the application, Ref 21/501554/FULL, dated 19 March 2021, subject to the conditions set out in the schedule below.

Preliminary Matter

2. The description of development above is taken from the Council's decision notice. This omits reference to the detached garage, which was removed from the proposal during the application process.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. Firs Lane extends from the southern side of the A20 Ashford Road. A number of detached properties are set around it which vary in scale and include houses of two storeys to its northern side as well as a series of bungalows. The appeal site contains a two storey house, set on the northern edge of its plot. The rest of the site contains predominantly grassland which gives way to woodland to the south.
5. To the east, beyond the appeal site, the ground levels drop, providing long views across the valley. The character of the valley comprises predominantly open arable land, interspersed with rows of trees and hedgerows. It is also formed of well contained clusters of commercial development, including the motorhome park at the foot of the valley and the Biffa site on the far slope. Other clusters of residential development exist to the west of Firs Lane.

Therefore, while the area is rural in its character, it nonetheless includes established groups of development.

6. The site is within the 'Leeds Castle Parklands' area of the Maidstone Landscape Character Assessment 2012, defined as including built development sparsely scattered along the A20 and adjoining roads, as well as notable amounts of commercial development along the A20. It also lies within the Len Valley Landscape of Local Value, which is a local designation.
7. The appellant has provided a Landscape Appraisal which considers the effects of the proposal on a number of localised and far reaching views. The Council's statement refers specifically to the effects on views from Firs Lane, Ashford Road and Old Mill Lane, as well as surrounding public footpaths.
8. The proposals would result in a significant change to the character of the appeal site, which is predominantly open grassland. This contributes positively to the appreciation of the rural setting, particularly as views are possible from the lane across the appeal to the valley beyond. While this is the case, the character of Firs Lane itself contains numerous residential properties and these vary in their scale, design, materials and plot size, and have varying degrees of set back from the lane. Some of the bungalows, for example, are set close to the edge of the road, and create a strong sense of enclosure when travelling along the lane. In this context, the addition of the proposed houses would not be incongruous or harmful to the overall character of the lane.
9. The site layout would allow for gaps to be maintained between the properties. While these may be infilled in part at the ground floor level by boundary treatments and parked vehicles, the gaps between the properties would nonetheless provide a sense of openness. While the properties could potentially be extended in the future, this is not part of the proposal before me. The design of the proposed houses would not mirror those of other properties on Firs Lane, however, given the varied nature of those other properties and the absence of a consistent character, the house designs would not cause visual harm.
10. The proposed landscaping scheme would include a native hedgerow and tree planting along the frontage, contributing to the verdant character of the lane. For these reasons together, I do not find harm would arise to the character or appearance of Firs Lane.
11. From the A20, at the point of the access onto Firs Lane, there would be very limited, if any, visibility of the proposal due to its distance from the access in combination with the narrow and landscaped nature of the lane and the set back of the proposed houses on their plots. Even if some visibility were to occur in glimpses from the A20, the proposal would be seen in the context of other residential properties along Firs Lane and would not appear incongruous or harmful in those views.
12. Old Mill Lane runs along the far eastern side of the valley and alongside a public footpath. The proposed development would undoubtedly be visible from the eastern side of the valley, particularly those houses on Plots 2 and 3, where the site is more exposed in long views. Several of the existing properties on Firs Lane are already visible from Old Mill Lane, including the upper floor levels of the larger properties to the north of the appeal site and closer to the edge of the valley's ridge. As a result, the proposed houses would appear as part of the

existing cluster of development on this side of the valley and I do not find their visibility amounts to harm.

13. New landscaping including hedgerow and tree planting on the eastern site boundary would, over time, assist in further integrating the proposals with the landscape and would infill the gap in the tree line which currently exposes the northern end of the site. These effects would also be apparent in the far reaching views from further east along the valley and from the south.
14. At night and when lit, the windows of the proposed houses may be visible across the valley, particularly at the first floor level. However, as above, first floor windows of other houses close to the appeal site are already visible across the valley. In the case of the house on Plot 1, the extent of first floor glazing would be substantial, and would be set further from the existing two storey properties to the north. However, this house would experience the most screening from the existing and established trees along the eastern boundary, which would largely be retained. As such the proposal would not cause harm in night time views. Further external lighting on the site could reasonably be controlled by condition to allow the Council to assess its acceptability.
15. Overall, the proposal would preserve the character and appearance of the area, and the attributes which contribute positively to the Len Valley Landscape of Local Value. The proposed scheme of soft landscaping would provide an enhancement through the introduction of native planting to the site and to its eastern edge where it is exposed to views from the east. As such the proposal would comply with policies SS1 and SP17 of the Maidstone Borough Local Plan 2017, insofar as they require protection of rural character and that landscapes of local value are conserved and enhanced. The proposal would comply with the objectives of the National Planning Policy Framework (the Framework) insofar as they relate to recognition of the intrinsic character and beauty of the countryside.
16. I note that Policy SP17, point 1, has two limbs, that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and will not result in harm to the character and appearance of the area. The Council have drawn my attention to other policies in the development plan with which it considers the proposal would not accord. Insofar as Policy DM32 is concerned, I have found the proposal to be visually acceptable in the countryside. In the absence of evidence of conflict with the other criteria of that policy, I do not find conflict with that policy overall. Policy DM11 relates to residential gardens within the boundaries of urban areas, rural service centres and larger villages. As the appeal site is not within these areas, I do not find Policy DM11 to be applicable to the appeal scheme. Based on the evidence, the proposal would comply with Policy SP17.

Other Matters

17. I note the comments of the Forestry Commission and the Restocking Notice relating to part of the appeal site, which would require an individual to restock the land with trees following illegal felling. The Forestry Commission state in its consultation response that a planning permission for the same area as a Restocking or Enforcement Notice does not remove the duties contained within that Notice. As such I have no substantive evidence to suggest that the provisions of that Notice should prevent or delay the grant of planning permission.

18. While Firs Lane is a narrow track and the proposal would increase vehicle and pedestrian movements, there is not substantive evidence to suggest that the proposal would cause harm to highway safety, or that widening is necessary to mitigate the effects of the two net additional homes.
19. I note concerns regarding the application drawings, which do not show the more recent extensions to nearby properties. While this is the case, I am satisfied that, having considered the plans alongside a site visit and other evidence which refers to those extensions, there is sufficient information to understand the relationship with those nearest properties.
20. The proposal would introduce new habitable room windows facing towards Firs Lane and the properties on the western side of the lane, in particular The Chestnuts and Conifers, which have habitable room windows facing towards the appeal site. These properties are set close to the edge of the lane and would already experience some overlooking from users of the lane. In respect of Plot 3, the new windows would have a similar position to those on Woodside and would not cause a significant worsening in overlooking. In the case of Plot 1, the majority of windows in the front elevation would serve non-habitable rooms and circulation spaces, and would not give rise to a harmful loss of privacy.
21. Plot 2, however, would be likely to have some effect upon the privacy of The Chestnuts, particularly its bedrooms. A distance of less than 21m would exist between the habitable windows. However, based on the evidence before me, it is not clear from where this minimum standard is taken. The Kent Design Guide¹ states that a flexible approach should be taken to privacy distances and does not prescribe minimum distances. While a degree of mutual overlooking would occur between the development and The Chestnuts and Conifers, given the relationship of those existing properties to the street, together with the set back of the houses onto their plots and the provision of planting and screening, overall the effects would not be harmful.
22. There may be some effects on the provision of sunlight and daylight to The Chestnuts and Conifers in the morning. There is not substantive evidence before to demonstrate what those impacts would be, and given the distances between the houses, their orientation and the gaps between the two storey elements of the proposal, I consider any impacts would not be significant. There would undoubtedly be a change to the outlook from those properties, and the loss of open aspect over the appeal site. However, given the characteristics of the proposal set out above, this would not cause harm to living conditions.
23. Details of the landscaping could reasonably be secured by condition to ensure it was appropriate to this context. Any structural damage arising from the new trees would be a matter to be addressed between the relevant parties.
24. Given the quantum of development proposed, and the likely frequency of vehicle movements, any additional noise from the use of the driveways would be unlikely to cause significant disturbance. The driveway of Plot 2 is aligned with the bedroom window of The Chestnuts, however, the effects of vehicle headlights would be infrequent and could be mitigated by an appropriate front boundary. There is uncertainty as to how long the construction may take and, while this may cause some disruption, this would be temporary.

¹ Kent Design Guide 2005, Section 2.2.6 Privacy

25. I note the Council's comments regarding access to public transport and the comments of an Inspector on this matter relating to a site some 300m away. Together with the access to bus services and a footpath on the A20, I find the proposal to be acceptable in this regard. I also note the Council and consultee comments in respect of biodiversity on the site and protected species, and there is no strong reason for me to reach a different view on these matters.
26. A grade II listed building, Mantels Farmhouse, exists at the southern end of Firs Lane. Given its distance from the appeal site, together with the intervening woodland, houses on the opposite side of Firs Lane and the change in ground levels, the proposal would not impact upon the setting of Mantels Farmhouse.
27. There is dispute between the main parties as to whether the Council can demonstrate a 5 year land supply for housing. Even if I were to find the Council did not have a 5 year land supply and if paragraph 11d) of the Framework were applicable, I have not found any adverse impacts of granting planning permission, nor do the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. As such the proposal benefits from the presumption in favour of sustainable development.

Conditions

28. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
29. In addition to the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. For visual and biodiversity reasons, tree protection measures need to be secured and these need to be in position prior to commencement to ensure appropriate protection from the outset. For the same reasons, and also to safeguard living conditions of nearby residents, a scheme of landscaping is also necessary. I do not have strong evidence as to why this would need to include other land within the appellant's ownership which would not be subject to development. In the interests of conciseness, I have removed the prescriptive elements of that suggested condition and combined with the requirement for replacement planting.
30. To preserve local character, details of external materials for the new dwellings should be provided as well as details of boundary treatments. For biodiversity reasons, details of ecological enhancements and external lighting are also necessary. For the safety of future occupants, land remediation is conditioned if it becomes necessary and, in the interests of highway safety, the proposed parking spaces should be provided and remain available for such. For sustainability reasons, measures to facilitate sustainable energy sources are also required.
31. As the side windows in the first floors of the houses on plots 2 and 3 serve non-habitable rooms, I do not find it necessary to restrict their outlook by condition. As electric vehicle charging points are a building regulations requirement, and in the absence of evidence of a planning reason for such a condition, I have not conditioned them. In the absence of precision relating to the need to remove permitted development rights, and given the advice of the

planning practice guidance on this matter, the removal of PD rights as suggested would not meet the test of reasonableness or necessity. Similarly, I do not find it necessary or reasonable to restrict the use of the land outside the scope of the appeal site based on the evidence.

Conclusion

32. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

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: 2168/51 Rev.A, 2168/52 Rev.A, 2168/53, 2168/54 Rev.A, 0340/20/B/20C.
- 3) No development shall commence on the site, including any demolition, until measures to protect the trees to be retained on the site have been installed in full accordance with the details contained in Section 4 of the report titled 'Tree Survey' Issue 4 dated July 2021 by LaDellWood. Those protection measures shall be maintained in full accordance with those details until such a time that construction works are complete.
- 4) Prior to the commencement of development above the damp proof course of any new dwelling, details shall be submitted to and approved in writing by the local planning authority to demonstrate how decentralised and renewable or low-carbon sources of energy will be incorporated into the development. The approved measures shall be implemented in accordance with those approved details and prior to the first occupation of each relevant dwelling.
- 5) Prior to the commencement of development above the damp proof course of any new dwelling, details of the materials to be used on the external surfaces of the dwellings shall be submitted to and approved in writing by the local planning authority. This shall include but not be limited to details of weatherboarding, roof coverings and facing bricks. The development shall be carried out in accordance with the approved details.
- 6) Prior to the commencement of development above the damp proof course of any new dwelling, a scheme of hard and soft landscaping for the site shall be submitted to and approved in writing by the local planning authority. This shall adhere to the principles set out on drawing 0340/20/B/20C and shall include a schedule for its implementation and details of its management for a period of 10 years. The scheme of hard and soft landscaping shall be carried out and maintained in accordance with the approved details. Any trees or plants which, within a 10 year period from their planting, die, are removed, or become seriously

damaged or diseased, shall be replaced in the next available planting season with others of a similar size and species.

- 7) Prior to the commencement of development above the damp proof course of any new dwelling, details of ecological enhancements for the site shall be submitted to and approved in writing by the local planning authority. This shall include but not be limited to swift bricks, bat tiles/ tubes, bee bricks, bat boxes, bird boxes and native and nectar-rich planting. Those enhancements approved shall be implemented in full and in accordance with the approved details not later than 6 months from the first occupation of the relevant dwelling, and shall be maintained thereafter.
- 8) Prior to the first occupation of each relevant dwelling, the vehicle parking spaces shown on the supporting plans for that dwelling shall be provided in full. These shall be maintained thereafter for that purpose.
- 9) Boundary treatments shall be installed across the site prior to the first occupation of the dwellings, in accordance with details which have first been submitted to and approved in writing by the local planning authority. Those details shall include measures to allow the passage of wildlife.
- 10) No external lighting shall be installed to the site unless details have first been submitted to and approved in writing by the local planning authority. Any external lighting shall be installed and maintained only in accordance with the details approved.
- 11) If during construction/ demolition works, evidence of potential contamination is encountered, works shall cease and the site shall be fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the local planning authority and the remediation has been completed. Should that occur, the development shall not be occupied until a closure report has been submitted to and approved in writing the local planning authority.

End of Schedule