



Appeal Decision

Hearing held on 14 June 2023

Site visit made on 14 June 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/U2235/W/23/3314651

Wyndrush, 6 Headcorn Road, Platts Heath, Kent ME17 2NH

- 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 Hamish Morrison, The Land Consultant TLC Ltd. against the decision of Maidstone Borough Council.
 - The application Ref 22/504669/FULL, dated 23 September 2022, was refused by notice dated 8 December 2022.
 - The development proposed is described on the application form as: 'Proposed replacement of single bungalow with a development of seven houses'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended plans were put forward by the appellant as part of their initial appeal submissions, prior to the Hearing. Although local residents were notified of the appeal and invited to examine the appellant's submissions, they were not explicitly informed that the amended plans had been put forward showing amended first floor window and internal layouts to the proposed dwelling at plot 3. The appellant's Statement of Case made brief references to the amended plans, but it did not explain the amended plans in detail. It also referred to the scheme considered by the Council at the application stage as a revised proposal in comparison to another scheme which was the subject of pre-application advice, which may have confused interested parties. Although the proposed amendments were minor in nature, they would have implications for how the proposed dwelling at plot 3 would be seen and experienced from neighbouring properties. They would also introduce further considerations relating to the privacy of neighbouring residents and the outlook of future occupiers of the proposed dwelling at plot 3.
3. The Government's guidance¹ relating to planning appeals explains that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector at appeal is essentially the same as that considered by the Council and interested parties at the application stage. Taking the 'Wheatcroft' principles² into account, I am unconvinced that considering the amended plans as part of the appeal would not cause injustice to neighbouring residents. This is because some neighbouring residents may

¹ Procedural Guide: Planning appeals – England

² As referred to in *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

not be fully aware of the amended plans and their implications and may not have had the opportunity to comment on them. I therefore informed the Hearing that I would not be considering the amended plans as part of the appeal scheme.

Main Issues

4. The main issues are:

- Whether the appeal site is a suitable location for the proposed development, with regard to local and national policies;
- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on the living conditions of occupiers of neighbouring residential properties at 3 School Lane and 7 and 9 Lenham Road, with particular regard to outlook and privacy; and
- the effect of the proposed development on the Stodmarsh Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site.

Reasons

Location

5. The appeal site is a residential plot within the rural settlement of Platts Heath. Policy SS1 of the Maidstone Borough Local Plan (2017) (LP) sets out a settlement hierarchy and explains that the principal focus for development in the borough will be an expanded Maidstone urban area, followed by rural service centres and then identified larger villages. Platts Heath is located outside these areas, where Policy SS1 states that protection will be given to the rural character of the borough.
6. The supporting text to Policy SS1 explains that development should be delivered where employment, key services and facilities together with a range of transport choices are available, and that outside the settlement hierarchy there should be opportunities for sustainable development that supports land-based activities and other aspects of the countryside economy, amongst other things.
7. It was confirmed during the hearing that aside from a primary school, there are no other employment, key services or facilities in Platts Heath. A range of services and facilities can be found in the rural service centre of Lenham, a short distance away, but this would be too far along unlit and narrow country roads without footpaths to be accessible on foot or by bicycle to most potential future occupants of the proposal. Other than a school bus, there are no public transport options within Platts Heath and it is clear that future occupiers of the proposed development would be heavily reliant on private motor vehicles to access employment, services and facilities, even if some may work from home and use home delivery services.
8. I have been referred to an appeal decision³ which concerned the proposed erection of a two-bedroom bungalow opposite the appeal site. In that case, another Inspector found that development would be in a suitable location for

³ APP/U2235/W/19/3228680

housing with particular regard to the accessibility of services and facilities. Part of that Inspector's reasoning relied on the limited number of potential future occupants of the proposed two-bedroom dwelling, such that car trips generated by that proposal would likely be short and of limited frequency.

9. The National Planning Policy Framework (the Framework) advises that sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision making. The rural nature of Platts Heath means the vast majority of people who live in its 124 dwellings are likely to rely on private motor vehicles to access employment, services and facilities. In that context, a net increase of 6 three-bedroom dwellings at the appeal site would represent a small increase in people living in a location where reliance on private motor vehicles will be necessary.
10. However, it is inevitable that a sizeable number of additional private motor vehicle trips are likely to be generated by the proposal. This is on account of the number and size of dwellings proposed and the lack of employment, key services and facilities, and public transport options within Platts Heath and the absence of good cycling and walking links to larger villages or service centres. It is therefore unlikely that the proposal would result in a limited frequency of short private motor vehicle trips, as was the case in the appeal decision referred to above.
11. The proposal would contribute towards the range of housing available locally, providing modern, thermally efficient options. It would also provide employment opportunities for the duration of its construction and future occupants would be likely to spend money at businesses in the surrounding area. These contributions would be consistent with the overarching social, economic and environmental objectives of the planning system set out at paragraph 8 of the Framework, but they do not demonstrate the proposal would constitute sustainable development.
12. The Council has a five-year housing land supply⁴ and there has been a surplus of housing completions between 2011 – 2022 compared to the Objectively Assessed Need referred to in the LP and the borough's five-year housing land requirement⁵. This has not been disputed by the appellant. It is therefore evident that the Council's strategic approach to managing development in accordance with the settlement hierarchy set out in Policy SS1 of the LP is delivering a significant amount of housing to meet the borough's needs. The proposal would conflict with this strategic approach to managing development. With this in mind, and taking all other matters raised into account, the proposal would conflict with the aims of Policy SS1 of the LP, which are set out above.
13. The Council's officer report refers to Policy DM1 of the LP alongside policy SS1, claiming that they seek to direct new development to locations within the borough that have greater access to facilities and maximise opportunities for permeability and linkages to the surrounding area and local services. Although this would be true for Policy SS1, the same cannot be said for Policy DM1, which is more relevant to the principles of good design in other respects, such as those addressed in the second and third main issues below. This also applies to Policy D1 of the Lenham Neighbourhood Plan 2017 – 2031 (2021) (LNP).

⁴ Housing Land Supply Update Analysis Paper, dated 1 April 2022 (the Council's Appendix I); and appeal decision reference APP/U2235/W/22/3305441 (the Council's Appendix L)

⁵ The Council's Appendices C – H

14. Although the proposal would not be well connected to public transport links or walking or cycling routes to services and facilities, I do not find any conflict with Policies AT1 or AT2 of the LNP, which the Council has also referred to. This is because the proposal does not seek to provide new walking or cycling routes or public transport services/facilities, and because Policy AT1 only encourages proposals to show how they link into the existing footpath and cycle network, which would not be possible from the appeal site.

Character and Appearance

15. Platts Heath is a small, densely arranged settlement of houses surrounded by countryside, with long distance views of the North Downs' chalk hills to the north-east. It is a village in a wider rural setting, characterised by narrow lanes and tightly positioned houses of varying styles and ages. Although houses are densely arranged, they do not appear overly cramped.
16. Land levels are higher at the south-western end of Platts Heath, sloping down towards the north-east. There is little consistency in the design and size of houses within Platts Heath, and although many are single storey detached bungalows or chalet bungalows with windows in roof spaces, there are also many two-storey detached and semi-detached houses throughout the village.
17. The appeal site is a relatively large plot, dissimilar in size to the smaller plots which are characteristic of the area. It is occupied by a large bungalow with driveway and garden areas and is at a higher level than the adjacent Headcorn Road to the south-east and neighbouring properties along Lenham Road to the north/north-east and School Lane to the west/north-west. Thick, tall planting lines its boundaries which shields views of the appeal site from outside.
18. The proposal would comprise 2 pairs of semi-detached houses and a row of 3 terraced houses, all two-storey in height. They would be arranged in a small cul-de-sac layout with 2 parking spaces per dwelling and 2 visitor parking spaces. It was explained at the Hearing that existing boundary planting, apart from that along the south-western boundary, would be retained, and that the Arboricultural Report⁶ was incorrect where it refers to boundary planting G10 and part of G15 needing to be removed. I shall return to this later.
19. Boundary planting could continue to shield some views of the proposal, but upper floors would be clearly seen from neighbouring properties and clear views of proposed plots 1 – 5 and extensive parking areas would be seen through the appeal site access, even with additional planting. Those views would be of an overly cramped cul-de-sac, which would be uncharacteristic within Platts Heath.
20. The positions of the proposed semi-detached and terraced houses, close to boundaries and with small gardens would also be apparent from neighbouring properties. The proposed site coverage would be seen as far more tightly arranged than other development in the area and more typical for an urban location, rather than what is essentially a rural village. As a whole, it would not read as high-quality design in the rural village setting and would be inconsistent with the existing pattern and grain of development in Platts Heath.

⁶ Tree Survey, Arboricultural Impact Assessment & Tree Protection Plan by The Mayhew Consultancy Ltd, ref: AR/114622, dated May 2022

21. Partial views of upper floor windows and roof slopes of the proposal would be seen from further away, along roads in all directions and from public footpaths in the surrounding countryside⁷. The proposal would be seen in those views in the context of other densely arranged two-storey houses, where the layout and detailed arrangement of the proposal would not be appreciable.
22. The proposal would consolidate development within Platts Heath, harmful to the rural characteristics of the settlement. This would not be materially harmful to the character or appearance of the wider countryside on account of the views of other large two-storey houses from areas surrounding the village. Even in views from the south-western end of Headcorn Road, where the proposal would interrupt glimpses of chalk hills in the distance, the proposed dwellings would be seen as similar in scale to other development facing onto that road.
23. Taking all matters raised into account, the proposal would harm the established rural character and appearance of Platts Heath in short distance views and would not comprise high-quality design. The level of harm would be low on account of the extent of those views and the mixed character and relatively dense arrangement of houses within the village. This would conflict with Policies SS1, SP17, DM1, and DM30 of the LP and Policies D1 and CP1 of the LNP. These require, amongst other things, development to be of high-quality design which respects the local character of the area without causing harm to the rural character and appearance of settlements.

Living Conditions

24. Although I was advised that the Arboricultural Report was incorrect, it suggests that the thick and tall laurel hedge along the north-western boundary (G10) would be unlikely to sustainably survive the construction process⁸; and that part of the mixed species planting along the north-eastern boundary (G15) would need to be removed to allow for the installation of the rear access path to the garden of proposed plot 4⁹. A reduction in the size of the garden which would serve plot 5 could allow the whole of G15 to be retained alongside an access to the rear of plot 4.
25. Even if the Arboricultural Report is incorrect with respect to the possibility of G10 sustainably surviving the construction process, I am unconvinced that a reasonable and enforceable condition could require the retention of planting similar to its current thickness and height for the lifetime of the development. It would also not be possible for a condition to require replacement planting to match the height and thickness of any existing planting in the case that existing planting is damaged or removed. A condition could require the provision and retention of boundary fencing, but any fencing similar in height to the existing boundary planting would be excessively tall and harsh in appearance.
26. The appellant informed the Hearing that the rear elevations of the proposed dwellings at plots 1 – 2 would be at least 9 metres from the boundary shared with 3 School Lane. The side elevations of the proposed dwelling at plot 3 would be much closer. I note that the proposed dwellings at plots 1 and 2

⁷ Viewpoints 1 and 3 identified in the Landscape & Visual Appraisal by Ian Stemp Landscape Associates, ref: 22.1659.R1, dated 13 September 2022

⁸ Paragraph 9.3.2

⁹ Paragraph 9.3.4

- would be set down behind retaining walls, but along with the proposed dwelling at plot 3 they would be experienced as dominating solid features from within the garden of 3 School Lane.
27. The rear garden to 3 School Lane is wide, but it is also relatively short in depth. That neighbouring property comprises a large plot, but it is clear that the rear garden forms an important private space. The quality of that private garden space would be significantly diminished by the presence of the proposed dwellings at plots 1 – 3 on account of their height, angles, and proximity in relation to that neighbouring garden.
28. The proposed dwellings at plots 1 – 3 would have bedroom windows at first floor level facing towards the garden of 3 School Lane. On account of the distances and angles involved, and the changes in land levels between those sites, there would be clear opportunities for unacceptable levels of overlooking from those proposed bedroom windows into the rear garden of 3 School Lane.
29. The hedge along the boundary between the appeal site and 3 School Lane forms a tall natural barrier, blocking out views between those properties' gardens at present. As I am unconvinced that this could be retained in perpetuity, the proposed dwellings at plots 1 – 3 would significantly reduce the outlook and privacy enjoyed within the rear garden of 3 School Lane. This would cause unacceptable harm to the living conditions of occupiers of that property. The harm could not be reasonably mitigated for the lifetime of the development by existing or proposed boundary planting, or any fencing of an acceptable height, including that which would not require planning permission.
30. The relationships between the proposed dwellings at plots 3 – 7 and the neighbouring properties at 7 and 9 Lenham Road would not be as poor as those between the proposed dwellings at plots 1 – 3 and 3 School Lane, but they would remain far from ideal. While 7 Lenham Road appears to have a deep private rear garden, the rear elevations of the proposed dwellings at plots 6 and 7 would be less than 8.5 metres from the angled boundary shared with that neighbouring property. The private rear garden to 9 Lenham Road appears to be more modestly sized, but the rear elevations of the proposed dwellings at plots 3 – 5 would range between 10.9 and 14.8 metres from that shared boundary. The proposed dwellings at plots 4 – 7 would have rear facing first floor level bedroom windows.
31. The mixed boundary planting which forms G15 provides a significant natural visual barrier between the appeal site and 7 and 9 Lenham Road. Although the Arboricultural Report suggests this planting would be capable of being retained with appropriate tree protection measures, there would be the same problems relating to its long-term retention as those set out above with regard to G10.
32. On account of the proposed positions, levels and first floor rear elevation window layouts of the proposed dwellings at plots 6 and 7 in relation to the private rear garden of 7 Lenham Road, I consider those proposed dwellings would significantly reduce levels of outlook and privacy experienced within that neighbouring garden. This would cause unacceptable harm to the living conditions of occupiers of 7 Lenham Road.
33. The proposed dwellings at plots 3 – 5 would be visible from the private rear garden of 9 Lenham Road. They would appear to be of sufficient distance from that neighbouring garden so as to avoid causing any unacceptable harm to the

living conditions of occupiers of 9 Lenham Road. The level of outlook and privacy currently enjoyed within that garden would be slightly reduced, but the extent of that impact would not be significant or unacceptable.

34. I have been referred to the former Kent Design Guide, which is claimed to have specified that back-to-back distances of 21 metres between neighbouring dwellings would be sufficient to protect amenity in terms of habitable rooms and private amenity space. I have not been provided with a copy of that document and the appellant suggests it is no longer relied upon by the Council. It does not form part of the development plan, and even if it previously provided a benchmark for back-to-back separation distances between dwellings in Kent, it does not convince me that distances of at least 21 metres between neighbouring dwellings will always be sufficient to avoid any unacceptable loss of outlook or privacy within private garden spaces.
35. The proposal would significantly reduce outlook and privacy experienced within the private rear gardens of 3 School Lane and 7 Lenham Road. For the reasons set out above, this would cause unacceptable harm to the living conditions of the occupiers of those neighbouring properties. The proposal would not cause unacceptable harm to the living conditions of occupiers of 9 Lenham Road, but it would remain contrary to Policy DM1 of the LP and Policies D1 and D2 of the LNP. These require, amongst other things, development to be of high quality design which avoids causing harm to the amenities of neighbouring residential properties, including through loss of outlook and privacy.

The SAC, SPA and Ramsar site

36. The appeal site is located within the Len catchment. The foul sewer connection serving the appeal site discharges to Lenham Waste Water Treatment Works, which discharges into the Upper Stour catchment. The appellant's Nutrient Neutrality Report¹⁰ explains that Natural England (NE) has advised that adverse effects from additional nutrient inputs arising from waste water associated with new development within the Upper Stour catchment upon the conservation targets of the SAC, SPA and Ramsar sites cannot be ruled out.
37. The SAC, SPA and Ramsar site are European Sites, as defined 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.
38. The Nutrient Neutrality Report advises that the appeal site is able to accommodate an on-site package treatment plant (PTP). Limited details have been provided of a potential PTP¹¹, but the appellant explained to the Hearing that one could be accommodated, along with the necessary deep bore hole and soakaway, underneath proposed parking spaces. This would allow the existing foul sewer connection within the appeal site to be disconnected and for all foul sewage associated with the proposal to be treated and released onsite, within the Len catchment.

¹⁰ Shadow Habitats Regulations Assessment by David Archer Associates, dated June 2022

¹¹ A Klargester BioDisc BE wastewater sewage treatment system

39. The appellant explained to the Hearing that the PTP would never require emptying and the need for licenses under separate regulatory regimes would ensure it could safely discharge effluent within the Len catchment. It was claimed that having consulted the relevant geological records, there would not be any difficulties in obtaining those necessary licenses.
40. It is claimed that full details of the proposed PTP, including details of how it would be safely and continuously maintained by a management company, could be required to be approved prior to the commencement of development by a planning condition. The suggested wording for such a condition put forward by the appellant could require the approved details to be fully implemented prior to the first occupation of the development, the PTP to be maintained in perpetuity, and prohibit any of the proposed dwellings from connecting to the main sewer after their completion.
41. I have concerns as to whether such a condition would be a sufficiently precise, reasonable and enforceable means of controlling the future maintenance of the PTP through a management company and preventing future foul sewer connections discharging into the Upper Stour catchment in the absence of a legal agreement. In any case, I would need to undertake an Appropriate Assessment if I was minded to allow the appeal, to conclude whether the proposal would have an adverse effect on the integrity of the European sites. As I have found that the proposal would be in conflict with the development plan with regard to the other main issues, there is no need for me to carry out an Appropriate Assessment unless if other considerations indicate planning permission should be granted.

Other Matters

42. The benefits associated with the proposal, outlined in the first main issue with regard to the social, environmental and economic objectives of the planning system, would be modest. These, together with any other benefits, would not outweigh the harm the proposal would cause on account of its conflict with the Council's strategic approach to delivering housing, and its adverse impact on the character and appearance of the area and the living conditions of occupiers of neighbouring residential properties.
43. The Framework offers support for windfall development and notes that small sites can make important contributions towards housing supply which can be built out quickly. The Framework also encourages well-designed development which respects local character and the amenity of neighbouring residents.

Conclusion

44. The proposal would conflict with the development plan and there are no other considerations, including the Framework, which indicate planning permission should be granted. For the reasons outlined above, I conclude that the appeal should be dismissed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Webster	Planning Consultant
Mr Morrison	Architect

FOR THE LOCAL PLANNING AUTHORITY:

Kate Altieri	Senior Planning Officer
Peter Radmall	Landscape and Visual Consultant

INTERESTED PARTIES:

Jackie Hansen	Local resident
Paul McCreery	Planner, Lenham Parish Council
Colin Spurrell	Local resident
Kathy Hales	Local resident
James Spurrell	Relative of local residents

DOCUMENT SUBMITTED AT THE HEARING

- Revised representations from Lenham Parish Council

DOCUMENT SUBMITTED AFTER THE HEARING

- The appellant's suggested wording for a condition relating to foul drainage