



Appeal Decision

Site visit made on 12 July 2023

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th July 2023

Appeal Ref: APP/L2250/W/22/3312805

Land adj. to the Rose and Crown PH, Swamp Road, Old Romney Marsh, TN29 9SQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Mike Hoverd against the decision of Folkestone & Hythe District Council.
 - The application Ref 22/0663/FH, dated 14 April 2022, was refused by notice dated 21 July 2022.
 - The development proposed is for outline planning permission for the erection of 4No. detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposal is for outline planning permission, with all matters reserved. The proposal was accompanied by indicative layout, floor and elevation drawings, (RA15653/02, RA15653/03 & RA15653/04), which show how the proposed development could look on the site. The Appeal has been dealt with on this basis.

Main Issues

3. The first main issue is whether the appeal site is located in a suitable location for housing and its impact on the character and appearance of the surrounding countryside. The second main issue is whether the scheme would increase the number of persons and properties at risk from flooding and if so whether such risks are outweighed by other factors. The third main issue is whether the proposal would conserve or enhance wildlife and their habitats.

Reasons

4. The Appeal site is situated on the edge of a scattered and informal small rural settlement, where clusters of residential and other buildings are separated by grassland and fields providing views over the surrounding flat, open countryside. This area of countryside is described in the Romney Marsh Landscape Character Assessment Area as a former area of saltmarsh that is characterised by fields divided by a network of drainage ditches which contribute to the open and flat characteristics of the landscape.

5. The appeal site comprises an area of undeveloped land located adjacent to the junction of Swamp Road and Wheelsgate Lane. Directly opposite the appeal site is a row of older semi-detached houses that occupy generous sized plots, with open farmland to the south of them. The Rose & Crown Public House sits within its spacious grounds immediately to the northeast of the appeal site and to the southwest is a single dwelling which occupies a generous sized plot. Beyond this dwelling and to the rear of the appeal site is a large expanse of open arable land with few trees and hedgerows within it. There is a public right of way across this open farmland, which starts close to the appeal site. Other than the development around the road junction there is very little built development along Wheelsgate Lane.
6. Whilst the farmland is open there are a combination of ditches, hedges and unmanaged strips of land adjacent to the field boundaries with Wheelsgate Lane. Consistent with this, the appeal site is enclosed by tall hedges and shrubs and is overgrown with tall nettles, weeds, occasional shrubs and trees. It partially screens the dwelling to the south and contributes to the informal field margins and clusters of native planting around the fields and on the edge of the settlement.
7. The National Planning Policy Framework (the Framework) advises that the purpose of the planning system is to contribute to the achievement of sustainable development. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, having regard to local circumstances and the character, needs and opportunities of each area. With this in mind the Framework advocates a plan-led approach and states that planning policies and decisions should play an active role in guiding development towards sustainable solutions. In relation to rural housing the Framework states that decisions should be responsive to local circumstances and support housing developments that reflect local needs.
8. At the same time the Framework seeks to restrict new housing in the open countryside; to protect landscapes and biodiversity and to steer sensitive development away from areas at most risk from flooding.
9. Together and amongst other things policies SS1, SS2, SS3 & CSD3 of the Folkstone & Hythe District Council Core Strategy Review 2022 (CS) set out the spatial strategy for the District and support sustainable development. They seek to concentrate new development in a new settlement and the most sustainable towns and villages. This helps to safeguard the countryside from unnecessary development and minimises the need for travel.
10. Collectively the above policies go on to state that in the countryside new development will only be allowed where it needs a countryside or coastal location. In relation to housing it should be to meet affordable housing needs or essential needs for rural workers accommodation. Within the Romney Marsh Area the priority is on accommodating new development within towns and sustainable villages. This is to protect and enhance the coast and the many special habitats and landscapes. It also seeks to avoid localities at the most acute risk to life and property from flooding, adopting a sequential approach.
11. Collectively policies HB1, HB2, NE2 & NE3 of the Folkstone & Hythe District Council Places and Policies Local Plan 2020 (PPLP), require proposals to make a positive contribution to their location and surroundings. It should be demonstrated how a proposal integrates into its surroundings; is located close

to community facilities; has good access to public transport; and provides a mix of house types and tenures. Proposals should protect or enhance the functioning of Romney Marsh Local Landscape Area, the natural environment and European protected species.

12. The appeal site is located in a countryside area where the above policies seek to restrict new housing development. The settlement has very limited community facilities and is not located within any of the settlements that are identified in the CS as being suitable for new housing development. It is located a short walk from the A259, where there are bus stops, although few pavements and no street lights. As such many residents within Old Romney are largely reliant on private transport for accessing larger settlements, including New Romney, which is the closest larger settlement and which is identified in the development plan as a major growth settlement.
13. The illustrative drawings show four identical detached houses with tall hipped roofs. They would be materially taller than the adjacent dwellings and other buildings and as a consequence would be unduly prominent in views within the street scene and across the open landscape. Even if they were materially reduced in height, due to the location of the site on the edge of the settlement, the proposed development would be seen as encroaching into and having an urbanising impact on the open countryside. The proposed development would obscure views into and out of the open countryside to the northwest. It would also result in an intensification of built development in a small scattered and spacious rural settlement and would deliver four open market family dwellings, for which no specific need has been identified.
14. Finally, the appellant has referred to two new dwellings that were approved in Old Romney in 2013 and 2019 although they are not comparable to the appeal scheme. This is because one was a replacement dwelling and the other replaced an existing building. As such they do not set a precedent for the proposal.
15. For these reasons I conclude in the first main issue that the site is not situated in a sustainable location and it would conflict with CS policies SS1, SS2, SS3 & CSD3 and PPLP Policies HB1, HB2, NE3 and paragraphs 11, 174 & 176 of the Framework.

Flood Risk

16. Due to the presence of flood defences the appeal site is shown to be at low/moderate risk of flooding in 2115 in the Council's Strategic Flood Risk Assessment. Despite this, the council has confirmed that the appeal site largely falls within Flood zone 2 and 3 on the Environment Agency's Flood Risk Map. The Environment Agency advises that flood zones 2/3 have a moderate to high probability of flooding from rivers and sea and that a flood risk assessment needs to be carried out as part of any planning application. Regarding flood defences it advises that they reduce but do not completely stop the chance of flooding because they can be overtopped or fail.
17. Paragraphs 161 & 167 of the Framework require a sequential, risk-based approach to the location of development. When determining planning applications councils should ensure that flood risk is not increased elsewhere and that where appropriate applications should be supported by a site-specific flood risk assessment.

18. Footnote 55 of the Framework states that a site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. Development should only be approved where the site-specific assessment demonstrates that the most vulnerable part of the development is located in areas at least risk of flooding. Also, that the development is appropriately flood resilient; where possible incorporates sustainable drainage systems; any residual risk can be safely managed; and safe access and escape routes are included where appropriate. These are matters that inform any decision made and cannot be dealt with by condition.
19. A site-specific flood risk assessment which addresses the above requirements has not been submitted and having regard to the limited and generalised details submitted the appellant has failed to meet the above requirements.
20. For this reason, I conclude on the second main issue that the appellant has failed to demonstrate that the proposal would not be at risk or give rise to increased off-site risk of flooding. Accordingly, the proposal would conflict with CS Policy SS3, PPLP Policy HB1 And chapter 14 of the Framework.

Ecology

21. Whilst the appeal site is not subject to any nature conservation designations, the Romney Marsh Landscape Assessment submitted by the council shows that there are a range of local and national nature conservation designations within the wider area. Although the open land to the rear of the appeal site appears to be intensively farmed, the field margins along Wheelsgate Lane include hedgerows, scrub and ditches and the local area includes a wide network of freshwater ditches and sewers. These features have the potential to be attractive to a wide range of species either as permanent habitats or feeding grounds.
22. The appeal site is overgrown with nettles, weeds, shrubs and occasional trees. At the time of the appeal site visit the site was inaccessible although a number of birds, butterflies and insects were clearly visible within the site. Due to the range of plants present, its undisturbed state and proximity to the field margins, planting and ditches, the appeal site has the potential to attract and help support a wide range of wildlife. In addition, I note that the appellant has stated that the site gets muddy and local residents have referred to the presence of Great Crested Newts in the area and on the site.
23. Amongst other things paragraph 174 of the Framework states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. Consistent with this, together PPLP Policies HB1 & NE2 require new development to integrate with, conserve and enhance the natural environment, including all sites of biodiversity value.
24. Together Circular 06/2005 (ODPM) and the standing advice of Natural England and the Department for Environment, Food & Rural Affairs (updated September 2022) advise that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. As such, it is essential that the presence or otherwise of protected species and the extent to which they may be affected by a proposal is established before planning permission is granted. Without such information all relevant material considerations may not

have been addressed prior to determining an application for planning permission.

25. Paragraph 99 of the ODPM goes on to advise that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
26. Taking all the above factors into account, from the very limited information submitted the presence or otherwise of protected species, the extent to which they may be affected by the proposal and the ecological value of the appeal site is not known. Without this information the need for specific surveys and any need for mitigation is similarly unknown. Notwithstanding the fact that the proposal is for outline planning permission with all matters reserved, this means that all relevant material considerations may not have been addressed prior to determining an application for planning permission. This is not something that could reasonably be dealt with by the imposition of conditions.
27. For these reasons I conclude on the third main reason that on the basis of the evidence submitted it has not been demonstrated that the proposal would provide any necessary and adequate ecological mitigation or conserve or enhance biodiversity. Accordingly, the proposal would conflict with PPLP Policies HB1 & NE2 and paragraphs 174 & 180 of the Framework.

Conclusion

28. Having regard to the conclusion on all of the main issues and having regard to all other matters the appeal is dismissed.

Elizabeth Lawrence

INSPECTOR