



Appeal Decision

Site visit made on 6 July 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/U2235/W/22/3302094

Land at Thurnham Lane, Thurnham ME14 3LD

- 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 Alan Penhallow against the decision of Maidstone Borough Council.
 - The application Ref 22/500356/OUT, dated 15 February 2022, was refused by notice dated 14 April 2022.
 - The development proposed is outline application for the erection of 1no. three bedroom bungalow with cycle storage shelter and bin storage attached, associated hardstanding for two car parking spaces, the creation of two bunds and associated landscaping (Access being sought).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice and the appellant's appeal form as this more accurately describes the development sought.
3. Both the main parties evidence refers to the Kent Downs Area of Outstanding Natural Beauty (AONB) Management Plan 2014 - 2019 and the Kent Downs AONB Management Plan 2021 – 2026. As the Council's reason for refusal states the Kent Downs AONB Management Plan 2021 – 2026 I have proceeded on this basis.
4. Both the main parties also reference the North Downs AONB. From the evidence before me the North Downs AONB forms part of the Kent Downs AONB and I have considered the appeal on this basis.
5. The Council's officer report refers to access being taken from Pilgrims Way. It is clear from the evidence before me that this should have stated Thurnham Lane, and this has been clarified by the Council. The appellant has been given the opportunity to comment as part of the appeal process. I proceed on this basis.
6. Outline planning permission is sought, with access only to be considered at this stage and all other matters reserved for later consideration. I have determined the appeal on this basis. Whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of appearance, landscaping, layout and scale as illustrative.

Main Issues

7. The main issues are:

- the effect of the proposal on the character and appearance of the Kent Downs AONB;
- whether the appeal site is a suitable location for the proposed development having regard to local and national planning policy for the delivery of housing and accessibility to services and facilities;
- the effect of the proposal on protected species; and
- the effect of the proposed development on highway safety, with particular regard to the provision of visibility splays.

Reasons

Character and appearance

8. The appeal site would be accessed from Thurnham Lane. It comprises a rectangular parcel of land bounded by an attractive large mature hedgerow adjacent to the road, which runs alongside numerous property boundaries. The site is enclosed to the north by a timber fence adjacent to the public house overflow car park. Timber fencing separates residential properties to the west and south. The site lies at a slightly elevated position from the road.
9. The appeal site is located within the AONB, which is characterised by secluded dry valleys, network of tiny lanes, isolated farmsteads, churches and oasts, orchards, dramatic cliffs, ancient woodlands and delicate chalk grassland. The features ensure there is an ancient, remote and tranquil quality to much of the landscape.
10. AONBs are designated for the purposes of conserving and enhancing natural beauty and Section 85(1) of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to this purpose in this decision. Paragraph 176 of the National Planning Policy Framework (the Framework) puts great weight on their conservation and enhancement.
11. In addition, the Council's third reason for the refusal of planning permission states that the proposed scheme fails to provide sufficient details regarding existing trees, the hedgerow and regrading works and how these would visually affect the countryside location.
12. The appeal site currently forms a verdant gap between the built form assisting in the development surrounding the appeal site remaining sporadic. As part of my site visit, I viewed the appeal site from Thurnham Lane, the entrance of the property to the south and also from the adjacent overflow car park. Surrounding boundary treatments ensure that from longer-range views, the site is not readily visible. However, viewed from surrounding properties and the road close to the proposed site entrance, the undeveloped nature of the appeal site contributes positively to the rural character of the area.
13. Although matters relating to scale, layout, appearance, and landscaping have yet to be fixed, the proposal would result in a dwelling, driveway and domestic paraphernalia occupying the appeal site. The built form and paraphernalia would be sited between existing development and infill what is currently an

attractive verdant gap. In this location, the introduction of residential development on the appeal site would cause harm to the character and appearance of the area. It would permanently erode the positive contribution the existing open gap makes to the rural character of the area, ensuring that the built form appears sporadic in this part of the AONB. Furthermore, as access would be taken from Thurham Lane, it would see the removal of a section of hedgerow. This removal would, to a limited degree, diminish the rural nature and character of the lane.

14. With regard to trees onsite, from my observations, there were a number of trees across the site, none of which appeared to be of particular prominence, but rather their group contribution with the hedgerow and other vegetation make up this attractive verdant green gap. As such, notwithstanding the harm I have already identified, I see no reason why an appropriate landscaping scheme could not compensate for the potential loss of some of these onsite trees.
15. Consequently, I have found the proposal would harm, albeit limited, the character and appearance of the AONB. This would result in a conflict with Maidstone Borough Local Plan (MLP) Policies DM1, DM3, DM30 and SP17. These policies seek to ensure, amongst other things, that development is of high quality design which responds positively to the local, natural and historic character of the countryside and AONB. The proposal would also be contrary with the provisions of the Framework and Kent Downs AONB Management Plan in so far as they seek to conserve and enhance landscape and scenic beauty.

Suitable location

16. The appeal site is located close to a small group of buildings which includes dwellings and a public house with hotel accommodation in the form of lodges. It is therefore not isolated for the purposes of Paragraph 80 of the Framework.
17. MLP Policy SS1 sets out the spatial strategy and the settlement hierarchy for the area. The proposal would be located outside any defined development boundary and, therefore, would be within an area of open countryside. Consequently, the proposal conflicts with the locational strategy of the development plan.
18. Occupiers of the dwelling would be able to visit the nearby public house when open. However, in the absence of nearby public transport to access services and facilities at Bearsted, when not using a motor vehicle, the occupants of the proposed dwelling would have to walk/cycle. Along Thurnham Lane, the intended future occupants would, for large sections, have to share the road, which narrows in places with motor vehicles. There are no cycle lanes or street lighting between the appeal site and Bearsted. In addition, this section of the road has a national speed limit, which means vehicles are likely to be travelling at fast speeds. As such, large sections of the route would be unsuitable for walking and cycling safely along including pedestrians with children's pushchairs, wheelchair users or people with limited mobility.
19. Given the above future occupiers of the proposed development would have poor access to services and facilities and would be reliant on a private motor vehicle to access them on a regular basis. For those that did not have access to a private vehicle, the services and facilities in nearby towns and villages would not be accessible.

20. In support of the appeal site's location, the appellant has stated that the proposed dwelling would be beneficial to occupiers with a requirement to have access to motor vehicles. The appeal scheme is also noted for its potential to be a family home. It has also been suggested that online shopping services could provide some basic services.
21. However, there is no mechanism before me, including for affordable housing, to secure these restrictions such that the proposed dwelling, if allowed, would be an open market dwelling. Furthermore, there are likely to be times when occupiers do not have access to a vehicle, and no substantive evidence has been demonstrated to show that even basic services can be delivered. In any event, locating new residential development in remote locations such as this that are reliant on a private motor vehicle would be contrary to the aims of the development plan and the Framework.
22. Whilst there are Public Rights of Way near to the site, these routes are unlit and largely unsurfaced, which would limit their use during hours of darkness and are unlikely to be suitable for all users. There are already existing properties located close by. However, the existence of these properties does not outweigh the harm of allowing an additional dwelling in an unsuitable location for the reasons I have identified.
23. As such, I conclude that the appeal site is not a suitable location for the proposed development and there would be a conflict with Policies SS1, SP17 and DM1 of the MLP. Amongst other things, these policies seek to ensure development is directed towards sustainable locations within the borough and accords with other relevant development plan policies. In addition, the proposal would also fail to accord with the Framework in respect of achieving sustainable development and making effective use of the land.

Protected Species

24. Circular 06/2005¹ states 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. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
25. In addition to the mature trees and well-established hedgerow, the appeal site also contains substantial vegetation. I also observed how the site forms a verdant link to the surrounding trees and hedges such that it could provide suitable habitat for a number of species.
26. From the evidence before me, the appellant has not provided information upon which an assessment of any protected species using this habitat could be reasonably assessed. Without robust evidence, I cannot be confident that development could be carried out in this location without adversely affecting any protected species habitats that may be present on site.

¹ Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

27. Given this uncertainty which covers the full appeal site, I am not satisfied that it would, in this case, be appropriate to defer consideration of this matter to a planning condition.
28. A lack of objection from Natural England is a neutral matter which does not overcome the need to establish the presence or otherwise of protected species which may be affected by the proposed development.
29. Accordingly, I am unable to conclude that the appeal site does not contain any protected species. I find that the proposal would conflict with MLP Policies DM1 and DM3, which seek, amongst other things, that new development protects and enhances the natural environment and biodiversity. It would also conflict with the Framework, which sets out the principles for the determination of planning applications to protect and enhance biodiversity.

Highway Safety

30. Policy DM1 of the MLP, amongst other things, supports new development that safely accommodates vehicular and pedestrian movements generated by a proposal on the local highway network and through the site access.
31. The Council's fifth reason for refusal asserts that insufficient information has been provided to demonstrate that the proposed access arrangements would provide safe and suitable access for all users of the development. In this regard, the appellant has not provided any substantive evidence of existing vehicle movements, speeds, or visibility splays.
32. A new vehicular access would be created to serve the proposed dwelling on Thurnham Lane which is an unrestricted 60 mph road. The nearby part of the road is narrow, with insufficient room for two vehicles to pass safely. As I have already identified, there are no streetlights or dedicated footways.
33. This section of Thurnham Lane has a broadly straight stretch leading up to the bend which has a fairly steep rise leading to Pilgrims Way. In the opposite direction, the road widens out with longer straight views of the road. As a result, these conditions allow for vehicles to reach higher speeds. While I have not been provided with details of sight lines at the site the bend of the road, trees, high hedges, and topography combine to restrict visibility in both directions from the site.
34. Whilst I accept that some matters are reserved for later consideration, the drawing supplied does not identify the scope of works required for the site entrance or whether the visibility splays fall within the appellant's ownership. Additionally, there is no information on existing traffic speeds, which could inform a different visibility splay. In the absence of any evidence to show that appropriate standards of visibility could be achieved, the proposal could lead to increased potential for collisions between road users. I am, therefore not satisfied that the introduction of the access in this location would not give rise to highway safety concerns. It would also not be appropriate to condition these details given the uncertainty that achieving the visibility splays may require land outside of the appellant's ownership.
35. There are other driveways in the vicinity to allow off-street parking. However, the presence of other accesses would be neutral considerations in any balance against planning harm; I have determined this appeal on its merits and this matter does not outweigh the harm I have identified above.

36. As such, based on the lack of substantive evidence to demonstrate that the proposal would not have implications for highway safety, I find that the proposal would be contrary to MLP Policy DM1. The proposal would also be contrary to the provisions of the Framework, which, amongst other things, seeks to avoid unacceptable impacts on highway safety.

Other Matters

37. There are three nearby Grade II listed buildings, Castlebank, Black Horse Public House and Thornham Friars and Barn attached to west. Given the presence of these heritage assets, I have had special regard to the desirability of preserving the buildings their setting and any features of special architectural or historic interest which they possess.
38. These three heritage assets derive their significance from their traditional appearance and prominent location close to the road junction. As a result of distance, existing built form, topography and well-established trees and hedgerows, there would be no harm to the setting of these listed buildings.
39. The appellant's statement states that the Council has an affordable housing shortfall. However, no substantive evidence has been put before me to demonstrate this is the case.
40. The proposal would enable the delivery of an additional dwelling to the Council's housing stock. There would also be economic benefits associated with employment during construction. However, these benefits would be limited given the small scale of the development. Consequently, even if there were a shortfall in the supply of affordable housing, as suggested by the appellant, the adverse effects of the proposal would significantly and demonstrably outweigh the benefits.
41. The appellant has drawn my attention to an application approved by the Council under ref: 14/0446. Whilst I do not have full details of the scheme, I note this was for the demolition of a bungalow and annexe to be replaced by two dwellings. I attached limited weight to this decision as it is not directly comparable to this scheme which is on undeveloped land. In any event, I have assessed the proposed scheme on its own merits and found there would be detrimental harm for the reasons set out.

Conclusion

42. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
43. Therefore, I conclude the appeal should be dismissed.

A Hickey

INSPECTOR