
Appeal Decision

Site visit made on 3 August 2023

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/Z2260/W/22/3304235

Land North of Reading Street Road, Broadstairs and St Peter's, Thanet, Kent CT10 3EA

- 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 Land Allocation Ltd against the decision of Thanet District Council.
 - The application Ref OL/TH/21/0941, dated 3 June 2021, was refused by notice dated 23 February 2022.
 - The development proposed is Outline Planning Application for Residential Development for up to 74 Dwellings, including Access, with all other matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission, with all matters except for access reserved for future consideration. An indicative site layout is submitted with the application, and I have taken this into account only in so far as determining the acceptability, in land use principle terms, of erecting up to 74 dwellings on the site. I have dealt with the proposal on that basis, treating details such as those on the proposed site plan as being illustrative only.
3. The Broadstairs and St Peter's Neighbourhood Plan (NP1) was made on the 3 June 2021. A second edition of the plan has subsequently been examined with it passing a local referendum on 26 October 2023. Consequently, the second edition plan in effect supersedes NP1 and the Council has not indicated that they do not intend to 'make' the second edition plan. As a result, I afford the second edition Neighbourhood Plan (NP2) full weight. In any event, having seen both versions of the plan, I am satisfied that no major changes have been made to policies BSP1 or BSP2. Consequently, I consider that the emergence of a second edition of the Neighbourhood Plan has not prejudiced the outcome of this appeal.
4. The appellant has submitted additional plans as part of the appeal, which include new pedestrian crossing points and dropped kerbs. Annex M of the Planning Appeals Procedural Guide – England advises that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority and on what interested people's views were sought. If I were to determine the appeal on the basis of these additional revised plans, it is possible that the interests of parties who might wish to comment would be prejudiced. For the avoidance of doubt, I have therefore determined the appeal on the basis of the plans which were before the Council when it made its decision.

5. The appellant also submitted a Geophysical Survey Report as part of the appeal process. However, as this is a piece of technical evidence to support the original scheme as submitted, I have taken it into account, and I am satisfied that no parties have been prejudiced by my doing so.

Main Issues

6. The main issues are:
- the effect of the proposed development on the character and appearance of the area including its landscape;
 - whether the proposed development would result in the loss of the best and most versatile agricultural land;
 - the effect of the proposed development on highway safety having regard to the capacity of the highway network;
 - whether sufficient information has been provided to enable the potential effects of the development on archaeology to be understood; and
 - whether the submitted planning obligation is sufficient to mitigate impacts on local infrastructure and make the development acceptable in planning terms.

Reasons

7. The appeal site is situated within a large area of agricultural land between the settlements of Broadstairs and Margate. The indicative proposal would provide up to 74 dwellings with the vehicular access being taken from Convent Road.

Character and Appearance

8. The site is in an area of open agricultural land that is on one side of Reading Street Road with another large area of open agricultural land being on the other side of the road. This other area of open land abuts Green Lane beyond which there is another large open field that stretches to the built-up part of Margate at Bradley Road. On the other side of the appeal site the open agricultural land extends to George Hill Road and another piece of the built-up area of the wider Margate settlement and the residential properties on George Hill Road and Whiteness Road. Beyond the part of George Hill Road that abuts the appeal site where it intersects with Convent Road there is the North Foreland Golf Course which lies on both sides of Convent Road as it travels towards the coast and Kingsgate Bay.
9. Therefore, to my mind, notwithstanding the residential development at Lerryn Gardens and Rosetower Court, the area including the golf course, the appeal site, the wider parcel of agricultural land to which it belongs, the large fields on the far side of Reading Street Road and Northdown Hill represents a clear strip of predominately open land both in a spatial and visual sense. Furthermore, given the location of this predominately open strip of land I consider that it forms a spatial and visual buffer between the settlements of Broadstairs and Margate.
10. Indeed, the Green Wedge designated by Policy SP25 of the adopted Thanet Local Plan (TLP) covers the entirety of this area and the wider Policies Map illustrates the extent of the broader coverage of this designation and the extent to which it acts as a buffer. A key aim of policy SP25 is to safeguard areas of open countryside to maintain physical separation and avoid coalescence of settlements, retaining their individual character and distinctiveness.
11. According to the evidence both main parties agree that the appeal site is within the open countryside and from what is before me, I see no reason to disagree. Policy SP24 of the TLP restricts new development on non-allocated sites in the countryside with the key proviso that all proposals *'should be of a form, scale and*

size which is compatible with, and respects the character of, the local area and the surrounding countryside and its defining characteristics’.

12. Policy BSP1 of the NP2 states that priority will be given to protecting the countryside from built development and ensuring that the physical coalescence of the Thanet Towns is avoided and that their physical separation is maintained. Policy BSP2 of the NP2 ensures that development proposals respect and not detract from the views and vistas shown on Map 4 with any proposals that negatively impact on these views not being acceptable.
13. Policy SP26 of the TLP states that development proposals should demonstrate how they respect and respond to the character, key sensitivities, qualities, and guidelines of the relevant landscape character areas, as detailed in the Landscape Character Assessment. The evidence shows that the appeal site sits within the St Peter’s Undulating Farmland Landscape Character Area (LCA) and that this area is characterised by undulating chalk farmland which is important for long distance views to the marshes and sea and for performing a settlement separation function. This area also contains high quality farmland and that is open and undeveloped which contributes to an essentially rural character.
14. The submitted indicative layout shows that the proposed housing would project past the existing built form of the settlement on both sides of this part of Reading Street meaning that it would spatially and visually intrude into the more open landscape beyond. That said, the indicative proposal would not project much further into this more open land than the existing housing at Leryn Gardens and Rosetower Court or the rectangular belt of high mature trees beyond them. A portion of the site would also sit in a gap between this housing and other housing at Reading Street Road.
15. One of the key characteristics of the LCA is long-distance views of the marshes and coast. Such views from vantage points such as the public footpath¹ that cuts across the wider field are blocked either by existing development or high mature trees as I observed on my site visit. I also observed that the visual backdrop of the appeal site from vantage points along the footpath was much the same i.e., it was of predominately residential development and high mature trees.
16. Furthermore, the proposal would be screened by the proposed landscaping features including trees when seen from the public footpath and other similar vantage points. The Council’s officer report also highlights that one of the guidelines for the LCA is to *‘consider opportunities for tree planting’*. The submitted Landscape and Visual Appraisal (LVA) also highlights that this landscaping would provide a visual buffer and that the proposal *‘would not compromise the valuable structure of surrounding hedgerows and tree cover’*. As a result, I consider that the proposal would not have a significant adverse visual impact in these regards.
17. The proposal would however be fully visible from the public footpath on Convent Road and the existing houses on the opposite side of the road meaning that the portion of the site closest to it would not be fully visually contained. Policy BSP2 identifies the view from Convent Road across the fields including the appeal site (view K) as one to be protected. The proposal would place a vehicular access and residential development within the existing gap thereby blocking this protected view in clear conflict with the NP2. Indeed, the submitted Landscape and Visual Assessment (LVA) highlights that the greatest visual effects would be on close-range views from Convent Road. The proposal would therefore have a significant adverse visual impact in this regard.

¹ PROW Footpath no. 0045/TB5/1

18. I note that the proposed mitigation measures would reduce the impact of the proposal during the residual phase of the development with the effects being moderate adverse from viewpoint VP04 as identified by the LVA. However, this is not the same as the proposal having no adverse impact from this viewpoint at all. Moreover, these measures would do little to obscure the view of the proposed housing from the footpath on Convent Road even if it were designed to be in keeping with the local area.
19. Regarding the proposal's development density, the Council argue that the proposed residential density would be around 24 dwellings per hectare (DPH). They also estimate the density of the adjacent and nearby residential development to be about 13 DPH if the developable site area is taken to be about 3 hectares. On the other hand, the appellant estimates the proposal's development density to be less than 15 DPH if the full area of the appeal site is used which they estimate to be around 5 hectares.
20. However, according to the submitted indicative site layout plan not all the appeal site's area would be used for housing. Indeed, the appellant's statement highlights that around 2.45 hectares of the site would be used as open space leaving about 2.55 hectares for the proposed residential element. So, if this figure is used the likely density of the indicative proposal would be around 29 DPH by my calculation. The appellant calculates the density of the residential development on the other side of Reading Street Road to be around 33 DPH and on the other side of Convent Road to be about 21 DPH. They also estimate the density of the residential development adjacent to the appeal site on the other side to be about 14 DPH.
21. While I acknowledge that the proposal would have a similar density to some of this nearby housing it would not be directly adjacent to it with it being separated from it by Convent and Reading Street roads. Therefore, and given the proposal's proximity to the lower density development (14 DPH) that encompasses Leryn Gardens and Rosetower Court I consider that a potential development density of around 14 DPH would be more appropriate on the side of Convent Road to which the appeal site and these houses belong.
22. Consequently, given its much higher density I consider that the proposal would be at odds with the established residential development pattern on this side of Convent Road. As a result, the indicative proposal would represent a cramped form of development thereby having a significant adverse impact in this regard.
23. In the context of the above, while the proposal would not represent a significant incursion into the open countryside or the green wedge, it would represent an incursion, nonetheless. It would also therefore have an adverse impact on the functional spatial and visual buffer that the open land in this area provides. Consequently, the broad objectives of policies SP24, SP25 and SP26 of the TLP and policy BSP1 of the NP would be compromised. For similar reasons the proposal would also have an adverse impact the key characteristics of the LCA.
24. I acknowledge that the submitted plans show only an indicative proposal. However, I do not have any other indicative plan(s) before me showing whether it would be possible to erect a different scheme on the site. Consequently, and even if I were to completely disregard the indicative plans for the purposes of considering the effect of the proposal on the character and appearance of the area and its landscape, I would conclude that I had insufficient information before me to reach a decision, in principle, that the development would not have an adverse spatial and visual impact.

25. Therefore, overall, I find that the proposal would cause substantial harm to the character and appearance of the area including its landscape. Accordingly, I conclude that the proposal would conflict with policies SP24, SP25, SP26 and QD02 of the TLP, policies BSP1, BSP2 and BSP9 of the NP and paragraphs 130 and 174 of the *National Planning Policy Framework* (the Framework).

Agricultural Land

26. According to the evidence both main parties agree that the appeal site is located within a field that is classed as Grade 1 agricultural land having regard to Regional Agricultural Land Classification Maps with such land being the best and most versatile agricultural land (BMVAL). The submitted evidence also shows that the appeal site measures around 5 hectares in total area with the wider field to which it belongs measuring about 20 hectares.
27. Policy E16 of the TLP states that planning permission will not be granted for significant development which would result in the irreversible loss of best and most versatile agricultural land unless it can be demonstrated that amongst other things, there are no otherwise suitable sites of poorer agricultural quality that can accommodate the development.
28. The appellant has stated that most of the land within the district comprises BMVAL a fact which the Council has not challenged and that this is the reason why no alternative site of poorer agricultural quality for the quantum of development proposed could be found. Even so, the proposal would lead to a loss of BMVAL, nonetheless. Consequently, and bearing in mind paragraph 174 of the Framework I find that the proposal would lead to a loss of BMVAL thereby having an adverse impact in this regard.
29. However, that said given the relatively small area of the appeal site when compared to the wider agricultural land it belongs to, the abundance of BMVAL in the district, the lack of substantive evidence to show that the remainder of the agricultural holding becoming not viable or that the proposal would lead to likely accumulated and significant losses of high quality agricultural land, I consider this harm to be moderate. Accordingly, I conclude that the proposed development would conflict with policy E16 of the TLP and paragraph 174 of the Framework.

Highway Safety

30. The vehicular access for the indicative proposed development would be at Convent Road not far from a crossroads junction between Convent, Beacon, and Reading Street roads. It would also be relatively close to what is, according to the evidence, a very busy junction at the other end of Reading Street Road where it meets Green Lane/Northdown Park Road, and George Hill Road (the Green Lane junction).
31. The Council have raised concerns that the proposal would result in additional vehicular trips and associated impacts upon the surrounding highway network and junctions, and that insufficient information and mitigation measures have been provided to demonstrate that the proposal would not have a detrimental impact on certain road junctions, one of which, the Green Lane junction, is currently operating over capacity.
32. The appellant has suggested several measures to mitigate potential impacts that the proposal may have on the highway network including placing two sections of double yellow lines along Beacon Road to help with the flow of traffic. The Council have argued that while this could well be done, that it would likely lead to the loss of on-street parking and displace this onto nearby roads thereby making an existing problematic on-street parking situation worse.

33. Indeed, in their consultation response dated 17 January 2023 the Local Highway Authority (LHA) state that the installation of the double yellow lines would displace on-street parking for around 9 cars which would affect residential amenity and that if dropped kerbs were also installed that this parking displacement would be reduced to about 6 cars. A fact which the appellant does not dispute.
34. Another concern the Council raised was that in its view there would not be adequate pedestrian and cycle access to the proposed development. In their statement the appellant highlights that a further review and a stage 1 Road Safety Audit (RSA) which has been submitted alongside their other evidence for this appeal and that this does not raise any specific safety concerns.
35. The statement also highlights that an emergency access, the installation of pedestrian crossing facilities at Reading Street Road, Beacon Road and Reading Street, Balliol Road, and Grange Road and at Old Green Road, the provision of dropped kerbs to the internal footways to the north of the site road and to the footpath on the southern side of Reading Street Road. Indeed, the LHA have advised that these proposed mitigation measures would ensure a more robust connection of the proposal to the wider footway network.
36. However, according to the Council, the installation of dropped kerbs and proposed pedestrian crossing points are based on new and revised plans that have been submitted as part of the appeal process. This has not been disputed by the appellant. Moreover, as highlighted in my preliminary matters above, the appeal process should not be used as an opportunity to evolve a scheme and the scheme before me as originally submitted does not include these additional elements.
37. As a result, I cannot be certain that the proposed mitigation measures would be sufficient to prevent an exacerbation of existing on-street parking problems that the evidence indicates are prevalent in the locality or that the proposal would have adequate pedestrian and cycle access or linkages to the wider network. Consequently, I conclude that the indicative proposal would materially harm highway safety. Accordingly, it would conflict with policies SP45 and TP01 of the TLP and paragraphs 110, 111, and 130 of the Framework.

Archaeology

38. The Council have raised concerns that the proposal fails to include sufficient information for the potential archaeological effects of the development to be adequately understood and evaluated.
39. The appellant has submitted a Geophysical Survey (Magnetic) Report dated May 2022 (the survey). The survey concludes that very few anomalies were revealed with none of archaeological interest but that it did discover '*a number of sub-circular magnetic anomalies*' that '*almost certainly*' reflect the presence of ferrous or brickwork material of '*no archaeological interest*'. It also stated that '*two other discrete anomalies are less easy to interpret and may represent pits of unknown origin or date*'.
40. In their statement the Council highlight that in January 2022, the Principal Archaeological Officer at Kent County Council advised two contractors who were seeking clarification on the scope of work likely to be needed for the assessment of the proposal that, in his professional opinion, both a geophysical survey and trial trenching would be necessary.
41. It goes on to highlight that in his opinion the survey was undertaken in poor conditions and excluded a part of the site that was highlighted with the medieval potential and potentially ploughed out barrows. It also states that the survey is

brief with only site wide plots of data provided. From the evidence before me I see no reason to disagree with this analysis of the survey.

42. Therefore, while I acknowledge that the requirement for trial trenching could very well be secured via the imposition of a suitably worded condition, given the highlighted shortcomings in the survey, I consider that the information submitted for the scheme before me to be insufficient for it to be properly assessed.
43. Furthermore, the proposed condition suggested by the appellant does not contain any requirement for the preservation and protection of archaeological finds of high significance should they be uncovered via the trial trenching, as highlighted by the County Council's Principal Archaeologist. Moreover, even if a suitably worded condition including this element were imposed given the that the survey did not cover the entirety of the site, the effectiveness of such work would potentially be limited or even undermined by the findings of a deficient or incomplete initial geophysical survey.
44. I note that the appellant's suggested condition mirrors one imposed on a different scheme in the same district (ref. APP/J2210/W/20/3260611). However, I do not have all the details of this case before me or the circumstances which led to that decision being made. In addition, the Council's statement highlights that the scheme was within the bounds of a working farmstead where previous activity would likely have affected the condition and significance of the archaeology, a fact which the appellant has not disputed. I therefore consider that the circumstances applicable to this scheme are not the same as those presented in this case, which I have determined on its own merits.
45. As a result, I find that the proposal fails to include sufficient information for the potential archaeological effects of the development to be adequately understood and evaluated. Accordingly, I conclude that it would cause substantial harm in this regard in conflict with policy HE01 of the TLP and paragraphs 194 and 203 of the Framework.

Affordable Housing, Infrastructure, and the Integrity of European Sites

46. The appellant has submitted a signed and dated unilateral undertaking which would enable the payment of financial contributions for health services, education services, a library, youth services, waste, social care, and the mitigation of impacts on European Sites. However, the Council has raised a concern in relation to the trigger for the construction and transfer of the affordable housing that would be provided.
47. The Council have indicated that they would be willing to accept the other proposed financial contributions set out in the submitted obligation and I am therefore satisfied that these would implemented as envisaged. However, as the submitted obligation is a unilateral undertaking and not a section 106 agreement, the Council is not bound by its terms and are not legally required to accept this element. As a result, I cannot be certain that the proposed affordable housing would be delivered in the manner envisaged.
48. Consequently, the submitted obligation would not likely be implemented in full. I therefore cannot be certain that the proposed development would be made completely acceptable in planning terms. I therefore conclude that the submitted planning obligation is not sufficient to mitigate impacts on local infrastructure and make the development acceptable in planning terms. Accordingly, the proposal would conflict with policy SP23 of the TLP thereby causing significant harm in this regard.

Other considerations

49. The appellant estimates the 5-year housing land supply to be approximately 4.3 years and this figure has not been challenged by the Council. According to the Council's officer report there were around 540 completions for the period 2020-21, a figure which the appellant has not challenged. Consequently, if this figure is used then the current shortfall would be approximately 378 dwellings.
50. Turning to the benefits, the development would potentially provide an additional 74 houses and a social benefit. There would also be some economic investment from both their construction and subsequent occupation. However, taken in the context of the shortfall in the 5-year housing land supply by my calculation using the above figures the proposal would contribute around 19% of the housing required to address this shortfall. This would not be a significant contribution and as a result I afford these benefits modest weight.
51. The proposal if implemented would enable financial contributions towards: primary, secondary and adult education; library, youth and social care services; GP surgeries and the mitigation of recreational activities on protected European sites. For similar reason to the above benefits, I afford these considerations modest weight.
52. In relation to the potential provision of affordable housing, given the uncertainty over the implementation of this element of the submitted obligation I afford this consideration little weight.
53. The proposal would also provide potential environmental benefits in terms of biodiversity net gain, tree planting, habitat creation and sustainable drainage systems. It would also provide an additional social benefit by providing public open space. However, given the proposal's size these associated benefits would also be modest.

Other Matters

54. In support of the proposal the appellant has cited other appeal decisions: (Ref. APP/Z2260/W/21/3280446) and (Ref. APP/J2210/W/20/3260611). However, I do not have all the details of these cases before me or the circumstances which led to those decisions being taken.
55. In addition, for the first scheme, the proposed affordable housing would have been delivered via a finalised S106 legal agreement with one of the main issues being the effect of the proposal on designated heritage assets and the second scheme was for full planning permission in a different district where the LPA was able to demonstrate a 5-year supply of deliverable housing land. I therefore consider that the circumstances applicable to these schemes are not the same as those presented in this case, which I have determined on its own merits.

Planning Balance

56. Both parties agree that the Council cannot demonstrate a 5-year deliverable supply of housing land for the district. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing up to 74 dwellings to assist the Council in addressing its undersupply as set out in Paragraph 11 of the Framework.

57. In relation to the adverse impacts of the proposal, these are substantial harm to the character and appearance of the area and its landscape in conflict with policies SP24, SP25, SP26 and QD02 of the TLP, policies BSP1, BSP2 and BSP9 of the NP2 and paragraphs 130 and 174 of the Framework. Other adverse impacts include substantial harms in terms of lack of affordable housing provision, highway safety and archaeology and moderate harm in relation to the loss of BMVAL in conflict with policies E16, HE01 and SP23 of the TLP and paragraphs 110, 111, 130, 194 and 203 of the Framework.
58. With regards to the potential benefits of the proposal, it would provide social, economic, and environmental benefits carrying some weight in favour of the appeal scheme. However, given the conflict with the development plan and those policies of the Framework identified above I find that, the proposal cannot be considered sustainable development in accordance with paragraph 11 of the Framework.
59. Therefore, within the context of paragraph 11 of the Framework, given the harms I have identified, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, including its presumption in favour of sustainable development.

Conclusion

60. The proposal would not accord with the development plan and the Framework when read as a whole and the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies contained within them. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR