



Appeal Decision

Site visit made on 8 November 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal Ref: APP/J2210/W/22/3313064

The Retreat, London Road, Upper Harbledown, Kent CT2 9AY

- 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 Paul Baker against the decision of Canterbury City Council.
 - The application Ref CA/22/01969, dated 9 September 2022, was refused by notice dated 14 November 2022.
 - The development proposed is erection of 2no. Residential Dwellings, together with associated garaging to existing property and new properties, and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the site is a suitable location for the proposal having regard to local and national planning policy, and the accessibility of the site to services, employment opportunities and facilities;
 - The effect of the proposal on the character and appearance of the local area with particular regard to the local landscape and the countryside as a whole; and
 - The effect of the proposal on the integrity of the features of European nature conservation sites situated at Stodmarsh, with particular regard to nutrient neutrality.

Reasons

Suitable location

3. The appeal site is a parcel of land located to the north of London Road. It contains a detached bungalow, 'The Retreat' and a large, grassed garden area. To the rear of the bungalow, and separated by a gated access is a scrap yard, set around hardstanding. The appellant indicates that, following the grant of a Certificate of Lawfulness (CA/18/00069), the entire site is in lawful use as a scrap yard. Both The Retreat and scrap yard are served by an existing means of access which runs between the bungalow and garden area.
4. Adjoining the site and fronting London Road are a pair of two storey, semi-detached houses which share a boundary with the scrap yard. The site is bordered by established trees and hedging on its boundaries to the east and west and Ancient Woodland to the north.

5. Policy SP4 of the Canterbury District Local Plan (2017) (LP) sets out the strategic approach to the location of development. It identifies that the urban areas of Canterbury, Herne Bay and Whitstable are the principal focus for development together with development at the rural service centres and local centres. The policy confirms that within hamlets, including Upper Harbledown, development will be permitted where it meets an identified local need.
6. There is no defined boundary for the settlement of Upper Harbledown. However, even if I were to conclude that the appeal site is within the settlement boundary, I have not been provided with substantive evidence demonstrating that the appeal proposal would specifically meet an identified local need. Consequently, the proposal would not accord with the provisions of Policy SP4 which are intended to prevent sporadic development.
7. The appellant describes the appeal site as previously developed land, as a result of the Certificate of Lawfulness for the scrap yard use of the site. Nevertheless, this would not negate the need for the development to meet the criteria outlined in Policy SP4.
8. I acknowledge that there is a local convenience store within 250 metres of the appeal site, and that this is closer to the appeal site than it is to many dwellings within Upper Harbledown. However, a single shop is unlikely to provide a wide range of goods and services that would be required by future occupiers. It is therefore likely that essential services, facilities and employment opportunities would not be readily accessible from the appeal site.
9. The appeal site is 400 metres from the 'Woodside' bus stop. From the submitted evidence, this provides, at best, buses on an hourly basis to Canterbury. Whilst offering some choice of means of travel to future occupiers the bus service is not so convenient that the site can be described as well-connected. The limited availability of public transport and lack of a range of shops and services mean that future occupiers would be likely to have a daily reliance on the use of private vehicles.
10. As such, the site is not a suitable location for the proposal having regard to local and national planning policy, and the accessibility of the site to services, facilities and employment opportunities. The proposal fails to accord with Policies SP1, SP4, HD4 and DBE3 of the Canterbury District Local Plan (2017) (LP). Amongst other things, these policies seek to limit development in the open countryside and minimise less sustainable forms of travel when accessing local services and facilities. For similar reasons the proposal would also fail to accord with the sustainability objectives of the Framework.

Character and appearance

11. This stretch of London Road is narrow and gently undulating. Properties are generally well set back from the highway, within large plots with tall, verdant front boundary planting. As a result, many properties do not have a prominent presence, and views from London Road are marked by limited built development, creating a rural landscape character on the northern side of the road.
12. The appeal site is unusual as The Retreat is clearly visible in views from the highway, and the neighbouring semi-detached houses, 1 and 2 Boundary Cottages, are located adjacent to the road and are therefore prominent.

However, the site's large grassed garden area, creates a visual and spatial buffer to the adjoining property to the east and contributes to the low density rural character of the area, reflective of the site's location within the open countryside.

13. The land slopes upwards from London Road to the rear of the site, with mature woodland visible beyond. The topography of the site and the immediate area means that the site has a moderate level of exposure to the surrounding area. Whilst not raised by the Council, the appellant has indicated that the site is within an Area of High Landscape Value.
14. Due to the proximity to The Retreat and 1 and 2 Boundary Cottages, the proposal would create a cluster of tight knit dwellings, which would be highly visible from the highway and which would be anomalous to the low density rural character of the area.
15. The proposal would result in the loss of a large part of the grassed garden area. The introduction of the additional built form from two dwellings, a garage, driveways, turning areas and entrance gates would have a harmful urbanising effect, increasing the proposal's prominence within the landscape.
16. The proposal would retain existing trees and hedgerows, whilst an additional landscape buffer would be planted on the site's southern boundary. However, due to the orientation of the site's open driveway it is likely that views towards the two dwellings and garage would remain, and the planting would provide limited mitigation.
17. The appellant refers to a recent planning application for an office building nearby. However, I have not been provided with any further details in relation to this, for instance drawings or an officer report.
18. For the above collective reasons, I conclude that the proposal, due to its urbanising effect, would be harmful to the character of the local landscape and detrimental to the countryside as a whole. I therefore find that it conflicts with Policy DBE3 of the LP which, amongst other things, expects development to be of high quality design having regard to the character, setting and context of the site and the way the development is integrated into the landscape.

European nature conservation sites

19. The Stodmarsh Nature Reserve and the Stodmarsh Special Protection Area (SPA) and Special Area of Conservation (SAC) are protected under European Law and managed by Natural England (NE). NE has identified that the water quality in the lakes at Stodmarsh has deteriorated and this is linked to the discharge of wastewater from new homes in the Stour Valley river catchment area, which the appeal site is within.
20. The need to protect and safeguard the Stodmarsh sites means development proposals are considered in the light of the Conservation of Habitats and Species Regulations 2017 (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. The consideration of any measures to avoid or reduce the harmful effects upon Stodmarsh and achieve nutrient neutrality can only be taken into account at the Appropriate Assessment stage of the Habitats Regulation Assessment. The general advice is that mitigation within such a development site should be considered first to minimise the contribution from the development itself.

Where it is not possible to provide or secure the necessary mitigation in this way, then mitigation on land outside the development can be considered.

21. The appellant submitted a Drainage and SUDs Strategy and Nutrient Assessment in support of the proposal. This provides calculations of nutrient loads using the NE calculator. The Assessment concludes that appropriate mitigation will need to be agreed with the planning authority and secured by planning condition or Section 106 agreement.
22. The appellant states that a suitably worded condition could have required either the storage of waste water within an on-site septic tank, and tanking of waste water off of the site. However, no further details have been provided. Alternatively, a suitable mitigation strategy could be contributed to once NE and the local authority identify suitable approaches, prior to occupation or construction.
23. The Council has confirmed that no means of strategic mitigation currently exist. However, even if a strategic solution were to exist, in this specific case, although the appellant was aware of the need, and willing to make the necessary contribution, there has been no planning obligation or other mechanism submitted to secure that contribution. As such, I cannot be certain that the mitigation measures would be forthcoming or implemented in an effective and timely manner.
24. Policy LB5 of the LP states that no development will be permitted which may have an adverse effect on the integrity of an SAC, SPA or Ramsar site alone, or in combination with other plans or projects. This is reflected in the advice within paragraph 180 of the Framework which clearly indicates that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats.
25. Without the necessary evidence and mitigation at the decision stage, I am unable to undertake an Appropriate Assessment. Given my duties under the Habitats Regulations, I find that the proposal would not accord with Policies LB5 and LB6 of the LP, which state that sites of international nature conservation importance and national nature reserves must receive the highest levels of protection. Nor would the proposal comply with paragraph 180 of the Framework as outlined above.

Other Matters

26. A previous planning permission (Ref: CA//18/1102) at the site was granted for an outline application for 2 dwellings with all matters reserved. I have not been provided with further details in relation to this, for instance drawings or an officer report. However, the evidence before me indicates that this permission has lapsed, and accordingly I afford this limited weight.
27. The Council's Statement indicates that the two dwellings in the previous permission were located to the west of The Retreat, within the existing scrap yard. It seems likely that, due to the screening provided by The Retreat, and 1 and 2 Boundary Cottages, this area would have been a less prominent location and the proposal would not have resulted in such a significant reduction of open space as the appeal scheme.

28. In addition, the reserved matters details, for instance relating to scale and appearance, were not approved. Overall, I attribute limited weight to the existence of a historic outline planning permission.
29. I understand that, in determining the previous scheme, weight was attributed to the benefits of tidying up the scrap yard and ceasing its use. Whilst the current proposal is not located within the scrap yard, the submitted drawings indicate that this area would be reinstated to garden land for use by the occupiers of The Retreat. This would ensure the removal and cessation of the unrestricted scrap yard use.
30. The removal of the scrap yard could be secured by planning condition, and as the return to garden would visually improve the appearance of this part of the site, reduce traffic generation associated with the scrapyards and reduce noise and disturbance to neighbouring residential occupiers, I afford this benefit moderate weight.
31. The Framework seeks to significantly boost housing supply. It also encourages the optimal use of underutilised land. However, any weight attributed to these factors is tempered by the Framework's expectation that developments prioritise pedestrian and cycle movements. The Framework also gives substantial weight to the value of using suitable brownfield land within settlements for housing, rather than land in the countryside as is the case with this proposal.
32. The proposal may be compliant with various other provisions of the development plan, for instance providing policy compliant car parking and cycle and waste storage and meeting the Nationally Described Space Standards. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.

Planning Balance and Conclusion

33. The Council acknowledge that the Housing Delivery Test 2021 shows that the Council had delivered only 65% of its housing target at that time.
34. However, whilst I acknowledge the significant shortfall in housing delivery, as the proposal relates to development which could result in the loss or deterioration of irreplaceable habitats, the application of policies in the Framework that protect areas or assets of particular importance, as given in footnote 7 of paragraph 11(d)(i), provide a clear reason for refusing the development proposed.
35. Alongside my findings in respect of the character and appearance, I have found that this site is not a suitable location for the proposal having regard to local and national planning policy, and the accessibility of the site to services, facilities and employment opportunities. I have also found that I cannot be certain that nutrient neutrality mitigation measures would be forthcoming or implemented in an effective and timely manner.
36. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR