



Appeal Decision

Site visit made on 3 January 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/U2235/W/23/3315964

Old Dairy Site, Old Ashford Road, Lenham, ME17 2DG

- 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 James Davey against the decision of Maidstone Borough Council.
 - The application Ref 22/501566/FULL, dated 23 March 2022, was refused by notice dated 5 August 2022.
 - The development proposed is residential development of an underutilised site, with view to erect 2no. three-bedroom semi-detached dwellings, together with associated parking and associated landscape enhancements.
-

Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - The effect of the proposed development on the character and appearance of the surrounding area, including the trees on the site;
 - The effect of the use of the proposed vehicle access on highway safety having regard to visibility along Old Ashford Road;
 - The effect on the integrity of the Stodmarsh Special Protection Area; and
 - Whether the proposed development would be in a suitable location having regard to relevant development plan policies.

Reasons

Character and appearance

3. The appeal site is unused and has been separated from the adjacent industrial area. It was last used for parking and storage. On the western side is a row of trees mainly comprised of leylandii which are alien to their surroundings. There is also dense native vegetation along the front and eastern boundaries. Immediately to the west are two bungalows whilst there is a group of houses on the opposite side of Old Ashford Road. To the east is a car wash facility. Owing to the amount of development in the vicinity the area is best described as being on the outskirts of Lenham rather than semi-rural.
4. As the site is undeveloped it currently provides a gap between the bungalows and the commercial activities and buildings. This would be filled by the proposal. However, in the context of the cluster of buildings that exist here the

open nature of the land makes no positive contribution to the surroundings. On the contrary, it allows views through to metal fencing and a large warehouse building to the rear.

5. Developing the site would lead to the loss of the hedgerow along the front boundary but this is an isolated and unkempt feature. Removing it and replacing it with more domestic planting would be entirely compatible with neighbouring frontages. In terms of the character and appearance of the locality, there is no overriding objection to building on the appeal site.
6. The proposed pair of dwellings would have a chalet style with accommodation in the roof. Although taller than the diminutive neighbouring bungalows, variation in the height of adjoining buildings is not unusual. In any event, the scale of development would be typical of many houses and compatible with the two-storey domestic properties nearby. Therefore, the detailed design would respond positively to local character.
7. However, the proposal would be close to an attractive line of mature and semi-mature maple and beech trees along the eastern boundary. Whilst some of the individual specimens are categorised as moderate or low quality or of impaired condition, they collectively form a pleasant and important feature in the local landscape. If retained, they would form a valuable barrier between the residential use of the site and the neighbouring commercial activities. A maple close to the road is proposed to be removed but the intention is to keep the others. According to the appellant's Arboricultural Survey Report the proposed building would be outside of their root protection areas.
8. The canopies of some of the trees would be likely to overhang the proposed houses which would be liable to lead to the need for pruning. More significantly, the sole ground floor flank window serving the kitchen/dining area of one of the houses would directly face the row over a short distance. This juxtaposition with the trees would severely curtail natural light into this internal space. Over time, together with possible concerns about subsidence, this could result in pressure to remove the trees, especially T16 to T19. This would disrupt the continuity of the belt and weaken this strong natural perimeter.
9. In short, siting the proposal so near to the trees means that it would not satisfactorily co-exist with a significant element of the existing local landscape. These adverse consequences would not be sufficiently compensated by new planting given that the scope for this at the front of the site would be limited.
10. Therefore, the design of the proposed building would be in keeping with existing built form as expected by Policy D2 of the Lenham Neighbourhood Plan. It would also accord with the general expectations for quality design in Policy D1. However, its siting in relation to the trees along the eastern boundary would be unacceptable. As a result, the proposal would harm the character and appearance of the surrounding area. It would fail to sensitively incorporate natural features worthy of retention and so be at odds with criterion v. of Policy DM1 of the Maidstone Borough Local Plan. It would also not maintain locally distinctive landscape features as expected by Policy DM30.

Highway safety

11. Adequate visibility could be achieved to the east of the appeal site on land in the appellant's control or within the highway verge. However, based on the

formula for stopping sight distances in *Manual for Streets* (DfT/DCLG, 2007), a splay of just over 81m should be provided to the west. This could not be secured since it extends over adjoining land.

12. The hedge at the front of The Marvel next to the appeal site is low and it would be in the interests of the occupiers to maintain it as such. However, the boundary hedge between this bungalow and Lanrig is higher. In practice this would impede the view of any approaching traffic for drivers exiting the appeal site. The vision that could be obtained has not been specified but it is likely to be well below the desired standard owing to ownership issues. The position is compounded by the bend in the road and as the wide access point would be positioned close to it rather than further east nearer to the existing gates.
13. There was a steady flow of traffic past the site at the time of my mid-morning visit in line with the data provided. This is to be expected given that Old Ashford Road links Lenham to the A20. The recorded 85th percentile speed is just below 40mph so that vehicles are not travelling slowly around the curve. Although there have been no recorded road traffic collisions in the immediate vicinity this is not determinative as to whether use of the proposed access would be hazardous.
14. Indeed, taking account of a combination of the usual speed and volume of passing traffic, the poor level of visibility that realistically would be available and the bend in the road, the use of the proposed access would have an unacceptable impact on highway safety. The development would improve vision across the appeal site for those exiting The Marvel. However, existing visibility in that direction is along a straight section of road and there is greater opportunity to see approaching vehicles on the far southern side. Therefore, this betterment does not outweigh the danger that would be caused by the proposed development.
15. As the proposal would not safely accommodate the vehicular movement generated through the site access, it would conflict with the expectations of criterion ix. of Policy DM1.

Integrity of the Stodmarsh Special Protection Areas

16. Stodmarsh is a Special Protection Area (SPA), a Ramsar site and a Special Area of Conservation. There are currently high levels of nitrogen and phosphorus in the water environment there and evidence that these nutrients are causing eutrophication. Because it would increase wastewater discharge, further housing development across the River Stour catchment area could exacerbate the existing impacts. To avoid this, the advice of Natural England is that development should achieve nutrient neutrality.
17. The proposal would incorporate a package treatment plant and a reed bed. These would reduce the amount of nutrients leaving the site. The appellant's calculations nevertheless show an increase in total nitrogen of 1.538kg per year and 0.121kg of total phosphorous per year. Therefore, notwithstanding the small scale of development and the efficiency of the measures proposed, the amount of nitrogen and phosphorous entering the catchment area would go up. This is not altered by the status of the site remaining as urban land.
18. Therefore, although the effect of two additional dwellings would be small, the proposal, in combination with other development, would have a likely

significant effect on the SPA. No mitigation is proposed to achieve nutrient neutrality. Therefore, following an appropriate assessment, the proposal would adversely affect the integrity of the Stodmarsh SPA. By virtue of the Conservation of Habitats and Species Regulations 2017, agreement cannot therefore be given to the project. Furthermore, the proposed development would not accord with Local Plan Policy DM3 which seeks to protect internationally designated sites of importance for biodiversity.

Location

19. Local Plan Policy SS1 sets the spatial strategy for Maidstone and identifies the expanded urban area as the principal focus for development with rural service centres, including Lenham, as the secondary focus. The appeal site is located outside the settlement boundary where protection is given to the rural character of the Borough. However, whilst development in the countryside is the least favoured option in the spatial strategy, it is not entirely ruled out.
20. The proposal would only be 30m from the defined edge of the settlement. Immediately to the west of the bungalows construction of 150 dwellings is under way following an allocation in the Local Plan and the grant of planning permission in 2018. Furthermore, within Lenham are a number of community services and facilities. The High Street, primary school and train station are a 10, 15 or 20 minute walk away respectively. Therefore, the proposed dwelling would be well related to the on-going expansion of Lenham and well placed to access various destinations without reliance on private vehicles.
21. Some journeys by these means may be necessary to access employment or for major shopping trips but it is unrealistic to expect all journeys from a rural service centre to be made by sustainable transport modes. Indeed, travel choices would be available to future residents and so the aim of the spatial strategy of delivering development at the most sustainable locations would not be undermined.
22. Nevertheless, Local Plan Policy SP17 provides that development proposals in the countryside will not be permitted unless they accord with other policies in the Plan and do not result in harm to the character and appearance of the area. In this case, the proposal would cause such harm due to the threat to the longevity and habit of existing trees. There would also be conflict with policies concerned with road safety and the natural environment. As a result, the proposal would fail to accord with Policy SP17.
23. Local Plan Policy DM5 indicates that the residential redevelopment of brownfield sites in the countryside will exceptionally be permitted, subject to meeting several criteria. However, whilst the site is overgrown and vacant it is not particularly unsightly. Having regard to this and the objections identified in relation to the trees, the proposal would not result in a significant environmental improvement. As such, the proposed development is not justified by this policy.
24. In terms of the broad spatial strategy the proposal would be in a suitable location. However, because the rural character of the Borough would not be safeguarded, there is a further objection to the scheme on policy grounds.

Other Matters

25. The Parish Council objects on other points including the desirability of retaining the site for employment use; conflict with the neighbouring car wash; potential contamination; accessibility and surface water flooding. However, there is limited evidence in support of these matters and none of them add to the objections already identified.

Conclusion

26. The proposal would not comply with the development plan and there are no material considerations to indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given, the proposed development is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR