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# Appeal Decision

Site visit made on 6 December 2023

**by Jane Smith MA MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> January 2024**

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**Appeal Ref: APP/E2205/W/23/3316800**

**Land Adjacent 16 Lloyds Green, Wittersham, Kent TN30 7NX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Joseph Titelboam against Ashford Borough Council.
  - The application Ref PA/2022/2518, is dated 25 September 2022.
  - The development proposed is described as 'to create 2 new houses'.
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## Decision

1. The appeal is dismissed and planning permission to create 2 new houses is refused.

## Preliminary Matters

2. The site was described on the application form as 16 Lloyds Green, which is the address of the adjacent dwelling. On the appeal form, the address was modified to 'land adjacent 16 Lloyds Green'. I have included this wording in the banner heading above, since it more accurately describes the location of the appeal site.
3. Amended plans were submitted on 19 January 2023, while the application was still under consideration by the Council and these plans were subject to further consultation with interested parties. I have considered the appeal based on the amended plans.
4. An Arboricultural Report<sup>1</sup> was included with the appellant's response to the Council's statement of case. This is dated May 2023, some months after the appeal was submitted. As such, it would not have been available when the Council's case was being prepared, or to interested parties notified about this appeal. Since the representations from interested parties include specific concerns about root disturbance and the effect on existing trees, there is a clear risk of prejudice if I were to have regard to this evidence, which they have not had the opportunity to respond to. For that reason, I have not taken the Arboricultural Report into account when considering the appeal.
5. In November 2023, all designated Areas of Outstanding Natural Beauty in England and Wales were re-branded as 'National Landscapes'. Therefore, where relevant in this decision, I have referred to the High Weald National Landscape. However, this does not change the legal status of the Area of Outstanding Natural Beauty, relevant local or national policy, or statutory requirements for

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<sup>1</sup> Marcus Foster Arboricultural Design & Consultancy, Arboricultural Survey Impact Assessment & Method Statement Report, dated May 2023

consideration of the effect of proposed development on the designated landscape.

6. A revised version of the National Planning Policy Framework (the Framework) came into force in December 2023, and I have taken its provisions into account. The main parties have had the opportunity to comment on whether the revisions to the Framework have relevance to their cases.

## **Main Issues**

7. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
8. The Council's statement of case states that, had they reached a decision, planning permission would have been refused for four reasons, encompassing the effect of the proposed dwellings on the character and appearance of the area, the effect on residential amenity for future and existing occupiers and insufficiency of information regarding ecology and the effect on existing trees.
9. Against that background, the main issues are:
  - the effect on living conditions for occupiers of 17 Lloyds Green and future occupiers of the proposed development, with particular regard to privacy,
  - the effect on the character and appearance of the area, taking account of its location within the High Weald National Landscape and the effect on existing trees, and
  - whether the proposal would protect or enhance biodiversity.

## **Reasons**

### *Living Conditions*

10. The appeal site is a parcel of land at the outer corner of Lloyds Green; a cul-de-sac of semi-detached dwellings laid out in a regular pattern. On two sides, it adjoins the rear gardens of 16 and 17 Lloyds Green. The only structure on the site is a small brick pumping station.
11. The proposed dwellings would be positioned just inside the rear site boundary, to maintain separation from the pumping station. In consequence, the proposed private amenity areas would be located in front of each dwelling. The amenity space for the four bedroom dwelling would be immediately alongside the rear garden of 17 Lloyds Green.
12. The proposed private amenity areas would be exposed to view from the first floor windows of 17 Lloyds Green, including from what appears to be a main bedroom window. The proposed kitchen and dining areas would also be exposed to overlooking from this neighbouring property, by virtue of the substantial glazed openings on the main elevation.
13. The Council has not alleged that the outdoor amenity space would be sub-standard in size. However, its layout in relation to the adjoining dwelling means that it would lack any areas which are not directly overlooked. As such,

occupiers of the proposed dwellings would not be provided with an acceptable standard of privacy.

14. Although no windows are proposed in the flank elevation, the proposal would include first floor bedroom windows on the main elevation, overlooking the adjacent garden at close quarters. Therefore, privacy for the occupiers of 17 Lloyds Green would also be compromised.
15. At the time of my site visit, there was no meaningful vegetation along the boundary with 17 Lloyds Green. This boundary is marked by a close boarded fence, which provides screening at ground level only. Given the very limited space between the existing and proposed dwellings, and their relative orientation, it would not be possible to introduce sufficient boundary vegetation or other screening, so as to establish an adequate level of privacy for existing and future occupiers.
16. For the above reasons, I conclude that the proposal would be unacceptably harmful to living conditions for occupiers of 17 Lloyds Green and future occupiers of the proposed development, with particular regard to privacy. This would conflict with relevant requirements in Policies HOU5 and HOU15 of the Ashford Local Plan 2030, adopted in February 2019 (ALP) and with principles set out in the Ashford Residential Space and Layout SPD 2011. These include that proposed development should not adversely impact amenity for nearby residents and that proposed dwellings should be provided with a sufficient area of usable private outdoor space, including areas which are not directly overlooked.
17. The proposal would also conflict with relevant paragraphs in the Framework, notably paragraph 135 which says that development should provide a high standard of amenity for existing and future users.

#### *Character and Appearance*

18. The existing dwellings at Lloyds Green are laid out in a formal arrangement fronting a cul-de-sac. They are all constructed in brick with tiled roofs. The majority have the same simple and symmetrical design, which is repeated along one side of the cul-de-sac and around the turning head. There are a few dwellings of a different repeated design on the opposite side. The scale of the existing dwellings is very consistent and their regular layout and appearance is a defining characteristic of the street scene.
19. The proposed dwellings would have a similar footprint and semi-detached, two storey form. However, they would not have the same level of symmetry in terms of their elevational treatment and would be sited outwith the established street frontage. Although the appellant states that the external materials could match those of the existing dwellings, that is not clearly demonstrated on the application drawings. These indicate a significantly different elevational approach, adopting external materials that are not clearly described, but are shown to be arranged in a strongly vertical format, with a very irregular layout of windows and doors.
20. The dwellings would not be particularly prominent from within Lloyds Green. The gap between 16 and 17 Lloyds Green is fairly limited and they would be largely screened behind these existing dwellings. Therefore, there would be limited disruption to the regular rhythm of the street scene. However, the

development would be conspicuous from the public right of way which provides access to the site and continues into the adjacent woodland. From this perspective, the contrasting design and appearance of the proposed dwellings would look highly incongruous, in comparison with the very regular appearance and conventional form of the established dwellings.

21. The dwellings would furthermore be positioned very close to the rear boundary of the site and would look cramped in comparison with the spacious rear garden layout to either side. The limited existing vegetation along the rear boundary could not realistically be retained due to the proximity of the proposed dwellings and access path. There would also be little meaningful opportunity to provide new soft landscaping, given the lack of space along the rear boundary and the land which would need to be kept open for access and car parking.
22. While the site currently adjoins an open field, evidence from the Council and interested parties highlights that planning permission exists for a new dwelling within that field. Therefore, if implemented in combination with the appeal proposal, the lack of space to the rear of the dwellings would appear even more pronounced.
23. There are existing trees and an area of woodland on the opposite side of the access track. Concerns have been raised by the Council and interested parties regarding the effect on those trees, including development within root protection zones. This would include the proposed hard surface to the access track, which would be close to several of these existing trees.
24. During my site visit I noted evidence that the track is already used by vehicles, although potentially on a much less regular basis. The ground was compacted and there were indications that some form of informal hard surface had been laid in places. Had I been minded to allow the appeal, further details could have been secured through planning conditions, so to ensure the use of an appropriate surface material and construction technique, minimising root disturbance. That being the case, any effect on the nearby trees would in all likelihood be very limited.
25. Although the Council alludes to the site's location within the High Weald National Landscape, I have not been presented with any specific evidence that the development would be harmful to the wider significance of the National Landscape. The site is on the edge of a settlement, where the development plan allows for development at a limited scale. It is currently a rather utilitarian parcel of land around a pumping station, which is contiguous with existing residential gardens. Furthermore, planning permission exists for an additional dwelling, which would project further beyond the existing settlement limits.
26. Based on the available evidence and my observations on site, any landscape impact would be highly localised and the National Landscape would be conserved. On that basis, there is no conflict with Policy ENV3b of the ALP. Nor would the proposal conflict with the provisions of the Ashford Landscape Character SPD 2011, which largely comprises evidence for assessment of landscape character outside the two National Landscapes in the Borough.
27. Nevertheless, for the reasons given above I conclude that the proposal would have a harmful effect on the character and appearance of the area, in terms of its incongruous design and cramped appearance. This would conflict with

relevant requirements in Policies SP1, SP6 and HOU5 in the ALP and with relevant paragraphs in the Framework. These policies, amongst other things, require that new development is well designed and responds to local character and the surrounding built environment.

### *Biodiversity*

28. Although the Council refers to insufficient ecological information having been submitted, the appellant has provided a Landscape and Biodiversity Statement<sup>2</sup> (LBS) dated January 2023. This was submitted to the Council while the application was still under consideration and I have had regard to its contents when considering the appeal.
29. The site is on the edge of a settlement and mostly comprises amenity grassland, which the LBS concludes is of limited habitat value. However, evidence from the Council also identifies a nearby area of Ancient Woodland and Local Wildlife Sites (LWS), referred to as Comb Wood and Church Wood. While the distance between the site and the edge of the Ancient Woodland and LWS has not been clearly specified by either party, I saw during my site visit that there is a significant area of woodland close to the site, in the general location indicated. I also noted that there is continuous mature tree cover between the appeal site and this woodland, along one side of the access track. In addition, representations from interested parties refer in some detail to local populations of protected species associated with the woodland, and potential risks arising from the topography of the site in relation to a woodland gill stream.
30. While the LBS alludes briefly to the presence of deciduous woodland near the site, its status as Ancient Woodland and LWS is not mentioned. As such, on the basis of the evidence before me, I cannot be confident that the effect of the proposed development on biodiversity has been adequately assessed. Nor can I be confident that the proposed mitigation and enhancement measures would be sufficient to safeguard biodiversity, when habitat connectivity around the perimeter of the site is taken into account. In addition, the recommendations in the LBS rely to some extent on retention of the existing boundary hedgerow, which I have concluded would be unrealistic.
31. For the reasons given above, on the basis of the information before me, I am not satisfied that the proposed development would protect or enhance biodiversity. It would conflict with Policies ENV1 and ENV5 of the ALP and relevant paragraphs in the Framework. These policies require, amongst other things, that development should retain, conserve and enhance habitats including Ancient Woodland and ecological networks, and should avoid significant harm to Local Wildlife Sites.

### **Other Matters**

32. While a range of concerns have been raised regarding the proposed access and parking arrangements, vehicular access would be available, and parking would be provided within the site. The Council's Rights of Way consultee is supportive of the principle of surfacing the access road. Against this background, there is no substantive evidence that the proposal would be harmful in terms of the proposed access and parking arrangements or use of the public right of way.

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<sup>2</sup> Marcus Foster Landscape Design & Consultancy, Landscape & Biodiversity Statement, dated January 2023

33. Evidence from both parties indicates a modest shortfall in five year housing land supply, standing at around 4.5 years based on figures dating from 2021. While I am conscious that the revised Framework may have affected the Council's precise position in this regard, I have not been presented with any updated evidence to that effect.
34. The proposal would contribute two additional homes to the supply of housing, next to a settlement where a modest range of services and facilities are available. Set against that benefit would be the harm to living conditions for existing and future occupiers and the character and appearance of the area. The evidence also does not satisfactorily demonstrate that biodiversity would be safeguarded.
35. The relevant development plan policies are generally consistent with the Framework, which includes that development should be well designed, provide a high standard of amenity for existing and future users and avoid harm to biodiversity. I have therefore given the harm arising from the proposal significant weight, along with the consequent conflict with the development plan. This significantly outweighs the benefit arising from proposal's modest contribution to the supply of housing.
36. I therefore conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

### **Conclusion**

37. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

*Jane Smith*

INSPECTOR