



Appeal Decision

Site visit made on 6 December 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/J2210/W/23/3314235

**Land West of Herne Bay Road, Calcott, Sturry, Canterbury CT3 4NB
(opposite the Punch Tavern) Easting 617569 Northing 163068**

- 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 Nick Masters of Masters Knowles Developments Ltd against the decision of Canterbury City Council.
 - The application Ref CA/22/02231, dated 17 October 2022, was refused by notice dated 12 December 2022.
 - The development proposed is Erection of 4 residential dwellings, associated highways works and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.
3. On the same day, updated Housing Delivery Test (HDT) results were also published. These showed that delivery had improved from 65% in the 2021 results to 75% in 2022, making the Council now a 'buffer' authority. I have sought views from the main parties on this matter, and have taken those responses into account in this decision.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the integrity of habitats sites;
 - the effect of the proposed development on protected habitats and species;
 - whether the site is a suitable location for development with regard to the Council's spatial strategy, the effect on the character and appearance of the area, and access to services and facilities by means of travel other than the private car.

Reasons

Habitats Sites

5. It is not in dispute that the proposed development would result in increased pressure on the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The Council has also raised concerns about the effect of the development on The Swale SPA although this has not been acknowledged by the appellant. The appeal site is within the catchment for the Stodmarsh Nature Reserve Special Area of Conservation (SAC) and Ramsar site where new residential development is likely to have a significant effect on the qualifying features of the SAC as identified in the advice issued by Natural England with respect to nutrient neutrality.
6. While the evidence before me makes reference to the North Kent and Thanet Coast Strategic Access Management and Monitoring Strategies and an Appropriate Assessment with respect to the effect of the proposed development on the SPAs, I have not been provided with any of these documents. Nor is there any substantive evidence before me as to how the effects of the development on the SAC could be addressed.
7. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected sites, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal. Regulation 63(2) confirms that it is incumbent on any person applying for permission to provide such information as the competent authority may reasonably require for the purposes of assessment. I have not been provided with any such information, therefore it is not possible for me to fulfil this obligation. The use of a condition in such circumstances would not comply with the tests set out in paragraph 56 of the Framework as it would not be precise or reasonable in all other respects as the mitigation measures are not known if indeed mitigation is possible. It would also be contrary to the habitats regulations.
8. Even if I did have sufficient information to enable me to establish whether there would be a likely significant effect, either alone or in combination with other development which could be adequately mitigated, there is no mechanism before me to secure the mitigation. While the evidence refers to a willingness to enter into a planning obligation, there is not one before me. The Procedural Guide: Planning appeals – England is clear that any such obligations, for the purposes of this appeal, should be submitted no later than 7 weeks from the start date. The Planning Practice Guidance¹ is clear that a negatively worded condition requiring a planning obligation should only be used in exceptional circumstances. There are no such circumstances in this case.
9. Consequently, I cannot be certain that the proposed development would not have an adverse effect on the integrity of the habitats sites. It would therefore be contrary to Canterbury District Local Plan (July 2017) (LP) Policies SP6 and LB5 which taken together and insofar as they relate to this appeal, confirm that no development will be permitted which may have an adverse effect on integrity. It would also be contrary to the habitats regulations and Section 15

¹ Use of conditions Paragraph: 010 Reference ID: 21a-010-20190723

of the Framework insofar as it relates to habitats sites, which require all impacts to be mitigated against.

10. The Council's decision notice refers to LP Policy SP1. This contains a version of the requirements of paragraph 11 of the Framework. As this sets out principles for dealing with applications, it is not of direct relevance to this main issue. It also refers to LP Policies LB6 and LB9 which refer to nationally designed sites and species and habitats of principal importance which are not of direct relevant to this reason for refusal.

Protected Habitats and Species

11. The appeal site lies approximately 50m from the West Blean and Thornden Woods Site of Special Scientific Interest (SSSI) and ancient woodland. The Preliminary Ecological Appraisal (PEA) does not contain any assessment of the potential for the proposed development to affect the SSSI. LP Policy Paragraph 186 of the Framework is clear that development outside a SSSI which is likely to have an adverse effect on it should not normally be permitted and that development resulting in the loss or deterioration of irreplaceable habitats such as ancient woodland should be refused unless there are wholly exceptional reasons. There is insufficient evidence before me to allow me to conclude that there would not be any adverse effects on the SSSI.
12. The PEA also identifies the potential for there to be grass snakes, slow worms and common lizards on the site. These are all protected by The Wildlife and Countryside Act 1981. The further work recommended by the PEA to establish their presence or otherwise has not been carried out, despite reference to one in the appellant's evidence. I am mindful of the advice in Circular 06/2005² (the Circular) that "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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".
13. The proposed development does show a landscaped area which would include grassland and ponds. It is not in dispute that substantial biodiversity net gain could be delivered on the site. However, in the absence of surveys as to the presence of protected species, it is not known if this would be an appropriate or effective approach.
14. I therefore cannot conclude that the proposed development would not have an adverse effect on protected habitats and species. It would be contrary to LP Policy LB6 which requires that development that affects a SSSI will only be permitted where it has been demonstrated that the objectives and features of the designated area and overall integrity of the area would not be compromised. It would also be contrary to LP Policy LB9 which requires development to carry out appropriate ecological surveys. It would also be contrary to the advice in the Framework at paragraph 180 that planning decisions should minimise impacts on biodiversity and at paragraph 186 that significant harm should be avoided, adequately mitigated or compensated for.

Suitable Location

² Circular 06/2005: Biodiversity and Geological Conservation

15. The site is on the A291, opposite the Punch Tavern, with a bus stop adjacent. There are dwellings on the adjoining land at Farthings Wood Rise and a further dwelling and what appeared to be commercial buildings to the other end of the site. Notwithstanding, the undeveloped site contributes to the prevailing rural character and appearance of the area.
16. LP Policy SP4 sets the strategic approach to the location of development within the area. This seeks to direct development to existing urban areas, and establishes the settlement hierarchy for housing development. The site lies in the countryside, where LP Policy HD4 sets out the circumstances where new dwellings in the countryside will be allowed. It is not argued that the site would meet any of these criteria.
17. The proposed development would introduce four substantial dwellings and their associated double garages onto the site along with the access. This would inevitably urbanise the site. Given its linear nature, and the connection it would introduce to the neighbouring development, the urbanising effects would be further exacerbated. This would have an adverse effect on the rural character and appearance of the area.
18. There is a bus stop immediately adjacent to the site, and one on the opposite side of the A291. This would provide an option for future occupiers of the proposed dwelling which would reduce the dependence on the private car, irrespective of the lack of shelter, potential challenges in crossing the road and lighting, given the proximity of the site to the proposed dwellings. However, options for other methods of sustainable transport would be extremely limited and the appellant's own Transport Statement acknowledges that access to neighbouring towns is easy by car. Walking times to services and facilities, other than the bus stop, would be around 30 minutes or more. The footpath is narrow, unlit and immediately adjacent to a road with the national speed limit for much of its length. This is unlikely to present an attractive option, particularly in the dark or poor weather. Given the national speed limit and lack of cycle lane, it is unlikely that cycling would be attractive to families or less confident cyclists. A reasonable degree of reliance on the private car would likely remain.
19. I therefore conclude the site would not be a suitable location for development with regard to the Council's spatial strategy, the effect on the character and appearance of the area, and access to services and facilities by means of travel other than the private car. It would be contrary to LP Policies SP4, HD4 and DBE3 which, taken together and insofar as they relate to this appeal, seek to direct development to existing settlements, provide for circumstances when dwellings will be allowed in the countryside and requires the distinctive character of the district to be promoted. It would also be contrary to the advice in the Framework at paragraph 83 that in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and at paragraph 180 that the intrinsic character and beauty of the countryside should be recognised.

Other Matters

20. The Council did not provide any response with respect to the updated HDT. The appellant has highlighted that their case did not rely on the application of the presumption set out in paragraph 11 of the Framework. In any event, my findings with respect to the first main issue would mean that even if paragraph

11d of the Framework were engaged, the policies of the Framework with respect to habitats sites would provide a clear reason for refusing the development proposed.

21. There would be a benefit from the delivery of additional dwellings, particularly given the Council has not met the requirements of the HDT. There would also be the associated economic benefits of development during both the construction and occupation stages. The provision of an improved bus stop and layby would also be a benefit to both users of the bus stop and to the free flow of traffic. However, these benefits would be limited given the small scale of the proposal and localised nature of the improvements to public transport and operation of the highway. There is no mechanism before me that would secure the provision of further contributions with respect to public transport such as live bus times or tickets for future occupiers.
22. The Council did not identify any harm to the Area of High Landscape Value or any other landscape harm. No objection to the design of the dwellings has been set out. I have no reason to find otherwise. Electric vehicle charging points are now required by the building regulations. Appropriate provision for car and cycle parking would be provided. There would not be an adverse effect on the living conditions of neighbouring residents, and appropriate living conditions would be provided for future occupiers of the proposed dwellings. The site would not be required to make a contribution towards the provision of affordable housing due to its limited size. The development would be liable for CIL. However, these considerations amount to a policy compliant scheme which would be expected of any well-designed development. These considerations are therefore neutral.

Conclusion

23. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to suggest the decision should be made otherwise. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR