



Appeal Decision

Site visit made on 23 January 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Appeal Ref: APP/A2280/W/23/3326810

1 Primrose Cottages, Ratcliffe Highway, Hoo St Werburgh, Rochester ME3 8QF

- 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 Sean Dean (Fraction Consultants LLP) against the decision of Medway Council.
 - The application Ref is MC/22/2401.
 - The development proposed is a three bedroomed attached dwelling with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for a three bedroomed attached dwelling with associated parking at 1 Primrose Cottages, Ratcliffe Highway, Hoo St Werburgh, Rochester ME3 8QF in accordance with the terms of the application, Ref MC/22/2401 and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. I invited the parties to consider whether the revised Framework had relevance to this appeal and have taken account of the comments received in my decision.
3. I understand the Council is preparing a new Local Plan. However, I am not aware of the exact stage it has reached, the extent of unresolved objections or whether the policies concerned will be considered consistent with the Framework. Consequently, in accordance with paragraph 48 of the Framework, I give it little weight.

Main Issue

4. The main issues are:
 - whether the proposal would be in a suitable location with respect to the settlement pattern; and
 - the effect of the proposal on the integrity of protected European sites.

Reasons

Settlement pattern

5. The appeal site is located outside of defined villages and settlement boundaries so is in the countryside for planning policy purposes.
6. Policy H11 of the Medway Local Plan 2003 (MLP) restricts housing development in rural area to allocated sites and the confines of defined villages and settlements unless an exceptional justification can be made. Policy BNE25 of the MLP states development in the countryside will only be permitted if, under section (i), it maintains and wherever possible enhances the character, amenity and functioning of the countryside; and offers a realistic chance of access by a range of transport modes. In addition to these requirements, development in the countryside must also meet one of the criteria listed in sections (ii) to (vii) of Policy BNE25.
7. There is no suggestion that the site is allocated or that the proposal falls within any of the circumstances set out in sections (ii) to (vii) of Policy BNE25.
8. The site is close to a roundabout on the A228, about one to two miles from the centre of Hoo. It is within reasonable walking distance of bus-stops served by several routes to surrounding towns. During my visit I observed walking routes towards bus-stops that were well separated from the busy carriageway and could be easily accessed on foot from the appeal site. I also observed clearly sign-posted cycle routes and footpaths at the roundabout, close to the site, which would provide good access to local services and facilities in nearby Hoo.
9. Future occupants of the new dwelling would be likely to use a private car for some journeys, including at night. Nevertheless, I am satisfied on the evidence before me that there would be a realistic chance of access to and from the site using a range of transport modes other than the private car. In addition to services and facilities, these transport modes could facilitate access to employment opportunities in the area for future occupants of the development.
10. There is a small cluster of houses near the appeal site, and a large commercial site immediately behind them. This existing developed area is separated from the adjacent field by a clearly defined border, with a public footpath running alongside it. Surrounding countryside largely comprises open and undulating fields with occasional trees and hedgerows. The area is described by the Council as an Area of Local Landscape Importance, although there is little before me to identify the particular characteristics of this landscape.
11. As the proposed house would be developed next to an existing group of dwellings, it would not result in an isolated home in the countryside for the purposes of paragraph 84 of the Framework. Bearing in mind the proximity and access to rural settlements described above, the proposal would help to maintain the vitality of their communities as required by paragraph 83 of the Framework, notwithstanding the small scale of development proposed. The proposal would also be consistent with the Framework's objective of offering a genuine choice of transport modes in new development.
12. The new house would be similar in scale and appearance to its neighbours. It would be located within an existing residential plot, so would be seen as part of the existing group of dwellings when viewed from Ratcliffe Way, as opposed to functioning countryside. Views across adjacent fields when facing Primrose

Cottages would be somewhat restricted by the new house. Nevertheless, the openness of the countryside would remain visible from elsewhere on Ratcliffe Way, the A228, the roundabout and nearby public footpaths. For those approaching Ratcliffe Way down the public footpath next to the site, views are dominated by the large commercial use, the dual carriageway and the roundabout, so the proposal would not have a materially detrimental effect on them.

13. I therefore find the proposed development would maintain the character, amenity and functioning of the countryside surrounding the site, and would offer a realistic chance of access by a range of transport modes. Consequently, both requirements under section (i) of Policy BNE25 would be met. I am also satisfied the proposal's design would be appropriate to the character, appearance and functioning of the built and natural environment, in accordance with MLP Policy BNE1. However, the proposal would not satisfy the requirements of MLP Policy H11 or any of the criteria under sections (ii) to (vii) of Policy BNE25. Consequently, the proposal would not be in a suitable location with respect to the settlement pattern.

Integrity of protected European sites

14. The appeal site lies within the Zone of Influence of the three North Kent Marshes Special Protection Areas (the SPAs), which are also Ramsar Sites. These are the Thames Estuary and Marshes, the Medway Estuary and Marshes, and The Swale. SPAs are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
15. The SPAs form a contiguous swathe of coastal habitats along the north Kent shore, comprising a complex of brackish, floodplain grazing marsh, ditches, saline lagoons and intertidal salt marsh and mudflat. The designations reflect the importance of the area for wintering waterfowl, breeding waterfowl, breeding and wintering raptors, and a range of rare plant and invertebrate species.
16. The SPAs provide an important recreational and economic resource. On the evidence before me, the proposal, particularly when combined with other development in the area, would be likely to have a significant effect on these protected European sites. Consequently, under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.

Appropriate Assessment

17. The conservation objectives of the SPAs aim to ensure the integrity of the sites is maintained or restored. This includes maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats; and the population and distribution of each of the qualifying features within the sites. There is a threat to their integrity from public access and disturbance, including from recreational activities such as walking, cycling, dog walking and water sports.
18. It is likely the occupants of the proposed dwelling would visit the SPAs, resulting in increased recreational activity that could disturb the protected habitats and birds within the sites. Therefore, the development, alone and in

combination with other development, would be likely to have significant adverse effects on the integrity and conservation objectives of the SPAs.

19. The parties have agreed a financial sum to be put towards a programme of strategic mitigation measures set out in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy. Natural England has been consulted as part of this appropriate assessment and has confirmed that the agreed sum is sufficient to avoid an adverse impact on the integrity of the SPAs.
20. Although not contained within a legal agreement, I am satisfied on the evidence before me that the agreed sum has been received by the Council for the purposes of contributing to the strategic mitigation measures described above. I therefore find there would be no adverse effect from the proposed development on the integrity of the SPAs as designated European sites. Consequently, it would accord with MLP Policy BNE35, which reflects the requirements of the Habitat Regulations. The proposal would also be consistent with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Conclusion

21. For the reasons set out above, I conclude the proposed development would not have an adverse effect on the integrity of protected European sites.

Other Matters

22. Concerns have been raised about parking, highway safety, and the effect of the proposal on the character and appearance of the host dwelling and the other dwellings in the road. These matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. There is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
23. The proposal would create one dwelling, which would contribute to the supply of housing in the area. This would accord with the Framework where it seeks to significantly boost the supply of homes. The creation of one dwelling would also result in a modest economic benefit to the local economy through construction and future occupiers' use of local services and facilities. This would be consistent with the Framework's economic objectives and, as noted above, its support for housing that enhances or maintains the vitality of rural communities.

Planning Balance

24. The Council accepts it cannot demonstrate a five-year supply of housing land. On the evidence before me, which the Council does not dispute, the supply stands at approximately 3 years, which is a significant shortfall. In these circumstances, paragraph 11d)(ii) of the Framework states permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. For the reasons set out above, the proposed development would conflict with Policies H11 and BNE25(ii) of the MLP. The proposal would be supported by

other development plan policies. Nevertheless, I conclude the proposal conflicts with the development plan, read as a whole.

26. I have found the proposal would not result in an isolated dwelling in the countryside and would be located where it will help maintain the vitality of rural communities, thereby according with paragraphs 84 and 83 of the Framework. In addition, the proposed development would make effective use of previously developed land in meeting the need for homes, with accessible services, so it would also be supported by paragraphs 123 and 8 of the Framework.
27. Whilst the proposal would not fall within a type of development permitted within the countryside, it would not conflict with the purpose of protecting the countryside for its own sake, which is the thrust of MLP Policies H11 and BNE25. Furthermore, the proposal comprises minor development and would deliver an additional housing unit in a district that is falling well short of the level of housing supply required by national policy. The proposal's economic benefits, the absence of harm to the character and appearance of the area and the site's accessible location also weigh in favour of the proposal. I therefore attach limited weight to the conflict with the development plan policies.
28. Consequently, in accordance with Framework paragraph 11d)(ii), the weight of the harm I have found would not significantly and demonstrably outweigh the collective weight of the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies and indicates permission should be granted.

Conditions

29. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
30. The condition requiring a Construction Environmental Management Plan (CEMP) is necessary to mitigate risks to highway safety and impacts on neighbouring occupiers during construction. It is a pre-commencement condition because mitigation needs to be agreed before any works on site take place. The appellant has agreed this condition.
31. Conditions are necessary to ensure on-site car parking provision accords with the requirements of MLP Policies T1 and T13; and to secure cycle storage to promote active travel. The condition on refuse/recycling storage is necessary to achieve good refuse management.
32. The condition relating to materials is necessary to secure the satisfactory external appearance of the development. The condition regarding boundary treatments is necessary for the same reason, and to protect the living conditions of neighbouring occupiers.
33. Justification for the wholesale removal of freedoms to carry out small-scale alterations and extensions, erect buildings incidental to the enjoyment of the dwellinghouse, or to change the use of the dwelling, is not specific or precise enough to meet the tests of necessity and reasonableness.

34. A condition requiring energy efficiency and climate change mitigation measures is not necessary because it is not justified by development plan policy, and this is covered by another regulatory regime.

Conclusion

35. I have found the proposal conflicts with the development plan, read as a whole. However, other material considerations, including the presumption in favour of sustainable development, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be allowed.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: No 3426-001 Rev C Existing elevations and block/location plan; No 3426-002 Rev C Proposed floor plans and elevations.
- 3) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for:
 - i) the parking of vehicles of site operatives;
 - ii) loading and unloading of plant and materials;
 - iii) measures to control the emission of dust and dirt during construction;
 - iv) measures to control lighting during construction;
 - v) delivery, demolition and construction working hours.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 4) The external surfaces of the development hereby permitted shall be constructed in materials to match those of the adjacent building at 1 Primrose Cottages.
- 5) Notwithstanding condition 2, the development hereby permitted shall not be occupied until details, including a plan, of the position, design, materials, and types of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the dwelling is first occupied and shall thereafter be retained.
- 6) Notwithstanding condition 2, the development hereby permitted shall not be occupied until details of refuse/recycling storage shall be submitted to and approved in writing by the local planning authority. The

refuse/recycling storage shall be provided in accordance with the approved details before the dwelling is first occupied and shall thereafter be retained.

- 7) Notwithstanding condition 2, the development hereby permitted shall not be occupied until details of cycle storage facilities shall be submitted to and approved in writing by the local planning authority. The cycle storage facilities shall be provided in accordance with the approved details before the dwelling is first occupied and shall thereafter be retained.
- 8) The dwelling hereby permitted shall not be occupied until the area shown for vehicle parking spaces on drawing No 3426-002 Rev C has been drained and surfaced, and that area shall thereafter be kept available at all times for the parking of vehicles.

End of schedule