



Appeal Decision

Site visit made on 21 February 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal Ref: APP/E2205/W/23/3325963

**Land adjacent to Creed Farm, Charing Hill, Charing, Ashford, Kent
TN27 0NG**

- 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 Patel against the decision of Ashford Borough Council.
 - The application is Ref PA/2022/2906.
 - The development proposed is erection of 2 dwellings.
-

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 materially 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 22 November 2023 all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became National Landscapes (NLs). I have therefore referred to NLs in my decision and specifically referred to the Kent Downs AONB as the Kent Downs NL. However, for the avoidance of doubt, as the legal designation and policy status of AONBs are unchanged, I have continued to refer to the AONB where relevant.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the integrity of the Stodmarsh Special Area of Conservation, Special Protection Area and Ramsar site (the Stodmarsh habitats site);
 - the character and appearance of the area, including the Kent Downs NL; and
 - the living conditions of neighbouring occupiers with respect to outlook and privacy.

Reasons

Integrity of the Stodmarsh habitats site

5. Advice from Natural England issued in June 2021, reiterated in their comment on this proposal, set out that there were impacts on the Stodmarsh habitats

site arising from excessive nutrients from wastewater discharge within the Stour catchment area.

6. Foul sewers lie some 900m from the site, so it is proposed that the dwellings would be served by onsite package treatment plants. The Nutrient Assessment Technical Note provided by the appellant includes calculations for the increased nutrient loads for nitrogen and phosphorous. However, there is no justification for an assumed water usage level of 90l per person per day as the lower level. It also confirms that further site investigations would be necessary to confirm soakage rates design requirements. The Note acknowledges there would be a residual impact which could be addressed via a regional mitigation strategy. However, there is no such strategy at the current time. Even if I were satisfied that the residual nutrient loads had been appropriately quantified, there is no evidence before me of a strategic mitigation scheme for the proposal to contribute to, nor a mechanism to secure this.
7. The proposed development, in combination with other development, would therefore have an adverse likely significant effect on the integrity of the Stodmarsh habitats site by virtue of the nitrogen and phosphorous it would generate. It would therefore be contrary to Ashford Local Plan 2030 (February 2019) (LP) Policies ENV1 and HOU5 which, taken together and insofar as they relate to this issue, confirm that development which would have an adverse effect on the integrity of internationally protected sites will not be allowed, consistent with the Conservation of Habitats and Species Regulations 2017.

Character and Appearance

8. The appeal site forms part of an expansive private garden which is bounded to the rear by woodland. It lies between the existing dwelling at Creed Farm, and the dwellings at The Towers. It lies to the rear of The Apple Trees, where some properties front onto Charing Hill, but others lie to the rear. Development in the wider area is generally linear, following and facing onto Charing Hill.
9. The proposed development would not follow the prevailing pattern of development in the area as it would not have a direct relationship with Charing Hill. However, it would lie between properties which are also set some distance from the road and where the direct relationship is limited to the access. These properties are set a considerable distance behind the properties which do face onto Charing Hill. The proposed development would be sited closer to the surrounding built form than those dwellings and between existing development. Given the existing layout behind the road frontage, the proposed development would not be incongruous or uncharacteristic of the area.
10. The site lies within the Kent Downs NL which is designated for the purposes of conserving and enhancing natural beauty. Section 85(1) of the Countryside and Rights of Way Act 2000 (CRoW) places a duty on me to seek to further these purposes. Paragraph 182 of the Framework confirms that great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB, and that the scale and extent of development should be limited.
11. The appeal site has the appearance of a managed domestic garden, albeit an expansive one. It is distinct from the natural woodland to the rear of the site. This is also true of the large conifer hedge which lies within the site. While the proposal would inevitably increase the extent of built development within the NL, it would do so within an area which has a developed character at present.

The proposed dwellings would be set in spacious plots, and the grounds of the existing dwelling would remain expansive. The proposal would therefore not give the area a cluttered appearance. Perimeter planting is proposed to demarcate the boundaries of the garden, which would assist in integrating the development, and that beyond, into the NL.

12. The proposed development would therefore have an acceptable effect on the character and appearance of the area and would conserve the scenic beauty of the Kent Downs NL. It would therefore be in accordance with LP Policies ENV3b HOU5 SP1, SP2 and SP3 which taken together and insofar as they relate to this appeal, require the location, form and scale of development to conserve the Borough's natural environment including designated landscapes, sit sympathetically within the wider landscape and respond to prevailing local character. It would also be in accordance with paragraph 182 of the Framework.

Living Conditions

13. A neighbouring property at The Apple Trees sits close to the boundary with the appeal site which is marked by a close boarded fence and trellis panels. It has a number of large windows and doors on the rear elevation facing towards the appeal site and the conifer hedge that bisects the appeal site. Its garden lies mainly to the side of the dwelling. There is a further property whose private garden is also along the boundary with the appeal site.
14. The proposed dwellings would be set at least 22m from the neighbouring properties. There would be windows at first floor level in the proposed dwellings which would be able to see into the private gardens of both properties. However, this relationship would be typical of those found in residential areas and would not be materially harmful to the living conditions of occupiers of the existing properties. The proposed layout would introduce built form where there is none at present which would change the outlook from the neighbouring properties. However, there is a substantial conifer hedge on the appeal site at present which limits the outlook from the properties. The proposed layout provides for space around both dwellings which would allow views through from the closest dwelling at The Apple Trees. The effect on the outlook from that property would not be materially affected by the proposed development.
16. The proposed development would therefore have an acceptable effect on the living conditions of neighbouring occupiers with respect to outlook and privacy. It would be in accordance with LP Policy HOU5 which requires development to not adversely affect amenity for nearby residents and paragraph 135 of the Framework which requires development to achieve a high standard of amenity for existing users.

Other Matters

17. There would be a benefit from the delivery of additional dwellings, and the associated economic benefits during the construction and occupation stages.
18. It is not in dispute that the appeal site is a sustainable location with access to services and facilities, including public transport, within Charing. The highways impact of the proposed development would be acceptable as would the design of the proposed dwellings. These would provide acceptable living conditions for

future occupiers. The preliminary ecological appraisal has demonstrated there are no significant ecological features or protected species on the site. However these amount to a lack of harm and would be neutral.

Planning Balance

19. It is common ground between the parties that the Council cannot demonstrate a deliverable five year supply of housing land. However, the harm to the Stodmarsh habitats site I have identified means that there are policies in the Framework that provide a clear reason for refusing the development. Therefore, under paragraph 11d)i of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

20. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance with the development plan. 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