



Appeal Decision

Site visit made on 12 June 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2024

Appeal Ref: APP/A2280/W/23/3332412

**Land west of Meresborough Road and south of Moor Park Close,
Meresborough Road, Rainham ME8 8QT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Abbey Development Ltd against the decision of Medway Council.
 - The application Ref is MC/23/0246.
 - The development proposed is redevelopment of the site to provide 9 residential dwellings along with access and parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Landscape and Visual Impact Assessment (LVIA) and revised Ecological Impact Assessment (EcIA)¹ were prepared after the Council's decision and submitted with the appeal. A completed Unilateral Undertaking was also provided, which would secure financial contributions to mitigate the effect of the development on local infrastructure and Habitats Sites. The Council and interested parties have had adequate opportunity to comment on this additional evidence and I have taken it into account.
3. A revised plan was also provided while the appeal was in progress, clarifying the intended boundary treatment. This does not substantively change the proposal and the Council has had the opportunity to comment. I have taken the amended boundary details into account, and I am satisfied that there would be no prejudice to any relevant party as a result of my having done so.

Main Issues

4. The main issues are:
 - the effect on the character and appearance of the area, with particular regard to the effect on the Mierscourt/Meresborough Area of Local Landscape Importance, and
 - the effect on biodiversity.

¹ ACD Environmental: Landscape and Visual Impact Assessment & Ecological Impact Assessment, both dated October 2023

Reasons

Character and Appearance

Landscape Policy Context

5. The appeal site is within the Mierscourt/Meresborough Area of Local Landscape Importance (ALLI), as designated in the Medway Local Plan 2003 (MLP). Within ALLIs, Policy BNE34 of the MLP states that development will only be permitted if it does not materially harm the landscape character and function of the area, or the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. Where development is permitted, harm to landscape character and function should be minimised.
6. The MLP describes the ALLI as an area of traditional Kentish farm landscape with country lanes. Although there has been some development, and there are various urban fringe uses, these characteristics remain discernible in the pattern of small fields and narrow rural lanes. The MLP also describes the ALLI's important function as a buffer zone, counteracting the outward pressure of urban sprawl and maintaining the separation of settlements, and its value in providing recreation opportunities.
7. By virtue of its designation in the development plan, the ALLI can be regarded as a valued landscape for purposes of paragraph 180 of the National Planning Policy Framework (the Framework). This was the view reached in two previous appeal decisions² relating to larger developments on land including the appeal site, and I have no reason to disagree. While the Appellant disputes the site's value within the ALLI and the weight which should be attached to Policy BNE34, the principle that the ALLI should be treated as a valued landscape for purposes of the Framework has not been disputed.
8. Policy BNE34 takes a balanced approach between protecting the landscape and taking the benefits of development into account. As such, it is not a blanket policy of restraint, and it is consistent with the Framework's approach to protecting valued landscapes in a manner commensurate with their status. While the Council gave Policy BNE34 limited weight when approving a nearby housing development in 2016, in the more recent appeals referred to above, BNE34 was given full weight. Based on the evidence before me, I have no reason to reach a different view.

Effect on ALLI

9. The appeal site is a triangular parcel of land, which is regularly cleared of scrub and currently contains rough grass and low-level vegetation. There is a substantial tree belt along the boundary with Moor Park Close, at the edge of the built-up area. A scrubby hedgerow provides visual containment along the frontage to Meresborough Road, and the remaining boundary is enclosed with a metal fence, which at the time of my site visit was encased in vegetation.
10. There are a few existing houses on one side of Meresborough Road, north of the appeal site. This section of the road is relatively formally laid out, with a pavement and street lighting. However, the road then narrows. Alongside and beyond the appeal site it is a single-track lane, with a more leafy, rural

² Appeals ref: APP/A2280/W/19/3240339, 30 July 2020 and APP/A2280/W/21/3274932, 25 April 2022

character. To the east and south, the adjacent paddocks and fields are largely open, with sporadic urban fringe uses.

11. Public right of way GB12 (the PROW) follows the southern boundary of the site and continues into the countryside beyond Meresborough Road. There is also an informal footpath through the trees between the site and Moor Park Close. Both footpaths can be easily accessed from the adjacent housing estates.
12. The appeal site is not farmed. In the 2020 appeal decision, the Inspector commented that it has little intrinsic landscape or amenity value. However, the 2022 Inspector did not make a similar comment. The 2020 decision also referred to the site's 'current condition' at that time. I have reached my own judgement, taking into account its condition during my site visit. Although the site is small and enclosed, it contributes to the functions of the ALLI as described in the MLP. It is part of the buffer of countryside around the settlement. It lies outside the tree belt around Moor Park Close, which currently provides a strong, defensible boundary to the urban area. There is recreational access into the countryside via the PROW, from which much of the nearby housing, including the development to the southwest, is screened from view.
13. The proposal would significantly urbanise the site, introducing nine substantial detached houses outside the tree belt. Five of these would directly front Meresborough Road, at close quarters, each with its own vehicular access. The existing hedgerow and trees would be lost. The narrow rural lane would be widened, and a pavement added, giving it a more urbanised character. While the dwellings would be constructed at a low density, with appropriate external materials, neither factor would adequately mitigate the intrusion of urban development into the countryside.
14. Although the PROW would not be obstructed, the new housing would be conspicuous from it and also from the informal footpath. There would be a close boarded fence along the PROW, but that would not prevent the more domesticated character of the back gardens from being apparent, in harmful contrast with the existing context of open and undeveloped land. In longer views from the PROW, where it runs beyond Meresborough Road to the east, there would be a significantly elongated frontage of residential development, eroding the countryside setting around the PROW network.
15. The layout would allow only limited scope for soft landscaping along the rather exposed boundary with Meresborough Road. Along the PROW, the back gardens would be enclosed by a typically suburban close boarded fence. Both these boundaries would be weakly defined in comparison with the existing mature tree belt enclosing the urban area at Moor Park Close.
16. There would be no risk of merging with the adjacent settlement which is some distance away. The LVIA correctly identifies that there would be little impact on longer views. The LVIA also places some emphasis on the fact that the development would be seen in the context of existing housing on Meresborough Road. However, the function of the ALLI as a buffer limiting the outward sprawl of the urban area and providing recreational access into the countryside is given limited attention in the LVIA, which consequently underplays the adverse effect of the development on the valued landscape.
17. For the above reasons, I conclude that the proposed development would be harmful to the character and appearance of the area, with particular regard to

the effect on the Mierscourt/Meresborough Area of Local Landscape Importance. It would conflict with Policy BNE34 of the MLP and the Framework's provisions regarding valued landscapes, as summarised above. Having concluded that Policy BNE34 is consistent with the Framework, this is a matter to which I have given significant weight.

18. The proposal would also conflict with Policy BNE25 of the MLP, which allows for development outside settlement boundaries only where it maintains, and where possible enhances, the character, amenity and functioning of the countryside. This aspect of Policy BNE25 is broadly consistent with the Framework's recognition of the intrinsic character and beauty of the countryside. However, the restrictive approach set out in the remainder of the Policy is less consistent with the Framework and it carries less than full weight for that reason.

Effect on Biodiversity

19. The October 2023 EcIA provides updated ecological evidence, including additional protected species surveys. Based on its contents, the Council accepts that the site's suitability for reptiles is limited, and any effect on roosting bats could be mitigated through conditions. However, the potential loss of biodiversity through removal of grassland, scrub and soils is highlighted, as is the limited scope for landscaping outside the curtilage of individual dwellings. On that basis, the Council continues to allege that there would likely be a net loss of biodiversity, or at least that there would be no measurable net gain.
20. The EcIA acknowledges that there has been significant clearance of scrub, which was present when the site was surveyed in 2022. The maintenance regime has significantly reduced the level of vegetation, although there is still scrub around the perimeter. However, the hedgerow and the few remaining trees along Meresborough Road would be removed.
21. While the EcIA identifies potential for protected species to pass through the site, the survey evidence does not indicate that any such species are routinely present. Mitigation and enhancement measures are proposed, which could be secured through appropriate conditions. Although there would be loss of some site features which support biodiversity, the landscaping proposals would include compensatory planting and a range of habitat enhancement measures, largely around the perimeter. There is insufficient evidence to determine whether this would result in a measurable net gain, but there is equally insufficient evidence that there would be a net loss.
22. The proposal is not subject to the statutory requirement for biodiversity net gain, since the application was made before the relevant date. In the MLP, Policies BNE37 and BNE39 seek to prevent development which would harm important wildlife habitats or protected species, but do not include a requirement for net gain. The habitats on the site are of a limited and localised nature and there is no evidence that protected species would be harmed. While the Framework is supportive of proposals which deliver measurable net gain, it does not preclude development which falls short of that objective.
23. Taking all the above matters into account, I conclude that the proposal would not have an unacceptable effect on biodiversity, subject to the imposition of conditions to secure the avoidance, mitigation and enhancement measures set out in the EcIA. There would be no conflict with Policies BNE37 and BNE39 of the MLP, which focus on avoiding loss of important wildlife habitats or harm to

protected species. The proposal would adequately reflect the Framework's requirements to minimise impacts on biodiversity and improve biodiversity in and around developments as an integrated part of their design.

Other Considerations

24. Evidence from both parties confirms that the Council lacks a five year supply of housing, with supply standing at approximately 3.4-3.6 years according to the evidence provided with the appeal. Although a new Local Plan is under preparation, it remains at an early stage and there is little evidence that the shortfall will be addressed in the near future. On that basis, paragraph 11d of the Framework is relevant. Since locally designated landscapes such as the ALLI are not among the policies referred to in paragraph 11di, the so-called 'tilted balance' described in paragraph 11dii is applicable.
25. The proposal would contribute nine dwellings to the supply of housing and there would be some associated economic benefit through the construction process. It could be delivered relatively quickly, contributing to the supply of housing on small and medium sized sites. Although the site is outside the settlement boundary, there are services and facilities nearby, and these are accessible on foot via Meresborough Road. There is also access to public transport connections, so future occupiers need not be reliant on travel by car.
26. Substantial detached houses are proposed, which the appellant identifies as being under-represented in the existing housing stock based on the 2015 Strategic Housing Market Assessment³. However, this evidence is several years old, and its conclusions are fairly ambivalent about whether provision of larger housing should be sought, or the locally distinctive housing mix maintained. In the absence of up-to-date evidence of an identified local need for detached housing, I have given this aspect of the proposal very limited weight.
27. A high standard of energy efficiency and sustainable construction is proposed, but the Sustainability Statement responds to requirements in the Framework, MLP and Building Regulations. There is no clear confirmation that there would be significant benefits over and above those requirements and this is therefore a neutral consideration.
28. Contributions to local infrastructure would be secured through the Unilateral Undertaking. The Council has indicated that these are not required since the development would provide fewer than 10 dwellings. However, the table in paragraph 3.12 of the Medway Guide to Developer Contributions and Obligations 2018, updated 2023, confirms that housing developments with a combined Gross Internal Area of 1000sqm or more is also covered, and the development would exceed that threshold. However, even if I were to agree that the contributions are required, and the UU meets the tests in the Framework, the provisions of the UU would not go beyond what is required to address the effects of the development itself. Therefore, the financial contributions are a neutral consideration and not a net benefit.
29. The Council has previously permitted housing development within the ALLI, in two phases, southwest of the site. However, this is less conspicuous from Meresborough Road and the PROW network. As such, the circumstances differ from the current proposal, which I have considered on its merits.

³ North Kent Strategic Housing and Economic Needs Assessment, Strategic Housing Market Assessment 2015

30. Although land within the ALLI is subject to consultation about potential urban expansion, as part of the Council's emerging draft Local Plan, this is in the context of alternative options for meeting housing needs and there is little certainty about the outcome. Despite the length of time since the ALLI boundaries were reviewed, I have given this rather uncertain evidence of potential future boundary changes very limited weight.

Planning Balance

31. The proposal would conflict with Policies BNE25 and BNE34 in the MLP. Policy BNE34 carries full weight, for the reasons given. While BNE25 carries reduced weight as a result of its restrictive approach to development outside settlement boundaries, the requirement that development maintains the character of the countryside is broadly consistent with the Framework. I have therefore given the conflict with the development plan as a whole significant weight, in the context of this specific proposal and its harmful effect on the character and function of countryside which is recognised as a valued landscape.
32. The harm to the ALLI would conflict with the Framework's provisions in relation to valued landscapes. While the harm would be localised, it would be experienced by those using the PROW network and informal footpath, undermining recreational enjoyment of the countryside. I have given these harmful aspects of the proposal significant weight.
33. The effect on biodiversity weighs neither for nor against the proposal, in the absence of any clear evidence of measurable biodiversity net gain.
34. The development would make a modest but meaningful contribution to the supply of housing, in an accessible location. However, I have given the other factors cited in favour of the proposal very limited or neutral weight. Considered collectively, the benefits of the proposal carry no more than moderate weight.
35. As such, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development, as articulated in paragraph 11d of the Framework.
36. As I am dismissing the appeal for other reasons, it is not necessary to address the effect on Habitats Sites in any further detail.

Conclusion

37. The proposed development would conflict with the development plan. No other material considerations, including the provisions of the Framework, indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR