

Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/E2205/W/24/3342137

Ashford Golf Complex, Etchden Road, Great Chart, ASHFORD, TN23 3BZ

- 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 Clarus Homes (Great Chart) Ltd against the decision of Ashford Borough Council.
 - The application reference is PA/2023/0395.
 - The development proposed is the erection of 10 detached dwellings together with all necessary infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's original reasons for its refusal of permission included concerns regarding the proposal's effect on ecology. Following the submission of additional evidence with the appeal the Council was satisfied that the potential ecological impact of the development had been fully considered and could be mitigated against. The Council subsequently stated that it no longer sought to defend that part of its reasons for refusal. I see no reason to disagree and consequently this matter no longer falls for consideration in my decision.
3. Policy COM3 of the Ashford Local Plan 2030 (adopted 2019) (the LP) is cited in the Council's reasons for refusal of permission. The policy concerns proposals which may affect allotments. However, any relevance of Policy COM3 to the appeal's main issues has not been demonstrated. As a result, I consider that it is not directly relevant to the Council's reasons for refusal. Accordingly, I have not considered Policy COM3 of the LP further in determining the appeal.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the draft Framework) and other changes to the planning system. The Secretary of State also made a written ministerial statement (WMS) entitled "Building the homes we need" on that date. The parties were invited to submit comments on whether these documents had relevance to the case.

5. A completed planning obligation is submitted with the appeal. It includes obligations regarding affordable housing and education, community learning, youth, library, social care and waste services. I return to the obligation below.

Main Issues

6. The main issues are:
 - Whether the proposed development would provide a suitable site for housing, having regard to the proximity of services and its effect on the appearance of the area; and
 - Whether the proposed development would result in the loss or deterioration of an irreplaceable habitat and, if so, whether there are wholly exceptional reasons and whether a suitable compensation strategy exists.

Reasons

Location

7. The appeal site lies to the west of Bears Lane in the parish of Bethersden and outside any settlement boundary set by the LP. It is consequently in the countryside for local policy purposes. The site houses the former Ashford Golf Complex, comprising a clubhouse, hardstanding carpark, driving range and pitch and putt course. It is bounded by ancient woodland and a railway line.
8. Policy HOU5 of the LP concerns residential windfall development in the countryside. It states that residential development at this location will only be permitted if the proposal is for one, or more, of several criteria, such as the re-use of redundant or disused buildings with an enhancement to the immediate setting. It is undisputed that the appeal scheme would not form one of these criteria. The proposal would consequently result in harm in achieving the planned strategy for the area. This harm would be limited in extent due to the relatively limited scale of development proposed.
9. Turning to accessibility considerations, previous planning applications for housing (ref 17/00469/AS and 18/01592/AS) at the "Bears Green" site (which is on the other side of the railway line from the appeal site) are referred to in support. That site appears to have been a golf course at the time when those applications were considered. Minutes of the planning committee on the matter state that, taking into account the situation at that time, the scheme would result in little or no increase in traffic movements and thus no significant additional unsustainable journeys.
10. The appeal site is disused and therefore currently attracts only minimal journeys. The appeal proposal consequently differs from the Bears Green scheme because the construction of ten 4+ bedroomed houses at the appeal site would result in a material increase in traffic movements to and from it. The circumstances of the Bears Green scheme were consequently sufficiently different that it does not form a precedent which provides support, on locational matters, for the development currently proposed.

11. Lanes in the vicinity are generally unlit with narrow verges, frequent bends, no foot- or cycleways, and carry a national speed limit. They would consequently be unattractive for regular use in all weathers by pedestrians and cyclists from the proposed development. Furthermore, the availability of public transport and services and facilities in the area is limited. As a result of these considerations, occupiers of the development are most likely to use the private car for the majority of their day-to-day trips.
12. However, whilst frequent private vehicular trips would be necessary for occupiers of the development to reach services and facilities, these would be short in duration due to the proximity of the site to surrounding settlements. The National Planning Policy Framework (2023) (the Framework) states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. In this regard I note that access to sustainable transport opportunities nearby, in Ashford, would be available to the occupiers of the rural development. Furthermore, whilst most trips from the development are likely to be to Ashford, occupiers would additionally provide some limited support for services in surrounding villages, so that the proposal would make a small contribution to the enhancement or maintenance of the rural community's vitality. For these reasons, the harm in accessibility terms would be limited.
13. Turning to the proposal's effect on the character and appearance of the area, three Landscape Character Assessments (LCAs) are referred to by the parties. It was established at the hearing that the LCA with the most specific relevance to the appeal proposal is the Ashford Local Development Framework Landscape Character Study (2005) (the LCS), produced by Studio Engleback.
14. It is submitted that the appeal site may be excluded from the "BHH 2 Etchden Woodlands" specific district landscape type in the LCS, due to the way the maps are drawn and to the lack of reference to the golf complex (which was present at the time the LCS was produced) at the site.
15. Nevertheless, the Ashford Borough Landscape Supplementary Planning Document (2011) (the SPD) states that "a complete landscape assessment has been achieved in the Borough". No reference is given within the LCS to the suggested exclusion of the small area of the appeal site from an otherwise apparently complete study covering an extensive area. Furthermore, location maps within both the SPD and the LCS indicate that the appeal site was intended to be included in the wider "Biddenden and High Halden Farmlands" area. For these reasons I am satisfied that the appeal site was included in the LCS assessment.
16. Paragraph 180a) of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by, amongst other matters, protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan).
17. The Council states that the proposal would lie within a valued landscape, with reliance on the findings of the LCS, and considers that the scheme would have an adverse effect in this regard. Nevertheless, whilst the SPD

advises that detailed information and guidelines should be obtained from the LCS, these two documents are not part of the development plan. The qualities identified in the LCS consequently do not form qualities set out in the development plan. Furthermore, any value attached to the use of the site as a leisure facility is not identified in the plan. Neither do the appeal site and its surrounding landscape have any statutory status as a valued landscape. Thus, it has not been demonstrated that the proposal's landscape setting should be considered "valued" in accordance with the provisions of paragraph 180a) of the Framework.

18. The LCS identifies landscape factors such as key characteristics, aesthetics, and impact of built development. Assessments of the condition and sensitivity of the landscape are then provided, contributing to an overall assessment of the area's ability to accommodate change and the appropriate land management or use. Policy recommendations are also set out.
19. The LCS reaches the following conclusions in respect of the Etchden Woodlands district landscape type. Its characteristic features are a gently undulating topography, woodland land use and restricted visibility. The assessment notes that the woodland has remained intact over time and has a high cultural and ecological value, giving rise to a strong sense of place. The policy recommendation is to conserve the distinctive character of the woodlands through appropriate management.
20. The deciduous ancient woodland of Hoad's Wood and Brickhurst Wood lies within the Etchden Woodlands landscape type, and forms the appeal site's immediate backdrop. The site's heavily wooded borders and the elevated railway line to one side of it produce a relatively enclosed quality. Nevertheless, the woodland's extensive and verdant appearance makes a significant positive contribution to the wider area's appearance. This is mainly evident from Bears Lane and from Ninn Lane (Viewpoint 11 according to the submitted Landscape Appeal Statement (LAS)). The latter viewpoint has a slightly elevated location from which the considerable extent of the ancient woodland can be appreciated.
21. The woodland's identified high value consequently endures today. The same is true for its intact quality, as the current extent of the woodland shown in the submitted plans largely reflects that shown in the LCS mapping of almost twenty years ago. Therefore the strong sense of place and distinctive character identified in the LCS have been conserved.
22. The conclusions of the LAS differ from those of the LCS. The susceptibility to change and landscape condition assessments within the LAS focus on the appeal site, and consequently omit an assessment of the woodland's contribution to the wider landscape character. They conclude that the landscape's condition is Medium/Low. Its susceptibility to change is assessed as Medium/Low. These assessments contribute to a conclusion that the overall sensitivity of the landscape in which the site is set is also Medium/Low.
23. However, the LCS judges the landscape's sensitivity to be High. The woodland, drove road and ancient banks contribute to this assessment. Its Condition is assessed to be Good. These conclusions are the optimum possible judgment allowed for by the LCS, in both cases.

24. In view of the above considerations and the inseverable landscape and visual relationship of the appeal site and woodland, the relevant area in this case should include both the appeal site and the wider landscape around it which may be influenced by the proposal. The landscape's High sensitivity and Good condition, as identified in the LCS, accurately describe the appeal site's landscape setting.
25. The pale materials of the existing club house and driving range structures at the site mean that they are visible within views from the road outside it and from the Viewpoint 11 (on Ninn Lane), as identified in the LAS's Viewpoint Location Plan. Nevertheless, the current structures have a generally low height, a functional leisure purpose and are relatively unobtrusive in the landscape. They are consequently subservient to the woodland within these views, as are scattered individual dwellings locally. Furthermore, the site's buildings and associated infrastructure are set well back from the road, with a considerable area of tussocky grassland, vegetation and hardstanding in the foreground. This area contains no structures and hence gives a spacious character to the woodland edge which reflects the rural location. Visibility of the Bears Green development is restricted by the intervening railway and vegetation, so that it does not provide a significant part of the appeal site's visual context from Bears Lane and Ninn Lane.
26. The proposed series of large two-storey dwellings would be set back from the road in a cul-de-sac layout and would have driveways, broad gables and domestic paraphernalia. These elements would result in a substantial development of a suburban appearance.
27. The scheme proposes to reinforce the site's hedgerow boundary with Bears Lane and to plant additional trees in the wider site. As this planting matures it would provide some additional screening of the development. The LAS considers that the long-term effect of the proposal on views from Bears Lane and Viewpoint 11 would consequently be neutral.
28. Nevertheless, the limited planting of trees between these viewpoints and the dwellings would still allow for views of them, and this would particularly be the case in winter, due to leaf loss from the deciduous species proposed. Furthermore, the planting would only be sufficiently established to offer any particular level of screening after several years.
29. The submission that the development would be less evident than the existing structures at the site from Viewpoint 11, and several other viewpoints, compares the existing and proposed materials of structures at the site. However, it does not take into account matters such as the change in scale, quantity and location of development. I am consequently unconvinced by this submission.
30. The retention of a 15-metre buffer between the woodland and the developed area would not reduce this harm, as it would lie on the other side of the dwellings from the identified viewpoints.
31. The scheme would consequently visually compete with the woodland within both close and medium-range views to less sensitive receptors such as motorists, to their passengers who are more likely to perceive the change, and to other more sensitive highway users, including users of the public right

of way leading to Viewpoint 11 to the east, over a considerable period of time. The low density of development proposed would not overcome the visual harm resulting from the scale, layout and appearance of the scheme.

32. I note the committee's findings in respect of the effect of the adjacent Bears Green scheme on local character and appearance, and I accept the submissions with regard to the need for the consistent determination of similar cases. Nevertheless, each application must be assessed on its own merits and the appeal site is a different site with individual topographical considerations and proposed planting, as set out above. The assessment of the adjacent scheme consequently does not provide support for the appeal proposal in this regard.
33. Although the proposed area for ecological enhancement to the west of the site may bring about some benefits to landscape character, much of the area is currently open and natural, so that these would be minimal in degree.
34. Whilst the Council has concerns regarding the appearance of the entrance gates to the proposed development, the appellant proposes that these could be alleviated by the use of a condition requiring the submission and approval of details in this regard. I consider that an acceptable appearance in this respect could be secured by the suggested condition, in the event of a grant of permission.
35. Nevertheless, the proposal would erode the landscape's strong sense of place and distinctive character which contribute to its good condition and high sensitivity, as identified in the LCS. Whilst the LCS acknowledges "residential pockets" as an "other" land use within its assessment of the Etchden Woodlands area, this is likely to reflect the sporadic single dwellings within large plots which characterise the area, and is not sufficiently specific to provide support for the development of several houses which is currently proposed. Furthermore, the LCS's lack of identification of areas which would be unsuitable for development does not indicate that all areas within it are considered by its authors to be suitable for development.
36. The SPD states that LCAs are to be used to promote the protection and enhancement of what is valued or distinctive about the landscape. The sensitivity of the appeal site's landscape setting is assessed by the LCS to be high, a conclusion with which I agree, for the reasons given above. This sensitivity arises in part from the woodland's extensive area and good mix of trees, which form characteristic features of the Etchden Woodlands district landscape type.
37. The appeal site currently contributes a spacious character to its extensive woodland edge which allows for these characteristic features to be appreciated. For the reasons above, the appeal scheme would fail to conserve the distinctive character of the woodlands and hence would not comply with the policy recommendation within the LCS. The overall harm in landscape and visual terms would be moderate due to the scale of development proposed immediately adjacent to the woodlands.
38. Thus, the proposal would not provide a suitable site for housing, having regard to the proximity of services and to its effect on the appearance of the area. It consequently conflicts with Policy ENV3a of the LP, which requires

proposals for development in the borough to demonstrate particular regard to particular characteristics, proportionately, according to the landscape significance of the site. These include the pattern and distribution of settlements; the setting, scale, layout and design of vernacular buildings; and any relevant guidance given in the SPD.

39. Further conflict exists with Policy SP1 of the LP, which sets a strategic objective to focus development at accessible and sustainable locations which utilise existing infrastructure, facilities and services wherever possible.
40. Additional conflict exists with Policy HOU5 of the LP, the aims of which are set out above.
41. Further conflict exists with Policy SP2 of the LP, which states that windfall housing development will be permitted where it is consistent with the spatial strategy and with other policies of the LP.
42. Additional conflict exists with the provision of Policy SP6 of the LP which states that development proposals must demonstrate careful consideration of, and a positive response to, character, distinctiveness and sense of place.

Habitat

43. The Council's decision notice cites concerns that the proposal fails to demonstrate that an appropriate buffer of at least 15 metres would be provided between the proposed development and the ancient woodland adjoining the site. Standing advice from Natural England (NE) states that such a buffer zone should consist of semi-natural habitats such as woodland and/or a mix of scrub, grassland, heathland and wetland. The Council considers that the proposed landscaping scheme indicates that the buffer would comprise only grassland, so that the area would be likely to be used for recreation and as an amenity area. It considers that this could result in indirect impacts on the ancient woodland comprising noise and disturbance, light pollution, damaging activities such as fly-tipping and impacts from domestic pets such as cat predation of wildlife within the woodland.
44. An Ecological Impact Assessment (EIA), produced in broad accordance with the relevant Chartered Institute of Ecology and Environmental Management guidelines, is supplied with the appeal. It recommends various mitigation and compensation measures which would seek to protect the ecology of the site and its surroundings. Measures in respect of the ancient woodland include the implementation of good construction practices to minimise impacts, the creation and planting of the buffer zone with native species, and the implementation of management practices for the buffer in order to allow it to develop into scrub and grassland habitat. The EIA does not anticipate any long-term negative impacts to the ancient woodland if its recommended measures are implemented.
45. A suggested condition requires compliance with the mitigation and enhancement measures set out in the EIA, and their retention and maintenance thereafter in accordance with a Landscape and Ecological Management Plan. A further suggested condition would require boundary treatments at the development to have regard to the NE standing advice.

46. In this case, I consider that the combination of ecological conditions proposed would provide sufficient compliance with the standing advice to protect the ancient woodland.
47. Thus, the proposal would not result in the loss or deterioration of an irreplaceable habitat. It consequently complies with Policy ENV1 of the LP, which states that proposals should include measures to retain, conserve and enhance habitats, including ancient woodland, as corridors and stepping stones for wildlife. Further compliance exists with paragraph 186c) of the Framework, which states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Further compliance exists with paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation, which states that ecological surveys should be completed before any permission is granted.

Other Matters

48. Great crested newts, a European Protected Species, are assumed by the EIA to be present at the site. I have had regard to my duties under Regulations 9(1) and 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended), and have considered the three tests in light of the proposed mitigation and compensation measures. In this case I have no reason to doubt that a mitigation licence would be issued.
49. Two site allocation policies in the LP are referred to by the appellant, who suggests that they show a need for well-designed and larger dwellings in the borough. These are Policy S41 (Chilham-Mulberry Hill) and Policy S42 (St Michaels Beechwood Farm) of the LP, which concern "exclusive individually designed home sites". The supporting text to these policies indicates that there is a need to provide opportunities for delivering housing for those people wishing to design their own, larger properties. Reference is additionally made to the occupation of a number of similar dwellings to those proposed by the appeal scheme at the adjacent Bears Green scheme, and to the overall housing target within Policy SP2 of the LP and the strategic objective within Policy SP1 of the LP to provide a mix of housing types and sizes.
50. Nevertheless, the details provided do not show whether there is an existing overall need for the type of housing proposed by the appeal in the borough and, if so, the extent to which such a need may have been met. Thus, they do not indicate that the appeal scheme would meet a current need for such housing. They consequently do not provide weight in favour of the scheme.

Other considerations

51. A planning obligation was provided during the appeal process. The appellant sought details of the necessary affordable housing contribution during the course of the appeal, but did not receive these. The submitted obligation consequently includes an affordable housing contribution which is less than the likely sum which would have been required according to the relevant development plan policy. Full details of the expected level of an alternative policy-compliant contribution are not before me. Nevertheless, the affordable

housing obligation accords with the statutory and Framework tests. Whilst the contribution proposed would be limited in extent, it would address the needs of a group with specific housing requirements. It consequently attracts moderate weight as a benefit of the proposal.

52. As the other planning obligations seek to offset the proposal's effect on existing infrastructure and services, they do not attract weight as benefits of the scheme.
53. The Framework and the WMS indicate the Government's objective to significantly boost the supply of homes. Nevertheless, at 4.39 years, the borough's degree of shortfall in 5-year housing land supply (5YHLS) is relatively limited, and the proposal would provide only a small number of homes. The provision of housing consequently attracts limited weight in support of the proposal.
54. The scheme would have a small and time-limited economic benefit during its construction phase, which may give rise to additional local employment. As the proposed development would be small in scale, minimal economic benefits would result from the support of occupiers of the development for local services and facilities.
55. The Framework acknowledges that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. Nevertheless, the subsequent list of means by which local planning authorities should promote the development of a good mix of sites does not refer to developments of the type proposed. Thus, the consideration attracts only minimal weight as a benefit of the scheme.
56. The proposed dwellings would generally include space for a study, so that the proposal would comply with the provision of Policy SP6 of the LP which requires development proposals to demonstrate flexibility and liveability. However, this compliance forms a neutral matter which consequently would not be a benefit of the scheme.
57. There is no dispute that the appeal site forms previously developed land (PDL). The Framework and the draft Framework state that planning decisions should give substantial weight to the value of using suitable PDL within settlements for homes. As the appeal site does not lie within a settlement, these provisions do not support the appeal scheme.
58. The submitted information does not indicate the level of any net gain to biodiversity which the proposal would achieve. This consideration consequently does not attract weight in favour of the proposal.
59. The LAS suggests that the area of habitat creation and restoration would be publicly accessible. However, the document states elsewhere that this would not be the case, and that the area would be accessed via a lockable gate. How any public access to the area could be made is consequently unclear. Thus, this does not attract weight as a benefit of the proposal.

Whether the proposal conflicts with the development plan as a whole

60. Locational policies are central to the development plan's aims. Conflict arises with a number of these policies. Their relevant provisions are consistent with the Framework and hence are not in fact out-of-date. It is undisputed that the Council's housing land supply is 4.39 years, and therefore that it cannot currently demonstrate a 5YHLS. Nevertheless, this is not a significant shortfall. As a result of these considerations, I give substantial weight to the proposal's conflict with the development plan.
61. The scheme would provide an affordable housing contribution to which the Council does not object, and consequently demonstrates some compliance with Policy HOU1 of the LP in this regard. It is undisputed that the contribution would be less than that which would be required to be fully policy-compliant, reducing the proposal's degree of conformity with the policy. This conformity consequently attracts moderate weight in support of the proposal.
62. Thus, taking into account policies that oppose and support the proposal, it conflicts with the development plan as a whole.

Paragraph 11d) balance

63. The development plan policies which are most important for determining the application are deemed to be out-of-date for the purpose of paragraph 11d) of the Framework, as a result of the borough's 5YHLS position.
64. I am therefore required to consider, as set out in Framework paragraph 11(d)(i), whether the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal. The application of these policies does not provide such a reason, in this case.
65. It is consequently necessary to apply the test in paragraph 11(d)(ii), which states that in such circumstances 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.
66. In terms of the proposal's adverse impacts, the Framework sets out an objective to support communities with accessible services. It states that planning decisions should ensure that developments are sympathetic to local character, including the surrounding landscape setting. It additionally sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. It indicates that the planning system should be genuinely planned, with strategic policies within development plans used to address priorities for the development and use of land in the area. These matters weigh against the scheme.
67. The proposal would make a small contribution to the enhancement or maintenance of the rural community's vitality. This attracts limited importance due to the small number of facilities which would be supported, and the small size of the development.

68. The appeal site is small and could be built-out relatively quickly, attracting minimal weight as a benefit of the proposal, as identified above.
69. The proposal would contribute a limited number of homes. Nevertheless, these would be physically separate from any settlement and would therefore be isolated homes of the type discouraged by the Framework (unless certain circumstances apply). Their location would consequently be unsuitable, so that the provision of housing forms only a limited benefit of the proposal.
70. I attach substantial importance to the locational harm in terms of accessibility, effect on local character and appearance and conflict with the planned strategy. Conversely, the proposal's benefits, as set out immediately above, attract only limited importance.
71. Thus, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal consequently does not benefit from the presumption in favour of sustainable development.

Planning Balance and Conclusion

72. The proposal conflicts with the development plan as a whole. The proposal does not benefit from the presumption in favour of sustainable development and there are no other material considerations which indicate that the decision should be made other than in accordance with the development plan. Thus, for the reasons given, I conclude that the appeal should not succeed.

C Beeby

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

I Bull, Chartered Town Planner and Development Consultant

C Dickens, Managing Director, Clarus Homes

A Macquire, Chartered member of the Landscape Institute

F Watkins, Land Consultant, Clarus Homes

FOR THE LOCAL PLANNING AUTHORITY:

C Marchant, Team Leader, Plan-making and Infrastructure

L Payne, Planning Officer

INTERESTED PARTIES:

K Brannan, Parish Councillor, Bethersden

DOCUMENTS

Email of 2 February from the appellant to the Council regarding developer contributions

Planning Committee minutes, application 17/469, 18 October 2017

Costs Decision, Appeal Ref APP/T2405/W/24/3342111