



Appeal Decision

Site visit made on 7 October 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2024

Appeal Ref: APP/E2205/W/24/3337074

Westlea House, Pluckley Road, Charing, Kent TN27 0AH

- 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 Mr Mike Exon against the decision of Ashford Borough Council.
 - The application Ref is PA/2023/0434.
 - The development proposed is the construction of two new dwellings utilising existing highway access with pedestrian footway, landscaping plus car ports.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an additional plan for illustrative purposes, to provide further clarification in relation to dimensions and parking arrangements. The parties have had the opportunity to comment on this information. As such, I am satisfied that no prejudice would occur to any party as a result of my consideration of their content.

Main Issues

3. The main issues are:
 - the effect of the proposal on the integrity of protected Habitats sites;
 - the effect of the proposal on the character and appearance of the area;
 - whether or not acceptable living conditions would be created for future occupants with particular regard to privacy and provision of waste storage and collection;
 - the effect of the proposal on the living conditions of the occupants of Briar Rose with particular reference to outlook; and
 - the effect of the proposed development on highway safety, with particular regard to parking provision and visibility at the site access.

Reasons

Habitats sites

4. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of the European Designated Habitats,

applying the precautionary principle. The Council has identified that the development has the potential to affect the Stodmarsh Lakes, which are nature conservation sites protected under European legislation. Where a plan or project is likely to result in a significant effect on a European site (habitats site), a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of its conservation objectives.

5. There is existing evidence that the levels of nutrients (nitrate and phosphate) in the water environment of the Stodmarsh designated sites are high. There is no disagreement between the parties that this is leading to the eutrophication of these sites, which is an excessive richness of nutrients in the water bodies that is causing plant growth, thereby threatening protected species and habitats comprising its qualifying features and for which it is a designated Habitats site.
6. In the meantime, Natural England advises that development proposals resulting in a net increase in dwellings are required to submit a nitrogen budget. This seeks to demonstrate no likely significant effect on the European designated sites due to the increase in surface and foul wastewater discharge from new housing within the catchment.
7. The proposal would deliver a net increase of two dwellings. Therefore, within the development, there would be an increase in nitrate and phosphate entering the Stour catchment from the new dwellings. The Nutrient Assessment provided by the appellant concludes that the increase in nutrient levels associated with the proposal would be small. Whereas this may be the case, the effect would remain an adverse one and the development, alone or in combination with other plans and projects, will result in likely significant effects, in the absence of appropriately robust avoidance and/or mitigation measures.
8. Mitigation measures would therefore be required if the proposal is to achieve nutrient neutrality. The Council is working on a Borough Wide Mitigation Strategy, which appears to be the off-site measure being relied upon by the appellant. However, it is my understanding that such strategy is yet to come forward.
9. Still, even if a strategic solution were to exist, in this specific case, although the appellant is aware of the need to address the matter, and may be willing to make the necessary contribution, there has been no planning obligation or other mechanism submitted to secure that contribution. As such, I cannot be satisfied that appropriate mitigation measures have been secured to achieve nutrient neutrality and thereby ensure that the development would not result in adverse effects on the Stodmarsh Lakes.
10. Applying the precautionary principle, in the absence of appropriate mitigation being secured, the appeal scheme would have likely significant effects upon the integrity of the Stodmarsh Lakes. For this reason, the appeal scheme would fail to adhere to its conservation objectives. Imperative reasons of overriding public interest do not exist, it has not been demonstrated there are no alternative solutions for the development, and no compensatory measures are secured. Therefore, section 63(5) of the Regulations precludes the proposal from proceeding.

11. Accordingly, the proposal would conflict with Policy ENV1 of the Ashford Local Plan 2030 (LP), where this policy seeks to safeguard European protected sites. Further, the proposal would conflict with the National Planning Policy Framework (the Framework), where it seeks to protect and enhance biodiversity.

Character and appearance

12. Despite its proximity to Charing, the site lies within the countryside for policy purposes, and it is located by the junction between Pluckley Road and Charing Heath Road, at the end of the ribbon of development that stretches out from Charing on the western side of Pluckley Road. On the opposite side of Pluckley Road there are examples of back-land development. The character of Charing Heath Road is rural, and it comprises of a ribbon of residential properties which adjoins the site, as well as swathes of open countryside on the opposite side. There is no prevailing style or appearance to the nearby dwellings, which together with their different plot sizes, varied setbacks from the road and space between built form provides the area with a pleasant and informal character.
13. The appeal site comprises part of the garden area associated with the property known as Westlea House, a large, detached dwelling located within a generous plot. The property is visually well contained, as it is enclosed by tall, mature vegetation on its boundaries. The site forms an envelope in line with the boundaries of neighbouring properties and its boundary treatment to Charing Heath Road makes a positive contribution to the leafy character of this road.
14. The proposal would introduce two new residential plots within the site. However, due to its spacious size, the property would accommodate the proposed development in a suitable layout. The size of the proposed plots would be commensurate to the size of the dwellings, and the dwellings would be provided with adequate gaps to their boundaries. As such, the proposal would not appear cramped in its receiving context and would integrate well with the local character.
15. The proposed layout plan shows the proposal positioned towards the rear of the property. As such, the portion of the property closest to Charing Heath Road would remain as garden space to serve the host dwelling. The key characteristics of the site, in particular its mature hedgerow and tree boundaries would be mainly preserved. The visual effects from the proposal would also be largely contained to the appeal site itself, apart from very constrained and intermittent views from Charing Heath Road through the retained boundary hedgerow and trees.
16. The layout plan also shows that the dwellings would be set amongst newly landscaped surroundings. Thus, views across the property towards the proposal would be filtered and limited by both existing boundary vegetation and new planting within the site's interior around the dwellings. Moreover, the site's rear boundary, which abuts open countryside, would be reinforced with native planting. This buffer of planting would assist with the transition to the open countryside beyond.
17. The property's boundary treatments would ensure that the proposed dwellings would not be prominent within the landscape, nor would they extend beyond the existing ribbons of development into the open countryside. Furthermore, with the mitigation of landscape planting secured by suitably worded

conditions, they would become largely screened and unobtrusive within the countryside setting.

18. As such, the proposal would not be harmful to and would have an acceptable effect on the character and appearance of the area. It would accord with LP Policies SP1, SP6, HOU5, HOU10 and ENV3a which, amongst other things, support development with a high-quality design, that is consistent with local character and built form, does not harm the surrounding pattern of development, provides a landscape buffer to the open countryside and retains landscape features which are important to local character. Additionally, it would accord with the aims of the Framework, where it seeks to conserve and enhance the natural environment.

Living conditions – future residents

19. Briar Rose is adjacent to the site and the evidence indicates that the rear facing first floor and loft windows within this dwelling would face towards Unit 2. However, the L-shaped form of Unit 2, together with its height and massing, would provide an acceptable degree of privacy to its outdoor space directly off the habitable rooms. In addition, as the dwelling at Briar Rose would be set away from the boundary with Unit 2, any views towards the wider garden area of Unit 2 would be sufficiently distant.
20. While there would be an area of garden between Unit 2 and the common boundary with Briar Rose, given its size and shape it is unlikely that it would be utilised by future residents for many types of outdoor activities, and there would be other spaces of sufficient utility, function and privacy within the plot. While Unit 2 would have a side window facing Briar Rose, this would not serve a habitable room and therefore could be secured as obscurely glazed by condition, were I minded allowing the appeal. For these reasons, I find it unlikely that future residents would experience unsatisfactory levels of loss of privacy or perception of overlooking.
21. The layout of the proposal would require the future occupants to take their bins some distance from the communal bin store to the bin connection point, shown near the proposed footpath. However, the appellant advises that the Council's generally recommended drag distance is of 30m, which is not disputed by the Council. The proposal would not exceed this drag distance, so it would therefore be compliant with the recommended distance. Even if future occupants would store the bins within their properties which would likely increase the drag distances, given the nature of the site, the drag distances would not be so substantial as to make it unmanageable for future occupants, nor would it result in an unsafe arrangement.
22. As such, the proposal could ensure acceptable living conditions for its future occupants, with particular regard to privacy and provision of waste storage and collection. The proposal would therefore accord with LP Policies SP1, SP6 and HOU5, where these policies support development of a high-quality design. Further, the proposal would accord with the Framework, where it supports development with a high standard of amenity for future users and seeks to minimise waste and pollution.

Living conditions – neighbours

23. Unit 2 would be a single storey dwelling, with a modest ridge height and roof sloping away from the common boundary with Briar Rose. In terms of its position, Unit 2 would be oriented at such an angle towards Briar Rose to limit the bulk of development closest to the boundary between these neighbours. As such, Unit 2 would not appear unduly conspicuous to the occupants of Briar Rose while using their garden. The distance between Unit 2 and the dwelling at Briar Rose would ensure that its windows that face towards the site would retain a sufficient level of outlook. Unit 1, which would also be single storey, would be sited at a significant distance from Briar Rose, so views towards this plot would be distant. As such, the proposal would not result in an unacceptable impact upon the outlook for the residents at Briar Rose.
24. As such, the proposal would not result in harmful living conditions for the occupants of Briar Rose, with particular reference to outlook. The proposal would therefore accord with LP Policies SP1, SP6 and HOU5, where these policies support development of a high-quality design that would provide a good standard of amenity for nearby residents. Further, the proposal would accord with the Framework, where it supports development with a high standard of amenity for existing users.

Highway safety

25. In accordance with LP Policy TR3a three parking spaces would have to be provided to serve Westlea House. The appellant has confirmed that the extent of hardstanding within the frontage of the site would remain unchanged following development. The site layout demonstrates that three parking spaces would be available to serve the host dwelling. On the basis of the proposed layout, and my site observations, I find that the existing area of hardstanding is sufficiently spacious to allow for access to the proposed dwellings without affecting the parking spaces for Westlea House or the manoeuvring space. The appellant further confirmed that the dimensions of the parking spaces would adhere to the Council's standards. As such, the proposal would not result in insufficient parking provision for the host dwelling.
26. The consultation response from Kent County Council Highways and Transportation indicates that the proposal would need to demonstrate the required visibility splays because the existing access would be widened. However, the appellant has confirmed that the proposal would not comprise any alterations to the existing access to the property. From the evidence before me, it follows that the need for the appellant to demonstrate visibility splays would not be required in this instance.
27. Owing to the modest number of proposed dwellings, the intensification of use of the existing access would likely be limited and it is unlikely that the proposal would significantly worsen any traffic congestion in the vicinity. In the absence of compelling evidence to demonstrate that the access would be unsuitable to accommodate the traffic movements associated with the proposal, I find that the scheme would be acceptable in this regard.
28. As such, the proposed development would have an acceptable effect on highway safety, with particular regard to parking provision and visibility at the site access. The proposal would comply with LP Policies TRA3a and TRA7, which set out the parking standards for residential development and support

development that can be reasonably accommodated in terms of capacity and road safety. Having regard to the Framework, the development would not result in any unacceptable impact on highway safety.

Planning Balance and Conclusion

29. There is no dispute between the main parties that the Council cannot demonstrate a five year supply of deliverable housing land. On this basis Paragraph 11 of the Framework would be engaged. However, the presumption in favour of sustainable development does not apply in circumstances like this where the proposal is likely to have a significant effect on a Habitats site, either alone or in combination with other plans or projects.
30. Although I have not found harm in relation to the effect of the proposal on the character and appearance of the area, living conditions of future residents and neighbours, and highway safety, this represents a lack of harm and so is neutral in the overall balance.
31. The social and economic benefits of delivering additional housing in a location close to the village are significant considerations weighing in favour of the scheme, particularly given the shortfall in housing supply. However, the development would result in likely significant effects to a Habitats site which attracts substantial weight against the proposal, and Regulation 63(5) of the Regulations states that the competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site. Therefore, I cannot allow the appeal.
32. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

P Terceiro

INSPECTOR