
Appeal Decision

Site visit made on 7 October 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Appeal Ref: APP/E2205/W/24/3338684

Land adjacent to 'Daven', Blindgrooms Lane, Shadoxhurst, Ashford, Kent TN26 1HN

- 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 David Happe against the decision of Ashford Borough Council.
 - The application Ref is PA/2023/0897.
 - The development proposed is the erection of two houses along with double carport/garage and associated works in side garden area.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the integrity of the European designated sites;
 - whether the site is a suitable site for housing having regard to its location outside the settlement boundary;
 - the effect of the proposal on the character and appearance of the surrounding area; and,
 - the effect of the proposal on the protected trees.

Reasons

Designated sites

3. The appeal site falls within the catchment area of the Stodmarsh Lakes European designated sites, which include a Special Protection Area (SPA), Ramsar site, Special area of Conservation (SAC), Site of Special Scientific Interest (SSSI) and National Nature Reserve. Stodmarsh Lakes are internationally important feeding grounds for rare bird populations and other water dependent species. They are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
4. Natural England has advised that there are impacts on nationally and internationally important wildlife sites in the Stour Valley arising from excessive nutrients from wastewater discharge. It is their view that a likely significant effect on the designated Stodmarsh sites cannot be ruled out due to the

increases in wastewater from new developments coming forward in the River Stour catchment.

5. Given this advice, I therefore consider that the effects of the proposed dwellings, both on their own and in combination with other development projects, is such that they are likely to have significant effects on the integrity of the sites.
6. The Habitats Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal.
7. Although recognising the problem, the appellant has been unable to put forward any specific proposals for mitigating the potential harm to the designated sites. They suggest the use of a Grampian condition requiring an agreement for the purchase of credits or appropriate financial contribution towards a mitigation strategy to be agreed prior to commencement of development.
8. The Council is currently investigating whether mitigation can be achieved at a strategic level but has yet to reach an agreed solution. In the absence of any local or strategic mitigation, I cannot be certain that the additional wastewater generated by the development would not contribute to a further deterioration in the water quality of the designated sites at Stodmarsh. As there is no agreed strategy or specific mitigation proposed by the appellant, given the environmental sensitivity of the site and the high level of certainty required to rule out adverse impacts on the integrity of the designated sites, it would not be appropriate to address this matter through the use of planning conditions.
9. Having regard to the precautionary approach taken by the Habitats Regulations, I conclude that the development could have an adverse effect on the nature conservation value of the Stodmarsh designated sites and would as a result conflict with the National Planning Policy Framework (the Framework) where it affords protection to Habitats Sites.
10. Although no development plan policy is referred to in the decision notice regarding this issue, I note that Policy HOU5 of the Ashford Local Plan 2030 (adopted 2019) (Local Plan) in its criteria for assessing residential development in the countryside, at (f)(vi) requires the proposal to not adversely affect the integrity of international and national protected sites. The appeal scheme would therefore conflict with part (f)(vi) of Local Plan Policy HOU5 as it would harm the integrity of the European designated sites.

Location

11. The appeal site is located just outside the settlement boundary of Shadoxhurst. Local Plan Policy HOU5 allows residential development close to the existing built-up confines of various settlements, including Shadoxhurst. This is subject to several criteria relating to, amongst other things, proximity to and the potential to maximise the use of public transport and sustainable access to local services.
12. Shadoxhurst has a fairly linear pattern of development, largely concentrated along Woodchurch Road, Hornash Lane and Tally-Ho Road. There is continuous development along the east side of Tally-Ho Road between Shadoxhurst and Stubbs Cross. The appeal proposal would effectively comprise infill development

between the host property and the adjacent group of houses on Blindgrooms Lane.

13. The addition of two dwellings would be proportionate to the size of Shadoxhurst and the services available. There is a post office/convenience store around 800m to the north of the appeal site at Stubbs Cross. There is a bus stop opposite the post office and another at a similar distance from the appeal site in the other direction towards Shadoxhurst centre. They are served by the 2A, a reasonably regular bus service linking to the larger settlements of Tenderden and Ashford. Both bus stops and the convenience store would be within 7/8 minutes' walk, the first 5 minutes or so would be along grass verges rather than a full pavement. Whilst I acknowledge this would not be an ideal arrangement, it would be for a fairly short stretch of this relatively quiet road. The verge is wide and would provide refuge from passing traffic.
14. The village services of Shadoxhurst would also be accessible by a short cycle ride from the appeal site. The surrounding land is reasonably flat and Tally-Ho Lane is a two carriageway road, subject to a 30mph limit along the route into the village centre, all of which would assist in making cycling a practical option.
15. The Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this rural context I consider that the appeal proposal would be reasonably well placed in terms of access to a choice of transport modes as an alternative to the private car. The proposal would be in line with the provisions of the Framework at paragraphs 83, 108 and 109 in this respect.
16. In respect of the principle of the location outside the settlement boundary, I conclude that the scheme would be in line with Local Plan Policies HOU5 and SP1 insofar as they aim to allow residential development in sustainable locations with access to services and public transport. Although the Council refer to Local Plan Policy SP6 in the reason for refusal, the policy relates to design and is not determinative on the matter of the location of development.

Character and Appearance

17. The local area is a relatively flat, agrarian landscape to the south-west of Ashford, interspersed with villages and small patches of woodland. The appeal site forms a large side garden of a house known as Daven, located on the north side of Blindgrooms Lane.
18. Blindgrooms Lane is a narrow road running off Tally-Ho Lane, one of the main roads through Shadoxhurst. The form of built development lining Tally-Ho Lane generally comprises one and two-storey regularly spaced detached houses set well back from the road in generous plots. Adjacent to the appeal site on Blindgrooms Lane there is a row of four detached houses, along with one further house opposite. Beyond this the road becomes an unmetalled track with no further built development.
19. The proposed houses would comprise a one and a half storey chalet design which would reflect the style of Daven as well as several of the dwellings along Tally-Ho Lane. The proposed dwellings would be of a size and footprint contingent with other houses in the area. Their detailed design and use of materials would fit with the character and appearance of housing development within Shadoxhurst.

20. Blindgrooms Lane has a somewhat rural character and the appeal proposal would effectively be infill development between Daven and the row of four houses further along the lane. The siting of the proposed houses on this garden land would not compromise the wider rural landscape in the form of the open fields to the south of and east of Blindgrooms Lane. The presence of domestic paraphernalia would not harm the rural character of the area largely since the appeal site is a domestic garden and would reasonably be expected to contain typical domestic items within its current function. Although there would be an increase in the amount of hardstanding as a result of the access and parking area, this would not be uncharacteristic of the area along a stretch of road where there are already several dwellings.
21. In conclusion therefore, the proposal would not be harmful to the character and appearance of the surrounding area. The proposal would accord with the overall aims of Local Plan Policy ENV3a insofar as it seeks to achieve development which would have regard to the landscape character of the area. Although not referenced in the reason for refusal, Local Plan policies HOU5(f) and SP6 seek new development to be of high-quality design. Given my findings set out above, the proposal would also be in line with these policies. It follows therefore that the proposal would conform with the aim of the Framework for development to be sympathetic to local landscape and built environment settings.

Trees

22. There is a protected woodland which surrounds the appeal site to the north and to the east where it occupies the strip of land between the appeal site and the adjacent house. The group Tree Preservation Order (TPO) for the woodland also incorporates the trees running along the boundary of the appeal site with Blindgrooms Lane. The woodland to the rear of the site is mixed, comprising mostly hornbeam coppice and oak. The roadside boundary includes hornbeam, oak, hawthorn, ash and cherry.
23. With the exception of the oak next to the entrance to Daven, individual specimens make a limited contribution in their own right and the value of this group of trees is derived from their collective contribution to the rural character of the lane. The proposal would involve constructing a single access from Blindgrooms Lane, which would mean the loss of a multi stemmed hornbeam shown as T07 in the arboricultural report accompanying the appeal. Having the benefit of the arboricultural report, along with my site visit, I am satisfied that the hornbeam to be removed would fit with category C as stated on the arboricultural report.
24. I note the proposed plan within the arboricultural report does not show the appeal scheme, but other evidence in the appeal is clear that only the hornbeam (T07) would need to be removed to allow the access to be built. Given that the proposed works near the trees would be limited to the provision of hardstanding and an access, I am satisfied that suitable tree protection measures and construction methodology could reasonably be secured by planning condition.
25. There are several existing vehicular accesses leading off Blindgrooms Lane. The addition of a further vehicular access resulting in the removal of the hornbeam would not significantly compromise the contribution the row of trees makes to the rural character of the lane. The proposal would not therefore result in unacceptable harm to the protected trees and would be in line with the aims of

Local Plan Policy ENV5 insofar as it aims to protect semi-natural woodland and rural lanes.

Planning Balance and Conclusion

26. Set against the harm identified, the proposal would deliver a net gain of two dwellings. The scheme would be an efficient use of land in a sustainable location. This would support the Government's aim of significantly boosting the supply of homes. However, the addition of two dwellings would provide a limited contribution in this context and I attach moderate weight to this benefit.
27. There would be temporary and ongoing economic benefits from the development through construction and use of local shops and services, but given the number of dwellings delivered, those benefits would be limited. There would be some sustainability benefits including the use of photovoltaic panels and the provision of electric vehicle charging points and I attach moderate weight to these benefits.
28. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites; the reported supply is equivalent to 4.39 years. In such circumstances paragraph 11 of the Framework says that permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal.
29. The protection of designated Habitats Sites is one such national policy. Given the potential for harm to be caused to the integrity of the Stodmarsh European designated sites, the presumption in favour of sustainable development is not applicable in this instance and is not therefore a material consideration in favour of the proposal.
30. The appeal scheme is in conflict with the development plan read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken otherwise than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

L Francis

INSPECTOR