

Appeal Decision

Site visit made on 2 September 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2024

Appeal Ref: APP/E2205/W/23/3331800

Tudor Cottage, Calleywell Lane, Aldington, Kent TN25 7DU

- 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 and Mrs C Skinner against the decision of Ashford Borough Council.
 - The application Ref is 22/00537/AS.
 - The development proposed is the construction of new dwelling with access and proposed footway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As a part of their appeal submission the appellant proposes to maintain the grass verge along the highway from the site leading to Aldington, instead of providing the footway. The appeals procedural guide¹ makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the Council, and on which interested people's views were sought. In this case, interested parties and consultees may have not had sight of the change.
3. Therefore, in the interests of fairness, this appeal must be determined based on the plans on which the Council made its decision, and which have been subject to consultation. To do otherwise could unacceptably prejudice the interests of other parties. As such, for the avoidance of doubt, I have determined this appeal on the basis of the plans originally submitted with the planning application which include the footway.
4. My attention is drawn to a previous appeal decision² for the construction of one dwelling within the site. I have had regard to that decision only insofar as it is relevant to my assessment of the main issues in this case, but I have determined the appeal based on the evidence and the details of the proposal before me.

¹ Procedural Guide: Planning Appeals – England (2024)

² Appeal Ref: APP/E2205/W/19/3241606

Main Issues

5. The main issues are:

- whether the proposal would be in a suitable location for housing, having regard to the development strategy for the area and access to services and facilities;
- the effect of the proposed development on the character and appearance of the area; and
- the effect of the proposed development on trees and ecology.

Reasons

Suitability of location

6. The appeal site is located within a loose group of dwellings and is close to the existing built-up confines of Aldington. Accordingly, it is not isolated in terms of the National Planning Policy Framework (the Framework). However, the site is not identified to lie within a settlement as set out in Policy HOU3a of the Ashford Local Plan 2030 (2019) (LP) and, as such, it lies within the countryside for policy purposes.
7. Consequently, the proposal falls to be assessed against Policy HOU5, which indicates that residential developments outside but adjoining or close to settlements, including Aldington, would be acceptable if they meet the specified criteria. Regarding this main issue, the disagreement between the parties lies on whether the proposal would meet criteria b) and d) listed under this policy.
8. Policy HOU5 criterion b) requires a development site to be located within easy walking distance of basic day to day services in the nearest settlement and / or have access to sustainable methods of transport to access a range of services. Criterion d) requires development to be located where it is possible to maximise the use of public transport, cycling and walking to access services. The supporting text to Policy HOU5 sets out that basic services such as a grocery shop, public house, play / community facilities and a primary school should be within a generally accepted easy walking distance of 800m to be considered sustainable.
9. The Officer report sets out the distances between the site and the services and facilities within Aldington, which are not disputed by the appellant. The proposal would be located within 800m of a post office / convenience store and fishmonger / butcher. However, other facilities and services in Aldington, including a public house, play / community facilities and a primary school are further away, with the latter being approximately 1200m from the appeal site.
10. The nearest bus stops are located within Aldington. From the Council's evidence, the service is relatively infrequent, since it operates approximately every two hours from Monday to Friday only, with no services in the afternoons/evenings. The limited offer of bus services would therefore be a disincentive to its use, thus making journeys by private car more practical and appealing to future occupiers.

11. In order to facilitate pedestrian access to Aldington, the proposal would deliver a footway connecting the existing footway on Calleywell Lane with the site. The footway would provide a safe access for future occupants and, additionally, would serve the residents of nearby properties which I understand walk to Aldington.
12. However, Aldington does not provide a full range of services or facilities and, as noted above, the basic services available within an easy walking distance of the site are limited. This, together with the limited offer of public transport, would result in future residents relying on the private car to access regular requirements such as secondary schools, full range of shops, employment, recreation and health services. This would significantly reduce the likelihood of journeys using sustainable modes of transport.
13. LP Policy SP1 sets out a number of strategic objectives to deliver the 'vision' for the Borough during the plan period, which are also core planning principles to which planning applications are expected to adhere. These objectives / principles are wide-ranging and include to focus development at accessible and sustainable locations and to promote access to a wide range of sustainable transport modes. For the reasons above, the location of the appeal site would therefore fail to promote such access.
14. Consequently, the appeal site would not provide a suitable location for new housing, having regard to the development strategy for the area and access to services and facilities. The proposal would conflict with LP Policy SP1 and Policy HOU5, where these policies seek to direct development to accessible locations. Further, the proposal would be contrary to the Framework, where it supports development that promotes walking, cycling and public transport use.

Character and appearance

15. Calleywell Lane has a verdant and rural character, due to the limited presence of development interspersed with areas of open land and mature vegetation. The roadside verges comprise grassed areas, hedgerows and trees, which provide an attractive and verdant foreground to the wider landscape when seen from the road.
16. The nearby dwellings are normally detached and set within generous plots. This contributes positively to the surrounding spacious character, befitting of its countryside surroundings. The appeal site comprises part of the garden area of Tudor Cottage. It is a substantial parcel of land which, due to its openness, undeveloped nature and presence of trees, makes a positive contribution to the character and appearance of the area.
17. A public right of way (PRoW), runs along the northern boundary of the site, providing access from Calleywell Lane to the open countryside beyond the site. The boundary between the site and the PRoW comprises of a low height wire mesh and post fence, together with sparse vegetation. This allows for views into the site and contributes to provide the PRoW with an attractive open character, notwithstanding the existing dense hedge along the other side of the PRoW.

18. The proposed development would introduce a new dwelling with associated residential paraphernalia within the site. Due to the substantial scale and size of the dwelling, together with its two-storey gable design, the proposal would appear as an intrusive residential development incursion into this green parcel of land, thereby eroding the contribution that the openness of the site makes to the rural character of the lane. The gaps to the plot's side boundaries would therefore fail to successfully mitigate the harm caused by the introduction of a domestic plot in this location. As such, notwithstanding the varied built form and pattern of development in the vicinity, the proposal would nonetheless appear incongruous when seen from Calleywell Lane. As such, the proposed scheme would harm the character of the area.
19. The trees along the site's front boundary would be retained, apart from one. Although new planting could be delivered through condition, the proposal would fail to maintain the character of the lane due to the introduction of built form and associated loss of spaciousness.
20. The proposed development would not physically affect the route of the PRow and means of enclosure and / or landscaping could be controlled by condition were I minded allowing the appeal. Nonetheless, whatever form this took, with the existing dense hedge on the other side, the boundary treatment would likely result in an enclosed route. As such, the gap to the dwelling would not overcome this harm. Therefore, the proposal would be harmful to the character and enjoyment of the PRow.
21. The proposal would introduce a substantial length of a 1.5m wide hard surfaced footway, which would be laid alongside the highway, where currently there are grass verges, hedgerows and trees that soften the road. As a result, the footway would appear as a significant and dominant built form that would urbanise this rural country lane, markedly at odds with its verdant character.
22. LP Policy HOU10 supports the redevelopment of residential garden land, provided that it would comply with Policy HOU5 and it would not result in significant harm to the character of the area. As set out above, I found that the proposal would not accord with Policy HOU5 and would be harmful to the character of the area. As such, the proposed development would not be supported under this policy.
23. I acknowledge that the detached garage, which seemed to be a concern in the previous case, has been removed. Further, I note that the scale of the dwelling has been reduced. However, this would not overcome my concerns relating to the loss of this open, green space to built development.
24. Considering the above, the proposed development would have a harmful effect on the character and appearance of the area, in conflict with LP Policies HOU5, HOU10, ENV3a, SP1 and SP6. Amongst other things, these policies support development of a high-quality design that promotes a positive sense of place and has regard to its local landscape character. Further, the proposal would be contrary to the Framework, where it supports development that is sympathetic to local character.

Trees and ecology

25. There is no disagreement between the parties that the residential plot would be acceptable in terms of its effect on trees and ecology, subject to appropriate conditions. However, there is no compelling evidence before me to demonstrate that the proposed footway would not lead to unacceptable arboricultural harm to the hedgerows, trees and any vegetation that provides a greening function to this rural area and is therefore worthy of retention. Similarly, without comprehensive evidence, I am unable to determine the full effects of the footway on protected species.
26. I therefore conclude that the appellant has failed to demonstrate that the siting of the footway would not have a harmful effect on trees and ecology. Accordingly, the development would conflict with LP Policy ENV1, which amongst other things, requires development to conserve or enhance biodiversity. Further, the proposal would be contrary to the Framework, where it seeks to protect and enhance the natural environment.

Other Matters

27. The appeal site is located within the Stour River catchment, which feeds into the Stodmarsh Lakes. The Stodmarsh Lakes are a set of lakes that are afforded a range of protection including, a Special Protection Area, Ramsar site, Special Area of Conservation, and a Site of Special Scientific Interest. Parts are also designated as a National Nature Reserve. There are excessive nitrogen and phosphorus levels in the Stodmarsh Lakes, and so the water within the Lakes is in an unfavourable condition and has the potential to further deteriorate.
28. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment (AA) of the project's implications in view of the relevant conservation objectives.
29. As such, I cannot rule out, in the first instance, that the proposed development would cause likely significant effects on the integrity of the Stodmarsh Lakes through increased residential use and associated nutrient discharge. Had I been in a position to otherwise allow this appeal, it would have been necessary to consider this matter within a separate AA. As the appeal is being dismissed for other reasons, I have not done so.
30. The neighbouring dwelling to the north, Symnel Cottage, is a Grade II listed building. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of this heritage asset. The significance of this heritage asset derives, in part, from its period design and materials. Symnel Cottage is set within extensive grounds and the PRoW separates both properties. The proposed dwelling would be at some distance from Symnel Cottage, so views between the proposal and this neighbouring cottage would be restricted by the existing hedge and trees within this property. Thus, the proposed dwelling would preserve its setting.

31. I note the third-party comments received in support of the proposal. However, the matters raised, individually or combined, do not justify allowing the development.

Planning Balance and Conclusion

32. The proposal would be acceptable in relation to living conditions of adjoining neighbours and parking. However, these are neutral factors that neither weigh for or against the development.
33. The appeal site would not provide a suitable location for new housing, having regard to the development strategy for the area and access to services and facilities. In addition, the proposal would be harmful to the character and appearance of the area for the reasons set out above, and it has not been demonstrated that the proposal would not harm trees and ecology. I therefore ascribe substantial weight to the harm.
34. Benefits of the proposal include the provision of a new dwelling, which would contribute to the housing stock within the Borough and would meet the Framework's objectives of boosting the supply of housing. This windfall site is a small one, so the development could be delivered quickly. The dwelling would incorporate solar panels as well as an air source heat pump, and there would be social and economic benefits during the period of construction and once the dwelling is occupied. Furthermore, the proposal would deliver ecological enhancements within the site. Given the Council's housing delivery position, moderate weight is ascribed to the benefits.
35. The Framework seeks to ensure that development promotes sustainable transport modes. It also requires that developments are sympathetic to local character, are visually attractive and seeks to protect the natural environment. Therefore, the conflict between the proposal and LP Policies SP1, HOU5, HOU10, ENV3a, SP6 and ENV1 should be given significant weight in this appeal.
36. It is common ground that the Council cannot demonstrate a five year supply of land and it is failing its Housing Delivery Test, which engages paragraph 11 d) of the Framework. This paragraph requires that planning 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.
37. The adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
38. 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