
Appeal Decision

Site visit made on 28 November 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/H2265/W/24/3340711

Aylesford Nursery, Rochester Road, Aylesford ME20 7EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr William King against Tonbridge and Malling Borough Council.
 - The application Ref is TM/23/01072/FL.
 - The development proposed is a change of use from a nursery (plants) to mixed equestrian and a holiday park comprising 7 mobile-homes, 4 serviced campervan places with a recreational area.
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Decision

1. The appeal is dismissed and planning permission for a change of use from a nursery (plants) to mixed equestrian and a holiday park comprising 7 mobile-homes, 4 serviced campervan places with a recreational area is refused.

Procedural Matter

2. The Government recently published a revised National Planning Policy Framework ("the Framework"). There are no material changes relevant to the substance of this appeal and therefore I am satisfied that no one will be prejudiced by the changes to the national policy context. All references to the Framework in this decision relate to the revised document.

Background and Main Issues

3. The Council's jurisdiction to determine the planning application for the appeal development fell away when the appeal was lodged. Based on the evidence before me the Council would have refused planning permission had it been able to do so. Having considered the evidence, including the Council's putative reasons for refusal, the main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area.
 - Whether the proposed development would be in a suitable location for tourist accommodation with particular regard to local planning policy.
 - Whether the disposal of surface water and foul drainage would be adequate.
 - The effect of the proposed development on highway safety.
 - The effect of the loss of the horticultural nursery.

Reasons

Character and appearance

4. Development in the area around the appeal site generally consists of a scattered pattern of small rural buildings and relatively sizable dwellings. The dwellings are often built in a period style and are set back from the road behind dense hedgerows, and in well planted plots. These are set within an essentially spacious and rural landscape comprising of pastoral fields bordered by hedgerows and interspersed with trees and the occasional woodland.
5. The appeal site consists of a sizeable dwelling and a group of small low height buildings. These are set back from the road behind a tall fence and a spacious front garden area, including areas of hardstanding. To the rear is a spacious field which the evidence suggests is in equestrian use. The small buildings on the appeal site include polytunnels in various states of repair. Although not traditional agricultural buildings they nonetheless have a discernibly rural and agricultural aesthetic.
6. Despite some hardsurfacing and areas covered in loose stone, the spaciousness of the appeal site, particularly between the buildings and the road, together with the agricultural aesthetic of the buildings, is generally consistent with the rural character and appearance of the area. Whilst not within the Kent Downs National Landscape (KDNL), the appeal site reinforces the established character and appearance of the area, and thus contributes positively to the intrinsic character and beauty of the countryside in this location.
7. Whilst the layout is described as indicative, the mobile homes would be relatively large and would be expected to spread across a good proportion of the appeal site. Together with the campervans, which would be expected to vary in size and appearance, the proposed development would intrude into the largely open and spacious part of the appeal site between the existing dwellings and the road. I saw at my visit that a few mobile homes stationed on the land were visible from the road and footpath above the boundary fences and hedgerow, and through the gaps in the hedgerow.
8. The boundary fence and hedgerow planting would provide some screening of low height domestic paraphernalia intrinsic to the use. However, the domestic appearance and holiday park aesthetic of the mobile homes and campervans would be clearly visible from the road above the boundary fence and access gates. They would also be visible in close distance views from the public footpath along the northeastern boundary, above the boundary hedgerow and through the gaps within it.
9. In these views the proposed holiday park element of the proposal would significantly change the character and appearance of the appeal site. It would contrast jarringly with the surrounding rural landscape and the mostly period style dwellings, and the utilitarian and often agricultural appearances of non-residential buildings within the area.
10. Consequently, the proposed holiday park development of mobile homes and campervans would appear harmfully discordant with the rural and pastoral character and appearance of the area. Even if I were to regard the caravans as buildings, they would not be well designed relative to their context.

11. No specific details are before me of the additional landscaping, including native species, that would be introduced to the appeal site. Additional boundary landscaping could assist in reducing the visual impact of the mobile homes and the campervans. However, planting would take several years to become established and could not fully screen views through the site access. I am not persuaded on the evidence before me that additional planting would be effective in forming an impenetrable barrier to views of the development, or that it would remain so in the long term.
12. The final appearance of the proposed mobile homes could vary, and the indicative layout represents one way in which they could be arranged on the appeal site. Nonetheless, I am not persuaded on the evidence before me that arranging the mobile homes in a different layout, or finishing their external surfaces in a dark colour would avoid or materially lessen the harm described above. Large parts of the appeal site are visible from the public footpath along its northeastern boundary. Arranging the mobile homes closer to site frontage or the boundary with the footpath could increase their prominence and visual harm.
13. Aerial imagery indicates that Polytunnels were tightly grouped together some distance from the site frontage. Even if the Polytunnels, some of which appear to have been removed, were greater in bulk and massing than the proposed mobile homes, and covered nearly twice the ground area, I am not persuaded on the evidence before me that they, together with stored horticultural paraphernalia, would have been anything other than consistent with the rural character and appearance of the area. I therefore disagree that the appeal proposal would have no greater effect on the character and appearance of the area than the horticultural nursery use.
14. I conclude on this issue that the appeal proposal would harm the character and appearance of the area, with particular regard to the appeal site's location in the countryside. It would therefore be contrary to Policy CP24 of the Tonbridge and Malling Borough Council Core Strategy, 2007 ("the CS"), and Policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document, 2010 ("the DPD"), insofar as they require development to, amongst others, respect the character and appearance of the site and its surroundings.

Whether the proposal is in a suitable location

15. The location of the appeal site is alongside a relatively busy highway with no footways between it and the nearest settlement of Aylesford. This would be expected to discourage walking and cycling journeys to and from the proposed development, including travel by rail from the closest station. This would be particularly so for tourists travelling with luggage and for more vulnerable groups such as children and persons with restricted mobility, especially during inclement weather. I have no evidence of any nearby bus stops to the appeal site.
16. There is no mechanism before me to secure a private collection service for holidaying guests between the appeal site and the railway. In any case it would rely on the private car and therefore would not constitute a separate mode of transport. For these reasons, the appeal development would not be appropriately located or accessible by a range of transport modes within the terms of DPD Policy DC5.

17. CS Policy CP14 seeks to restrict development in the countryside to those purposes listed, which include development for which a rural location is essential. Whilst a countryside location might be preferable for this type of tourist accommodation and the appellant's business model, the evidence advanced by the main parties in this appeal does not persuade me that it would be essential.
18. Visitors would likely need to travel to tourist facilities, including several nearby attractions¹. However, I see no basis on the evidence before me that they could not do so from tourist accommodation located in accordance with CS Policy CP14 and DPD Policy DC5.
19. For these reasons, I conclude that the proposed development would not be in a suitable location contrary to CS Policy CP14 and DPD Policy DC5.

Surface water and foul drainage.

20. The Council's suggested condition requires all surface water run-off to be directed to a porous surface. However, limited details of any drainage scheme are before me and I have no substantive evidence that ground conditions would be suitable for this method of drainage or that it would not increase flood risk.
21. Furthermore, the terms of this condition do not align with the requirements of Kent County Council (KCC) as the Flood and Water Management Authority, which has recommended that the planning application is not determined until a surface water drainage strategy has been submitted. Therefore, it has not been demonstrated that the proposed development would drain surface water satisfactorily and without increasing flood risk to the appeal site and land beyond it. The parties have not advanced substantive evidence to justify me departing from the advice of KCC.
22. There is limited evidence that the existing foul drainage system can accommodate flows of foul water from the proposed development without causing harm to the water environment. The Council's Director of Health and Housing requires full details of foul drainage that meet the Environment Agency's binding rules or be capable of meeting the requirements of any application for discharge consent. No such technical evidence has been submitted.
23. The potential risks to the water environment and the risks to people and property that could arise from inadequate drainage systems justify me taking a precautionary approach to this matter. I cannot be assured on the evidence before me that these potential harms could be addressed through a caravan site license. As such, technical evidence on this matter is necessary and it would not be acceptable to defer it to planning conditions.
24. For these reasons I conclude on this issue that the proposed development would increase flood risk and harm the local water environment, contrary to DPD Policy CC3 which states that development will not be permitted if it has an unacceptable effect on the water environment, including surface water.

¹ Appellant's Statement paragraph 4.3

Highway safety

25. Rochester Road is a relatively busy route between Aylesford and the A229. I observed regular traffic flows on the road, mostly cars and the occasional commercial vehicle. Whilst just a snapshot in time, I have no substantive evidence to demonstrate that the traffic conditions I observed were abnormal.
26. On the evidence before me, the proposed development is likely to generate relatively frequent vehicle trips, including by larger campervans. The horticultural nursery would have generated vehicle trips commensurate with its activities. However, there is limited evidence to show a comparison between the two uses, or that the appeal proposal would generate fewer vehicle trips, including fewer trips by larger vehicles.
27. The evidence before me does not demonstrate that the width of the appeal site access is sufficient for vehicles to simultaneously enter and exit the site, particularly larger campervans. If this were to occur a vehicle seeking to turn into the appeal site from the road would need to wait in the carriageway whilst a vehicle leaving the appeal site moves clear of the access and joins the road. In that scenario, the vehicle waiting in the carriageway would obstruct the flow of traffic along the road, posing a risk of collisions.
28. Given the 40mph speed limit between the site access and Aylesford, together with the alignment of the road, the driver of an approaching vehicle travelling towards the A229 from Aylesford may have sufficient time to react to a stationary vehicle waiting to turn into the site. However, I have serious concerns regarding vehicles travelling along the road towards Aylesford in the opposite direction.
29. I observed that those vehicles were travelling at relatively high speeds given the closeness of the appeal site's access to the stretch of road subject to the national speed limit. I have no substantive evidence to the contrary. As such, braking distances would be commensurately longer in the event of a driver reacting to a stationary vehicle obstructing the carriageway. Furthermore, curvature of this stretch and the roadside planting restricts visibility for approaching drivers to see stationary vehicles in the carriageway. This is highly likely to increase drivers' reaction times for braking.
30. Together, these factors lead me to conclude that the appeal proposal presents a significant risk of collisions and injury to road users. No substantive evidence has been advanced by the parties to justify reaching a different conclusion on this issue.
31. Whilst paragraphs 2.36 and 2.37 of the Council's statement indicate that it had no objection to the proposal on the grounds of highway safety, this is contradicted in paragraphs 3.17 and 3.18. Furthermore, third parties have raised highway safety as a ground for objection and the appellant has had an opportunity to respond to those objections through the appeal process. Therefore, the interests of the parties would not be prejudiced by my approach to this issue.
32. The consultation response from the Local Highways Authority confirms that the appeal proposal did not meet the consultation threshold for its involvement. Therefore, it does not alter my conclusion on this matter which is based on the evidence before me and my experiences at the site visit.

33. For these reasons, I conclude that the appeal proposal would have a significant unacceptable impact on highway safety contrary to DPD Policy SQ8.

Loss of employment land

34. The evidence before me, including the description of development, indicates that the extant use of the appeal site is a horticultural nursery. Whilst this use is likely to have employed persons and may have had a retail element to it, horticulture falls within the meaning of agriculture². Therefore, I am not persuaded on the evidence before me that a horticultural use would constitute an employment use for the purposes of CS Policy CP21 and I find no conflict with this Policy.

Other Matters

35. The proposal would make a small contribution to improving the availability of tourist accommodation in the Borough, which the Council³ recognises does not have a high tourism profile. However, there is limited substantive evidence, that there is shortfall of tourist accommodation in the area that the appeal proposal would address.
36. Occupiers of the proposed development would spend money in the local economy and a small number of jobs would likely be created to manage the accommodation. However, given the proposal's scale the economic benefits would be commensurately small and weigh only modestly in favour of the appeal scheme.
37. Land last used for agriculture is excluded from the Framework's definition of previously developed land (PDL). Even if the appeal site was PDL, the benefits of re-using a relatively modest area of such land would add limited weight in favour of the appeal proposal.
38. Apart from extracts from a Committee Report, I have limited details of the tourist development⁴ permitted by the Council. The permitted scheme was located further away from Aylesford within the KDNL, but was not found to harm its appearance. The evidence does not show that it is directly comparable to the scheme before me, and therefore it has limited relevance and weight to my considerations in this appeal.
39. I see no basis to reach a contrary view to the Council that the equestrian element of the proposal would not be harmful. The evidence indicates it is already in use on a personal basis. The appeal site is not within the Green Belt, nor would it be at risk of river or sea flooding. However, an absence of harm in these respects does not weigh in favour or against the proposal.
40. Converting the existing small buildings and polytunnels into viable businesses uses may not, as indicated, be feasible. However, this would not justify the appeal proposal's harm, nor would it alter my conclusions on the main issues above. The Framework requires planning decisions to enable well-designed new buildings for the growth of businesses in rural areas. As such, I am not persuaded on the evidence before me that the proposed development is the only option for the appeal site's reuse.

² Section 336(1) of the Town and Country Planning Act 1990

³ Economic Regeneration Strategy 2019-2023

⁴ TM/13/03354/FUL

41. Concerns over the Council's engagement at the pre-application stage and processing of the planning application does not affect the planning merits of the scheme and have not influenced my determination of the appeal.

Planning Balance

42. The appeal proposal would harm the character and appearance of the area, and would result in an unacceptable impact on highway safety. It would increase flood risk and harm the local water environment. There would be conflict with local policies that seek to control the location of tourist accommodation. I give significant weight to these harms and the resultant policy conflicts, sufficient to bring the development into conflict with the development plan when read as a whole.
43. The proposed development would conflict with Framework Paragraphs 88, 89, 136, and 187 insofar as they seek to ensure that development, including rural tourism, is sympathetic to local character and landscape setting, and respects the character of the countryside, which has intrinsic character and beauty. Furthermore, the proposal would conflict with Framework Paragraphs 116, 181 and 198, insofar as they require that development does not have unacceptable impacts on highway safety, increase flood risk or cause harmful pollution of the water environment.
44. The benefits of the proposal to tourism and the rural economy would accord with the Framework's economic objectives and support for business development. However, I have found that those benefits weigh only modestly in favour of the proposed development, and they are outweighed by the harms and policy conflicts I have identified above. The proposed development would not constitute sustainable rural tourism, contrary to Framework paragraph 88.

Conclusion

45. The harms and resultant conflicts with CS Policies CP14 and CP24, and DPD Policies DC5, CC3, SQ1 and SQ8 bring the proposed development into conflict with the development plan when read as a whole. The material considerations that weigh in its favour do not outweigh the harms or indicate that a decision should be taken other than in accordance with the development plan. The appeal should be dismissed and planning permission refused.

G Sylvester

INSPECTOR