



Appeal Decision

Site visit made on 10 December 2024

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2024

Appeal Ref: APP/E2205/W/24/3342583

Rook Toll, Faversham Road, Boughton Aluph, Kent TN25 4HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Pomery (Pomery Planning Consultants Ltd) against the decision of Ashford Borough Council.
 - The application Ref is PA/2023/0791
 - The development proposed is for the re-use of 2 No redundant Nissen huts to create 2 No dwellings and the demolition of redundant structures within the site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 12th December 2024. However, as the parties have had the opportunity to comment on the new document, I am satisfied that any changes to the Framework have not prejudiced any party in this case. Consequently, in reaching my decision I have therefore had regard to the new Framework published in December 2024, and any reference to Paragraph numbers are to this version.
3. Since November 2023 all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales are to be referred to as 'National Landscapes' (NL). Therefore, while the legal designation and policy status of AONBs are unchanged, all references to the North Downs AONB in this appeal will reflect that change.

Main Issues

4. The main issues in this appeal are:
 - whether the proposal would be in a suitable location
 - the effect of the proposal on the character and appearance of the area, including the scenic beauty of the NL,
 - ecology; and,
 - the effect of the proposal on the Stodmarsh Lakes and the water environment, east of Canterbury.

Reasons

Suitable location

5. 'Rook Toll' is located in the NL to the eastern side of Faversham Road (A251) which is a well-used highway with a footway that leads to the settlement of Ashford that is 2km distant. On the western side of the road there is a line of loose knit residential dwellings. The appeal site is bounded by a brick wall that shields an area of protected woodland¹ within which there are 6 redundant World War II Nissen hut type buildings that are non-designated heritage assets in a state of disrepair.
6. The proposal is to create new dwellings inside a pair of the existing huts on the hard standings at the eastern end of the site. The existing hut shells would be painted in a natural palette of colours and the dwellings would be constructed from cross laminated timber and prefabricated glazed boxes. Perforated aluminium sheets would replace some of the corroded shell panels. There would be Biophilic planting to create a microclimate between the existing roof and the new glass structures.
7. The main parties agree that the proposed dwellings would be located outside a settlement boundary. Nonetheless, the site appears to be served by a bus route to the nearby settlement of Ashford where day to day shops and services can be found, as well as a national rail link for the purposes of commuting, longer journeys and leisure trips.
8. The partially lit pathway is likely to be less attractive to some pedestrians at certain times of the day and during the colder months of the year. Therefore, the shops and services of Ashford would be more likely to be accessed by the occupiers of the new dwellings using a motor vehicle.
9. However, the number of journeys generated by two dwellings in addition to journeys generated by the existing properties along this part of Faversham Road would be relatively modest and similar in nature to those undertaken by the occupiers of dwellings nearby.
10. Therefore, I conclude in respect of a suitable location, that overall the proposal meets the aims of Policies SP1, SP6, HOU5, ENV3a and ENV3b of the Ashford Local Plan 2030 (2019) (ALP), Policies BAE NP3, BAE NP4 of the Boughton Aluph and Eastwell Neighbourhood Plan (NP), as supported by the adopted Landscape Character SPD which say, amongst other things, that planning applications are expected to focus development at accessible and sustainable locations.

Character and appearance

11. The main parties agree that the proposed development would be in the NL and therefore, for planning purposes located in the countryside. The Nissen Huts are well hidden from the wider views of the NL due to their previous military use as storage buildings for flame-throwing tanks and other equipment. Consequently, as the dwellings would be contained within these structures and the level of occupancy and related activity associated with them would be relatively low level, to my mind the proposed development would have minimal effect on the NL.

¹ TPO No 2 of 2011

12. Nonetheless, as the proposed scheme would be a windfall development in the countryside, it must meet at least one of the criteria found in Policy HOU5 of the ALP. In this case, the appellant suggests that the development would consist of the re-use of redundant or disused buildings and lead to an enhancement of the immediate setting and hence meet the aims of Policy HOU5.
13. Even so, the Council contend that the proposal would not have a direct link to the existing structures and would represent free-standing buildings. I find to the contrary. The abandoned and dilapidated buildings are clearly redundant. Moreover, the proposed development would integrate with the new dwellings by means of Biophilic planting and the insertion of perforated aluminium panels within the existing shells for the purposes of plant growth and for daylight and sunlight for the occupiers of the new dwellings.
14. In addition, the existing structures would be painted and repaired. The wider site would also be cleared of debris and a derelict caravan. Therefore, I am in no doubt that the creative proposal would lead to a modest enhancement of the immediate setting.
15. Accordingly, in respect of the character and appearance of the NL, the proposal would meet the requirements of Policy HOU5, which says that where a proposal is located within or in the setting of the NL, it will also need to demonstrate that it is justifiable within the context of their national level of protection and conserves and enhances their natural beauty, and for similar reasons Paragraph 189 of the Framework.

Ecology

16. A preliminary ecological appraisal was submitted by the appellant in support of his case in 2021, which the Council's Biodiversity Officer has confirmed is likely to remain valid and the Council have also mooted that ecological matters on the appeal site could potentially be addressed. However, notwithstanding the brief update to the assessment in 2023, I concur with the Council that the assessment for roosting bats is very limited. Indeed, while the updated report concludes that the roof spaces of the Nissen Huts offer negligible suitability for roosting bats, it has not been substantiated by a professional source whether certain trees on 'Rook Toll' offer potential roost sites for bats or not. Moreover, evidence is also scant regarding the effect of the proposal on the existing trees or the reinstatement of access routes to the proposed development, both of which are likely to have an influence on the current ecology of the site.
17. Therefore, while I have considered if ecological matters could be mitigated through the imposition of a condition/s in respect of the ecological integrity of the site, as there is limited evidence before me in respect of a mitigation strategy, any condition would lack precision as required by Paragraph 57 of the Framework.
18. Accordingly, I conclude the proposal would harm the ecological integrity and wildlife of the appeal site. It follows then, in respect of ecology and protected species on the appeal site, that proposal would be contrary to Policy HOU5 of the ALP, which requires that development must conserve and enhance the natural environment.

Nutrient neutrality

19. The appeal site is within the Stour River Catchment area which links to the Stodmarsh Lakes and the water environment, east of Canterbury. The environment is protected as a Special Protection Area (SPA), Ramsar site, Special Area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI). Parts are also designated as a National Nature Reserve (NNR).
20. Natural England's position statement makes clear that, given the requirements of the Conservation of Species and Habitats Regulations 2017 (CSHR), proposals for development must demonstrate water neutrality within the nationally and internationally designated protected sites, including the Stodmarsh Water environment. Moreover, that the nitrogen and phosphorous levels in the Stodmarsh Lakes are unfavourable and have the potential to further deteriorate.
21. I acknowledge that the appellant proposes that a condition is imposed to ensure that foul water on the site would be treated by a field drainage system linked to a package treatment plant which would be supported by the natural process of trees, plants and the possible creation of a shallow pond/s on or near the site and/or the existing foul water system.
22. In such cases, normally it would have been necessary for me as a competent authority to carry out an Appropriate Assessment in respect of water neutrality. However, whether the proposed on-site mitigation is possible or not, as I have found against the appellant on the third main issue, and therefore planning permission is to be refused, this matter need not be considered any further in this appeal.
23. Therefore, taking a precautionary approach, I conclude that the proposal would give rise to an adverse effect on the integrity of the site and be at odds with HOU5 of the ALP, which requires that developments should not adversely affect the integrity of international and national protected sites.

Other Matters and Planning balance

24. The Council cannot demonstrate a 5-year housing land supply. As such, Paragraph 11(d)i of the Framework is normally engaged. However, the proposal would be in the NL. As such footnote 7 of the Framework is clear that the requirements of 11(d) do not apply in this case.
25. I acknowledge that the scheme would offer some economic and social benefits. For example, employment associated with its construction, patronage of local services such as pubs, restaurants and shops and the benefits associated with the provision of two new dwellings. Moreover, without prejudice and subject to the acceptability of a separate planning application determined by the Council, that the site could be opened to the public with signage boards related to the historic interest of the site. However, as the extent of these benefits are likely to be small-scale, I attribute this limited weight.
26. Consequently, I conclude that, even in combination, the potential benefits of the proposal do not outweigh the substantial harm I have found above.

Conclusions

27. Whilst I have found in favour of the appellant on the first and second main issues, the proposal would harm the ecological integrity of the site. As such, the proposed development conflicts with the development plan taken as a whole., and as there are no material considerations of sufficient weight to indicate that a decision should be made other than in accordance with the development plan, I conclude that the appeal should be dismissed.

J E Jolly

INSPECTOR