
Appeal Decision

Site visit made on 5 November 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

Appeal Ref: APP/E2205/W/24/3340179

The Silvers, Selling Road, Chilham, Kent CT4 8BH

- 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 Scott against the decision of Ashford Borough Council.
 - The application Ref is PA/2023/1231.
 - The development proposed is the erection of a new dwelling.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr and Mrs Scott against Ashford Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether the proposed development would provide a suitable location for housing, with reference to the spatial strategy in the development plan;
 - the effect of the proposal on the character and appearance of the area, with reference to the Kent Downs National Landscape (NL)¹;
 - the effect of the proposed development on the living conditions of the occupants of The Silvers, The Greystones and Chapel House with regard to private outdoor space, privacy and outlook; and
 - whether adequate parking provision would be provided.

Reasons

Suitability of location

4. LP Policy HOU3a permits residential windfall development and infilling within the built-up confines of several settlements, including Old Wives Lees, subject to certain criteria. The built-up confines of a settlement for the purposes of LP Policy HOU3a are established with reference to a written definition. This states that the built-up area of a settlement is the limits of continuous and contiguous development, excluding any curtilage beyond the built footprint of the buildings on the site (e.g. garden areas).

¹ Formerly Area of Outstanding Natural Beauty

5. There is continuous and contiguous development near the appeal site in Selling Road and this amounts to frontage residential development accessed directly from this road. However, save for the site access, the site and the outbuildings it accommodates are positioned behind this frontage development, apart from it. While there are outbuildings within the neighbouring rear gardens, the aerial images provided by the appellant show that these are dotted around and therefore do not follow any particular pattern. Because of the scattered spread and minor scale of the outbuildings, the frontage development is the main part of the settlement and so the land behind it, on which the house would sit, would be on curtilage land that is specifically excluded from the settlement confines as set out in the definition. As a consequence, the appeal site is not part of a development pattern which is continuous or contiguous with the remainder of the settlement.
6. Policy HOU5 permits residential development adjoining or close to the built-up confines of the settlements listed. Old Wives Lees is not listed under this policy and therefore development beyond the built-up confines of the settlement is not permitted there, even if it would be in a location close to public transport. The proposed development would not result in isolated housing because the properties would be near the existing settlement. However, this would not overcome the conflict with LP Policy HOU3a as I have identified above.
7. My attention is drawn to a planning application² for the erection of four dwellings in a nearby location which was refused by the Council and subsequently dismissed at appeal. The evidence indicates that this site was undeveloped and verdant in character and while it differs from the appeal site in this regard, the Inspector found that this site was located apart from the nearby residential development. Nevertheless, I have determined the appeal on the specifics of this case and found that, due to their siting, the outbuildings on site bear little relationship with the frontage development and therefore would be outside the limits of continuous and contiguous development.
8. I do not have full details of the circumstances that led the developments in Shrimpton Close, North Downs Close and site between the built areas of Chilham and Old Wives Lee being accepted. Consequently, I cannot conclude that they represent a direct parallel to the appeal proposal, including in respect of development plan policy.
9. As such, the proposal would not provide a suitable location for housing, with reference to the spatial strategy in the development plan. It would be contrary to LP Policies SP1, SP2, HOU3a and HOU10 which seek to direct residential development to settlements.

Character and appearance

10. The area within the vicinity of the appeal site is characterised by frontage development. While there are instances of back-land development in the vicinity, including Shrimpton Close and North Downs Close, these are limited in number and are distinct developments. As such, other than such neighbouring properties, any buildings lying behind the frontage dwellings in Selling Road are very much of an ancillary nature. Although there are two storey dwellings within Selling Road, the properties closest to the site are bungalows, some of which contain roof accommodation. The appeal site accommodates a detached

² LPA Ref 19/01427/AS

bungalow with a detached garage and several outbuildings within its rear garden.

11. The proposed dwelling would be located behind the residential properties facing Selling Road, in a tandem arrangement, markedly at odds with the prevailing pattern of development of Selling Road in this location. Although some back-land development has been undertaken nearby, its magnitude is not strongly influencing the character of the area. As such, the proposal would fail to relate well with its receiving context.
12. While the dwelling would use typical local materials, its scale and footprint would be substantial, and in addition, it would have a large two storey front projecting gable. Consequently, the proposal would be considerably taller and have a greater mass than the host bungalow, thereby appearing overwhelming given the modest scale of the host.
13. Despite the proposed use of cut and fill, the proposed development would be glimpsed from Selling Road. Whilst some of the neighbouring bungalows contain roof accommodation, these are modest single storey buildings with small dormers within their roofs. Therefore, the introduction of an additional dwelling in this location would result in an incongruous two storey form of development that would not be sensitive to its surroundings and would fail to make an efficient use of land.
14. The site lies within the Kent Downs NL. Section 85 of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to the purpose of NLs to conserve and enhance the natural beauty of the area. The special qualities of the Kent Downs NL include a broad pattern of agricultural fields and woodland, with scattered settlements and hamlets, and undulating topography.
15. The surrounding area has a semi-rural and verdant appearance and feel but is not devoid of dwellings and associated domestic uses and paraphernalia. As such, the proposal would not harm the natural beauty of the NL in which the appeal site lies within and so would be in accordance with Policy ENV3b, which seeks to conserve its natural beauty.
16. However, the proposal would have a harmful effect on the character and appearance of the immediate area, in conflict with LP Policies SP1, SP6, HOU3a and HOU10, which amongst other things, support development of high-quality design which promotes a sense of place.

Living conditions

The Silvers

17. LP Policy HOU15 requires new dwellings to be provided with an area of private open space. Unless demonstrably unfeasible, this should not be overlooked from the road or other public spaces. Although the policy sets out a starting point for calculating the size of the garden, it sets out that the standard can be flexible providing it can be adequately demonstrated that alternative solutions ensure that a high standard of living conditions can be achieved.
18. The Greystones is a neighbouring bungalow sited close to the front garden of The Silvers. The common boundary between both properties, in this location, consists of a low height close boarded fence for most of its length and taller panels closer to The Silvers.

19. The front garden area of The Silvers would remain following development. However, the windows at The Greystones directly face this space at a short distance. Despite the taller panels, a substantial level of overlooking would occur over most of this outdoor space above the low height fence. In addition, there would be views towards this space from the public street above the existing boundary treatment. Overall, this space would have limited privacy, were it to be used as a main outdoor space.
20. The proposed dwelling would be sited close to the host bungalow and its rear garden. Views from the dormer windows on the proposed dwelling towards the donor property would be oblique, however due to the modest separation, the occupants of The Silvers would likely be overlooked while using their rear garden. Additionally, due to its substantial bulk and mass, the proposal would appear unduly overbearing when seen from The Silvers, thereby harming the living conditions of these residents.
21. The proposed development would result in the loss of part of the existing rear garden of The Silvers. However, the proposed garden space would wrap around the side and rear elevations of the bungalow and would be sufficient to accommodate an area for sitting out, drying washing, for garden furniture, play space as well as planted areas. Nonetheless, this space would be overlooked and, as such, the proposal would fail to ensure a high standard of living conditions for the residents at The Silvers.

The Greystones and Chapel House

22. The proposal would contain first floor bedroom windows facing Chapel House. Due to the short distance to the rear boundary of Chapel House, these windows would closely overlook the garden space of this neighbouring property, thereby resulting in an unacceptable harm to the occupants' enjoyment of that space. While in my site visit I observed that there are mature trees and other vegetation near the boundary between both properties which would likely assist in filtering some views towards Chapel House, there is limited evidence before me to demonstrate that such vegetation would remain following development.
23. I note the appellant's comments that these bedroom windows could be obscure glazed. However, these windows would be the sole source of outlook from the rooms they serve. As such, I am not persuaded that this would be a reasonable imposition on its occupants.
24. The dwelling would have its side elevation facing towards The Greystones. However, this elevation would not have first-floor side windows facing these neighbours. The first floor front and rear windows, given their orientation, would offer very limited and distant views towards this neighbouring property. Accordingly, the proposal would respect the privacy of these neighbours.
25. The dwelling would be provided with a sizeable garden, so it would maintain a generous distance from The Greystones. The set away position of this neighbouring dwelling from the proposal would mean that its windows that face towards the site, as well as its garden space, would enjoy a sufficient level of outlook. As such, the proposal would not create an undue sense of enclosure for the residents of this property.
26. Consequently, the proposal would have an acceptable effect on the occupants of The Greystones with regard to privacy and the size of the garden space for

The Silvers would be adequate. However, the proposal would harm the living conditions of the occupants of The Silvers and Chapel House with regard to privacy and loss of outlook. Therefore, the scheme would be contrary to LP Policies SP1, SP6, HOU3a and HOU10, which support development of high-quality design. Although not cited in the reasons for refusal, the proposal would be contrary to LP Policy HOU15, which supports the provision of high quality private outdoor space.

Parking provision

27. LP Policy TRA3(a) sets out the parking standards for residential development across the Borough. In locations outside the town centre, this policy sets a minimum parking of three spaces for four-bedroom dwellings.
28. The Planning Statement sets out that the proposal would include four external parking spaces, in addition to the garage. While it may be that many residents do not use their allocated garages for parking purposes, the block plan shows that there would be generous driveway and circulation space, so the proposed layout could accommodate three parking spaces as required by Policy TRA3(a) and operate satisfactorily.
29. The proposal would therefore be provided with the appropriate number of parking spaces. As such, and while this policy is not referenced in the reasons for refusal, the proposal would accord with LP Policy TRA3(a), which sets out the parking standards for the Borough.

Other Matters

30. Reference is made to the 2019 Village Boundaries map and the appellant points out inconsistencies regarding how boundaries have been drawn across settlements. However, the LP clearly sets out that the definition of built-up confines supports a more flexible approach to assessing windfall development. While I appreciate the importance of consistency in decision making and I note the extract of the Chilham and Old Wives Lee Village Confines Map 2019 provided, this does not affect the conclusions I have reached with respect of this matter, since I have relied on the definition of built-up confines as provided in the LP.
31. I understand that the proposal follows a previous planning application which was refused by the Council. Whereas it may be that the size, scale and footprint of the dwelling have been reduced, and the ridge height has dropped through the use of cut-and-fill, I find that the proposal would be harmful in its own right for the reasons set out above.
32. The National Planning Policy Framework supports the use of under-utilised land to help meet the need for homes. However, there is limited evidence that the site is under-utilised.
33. The farmhouse on Selling Road, Phyllis Farmhouse, 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 listing description³ suggests that this two storey farmhouse dates from the 17th century. Its significance derives, in part, from its period design and materials and its setting is informed by the surrounding

³ List Entry Number: 1299650

open fields and dwellings nearby. As the proposal would be at a fair distance from Phyllis Farmhouse and separated by intervening features such as existing dwellings, the road, trees and hedges, it would preserve the setting of this heritage asset.

34. The site is located within the catchment area of the River Stour, part of the Stodmarsh Special Area of Conservation (SAC) and RAMSAR site, a Habitat site with signs of eutrophication. As such, I cannot rule out, in the first instance, that the proposed development would cause likely significant effects on the integrity of the SAC and RAMSAR site 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 Appropriate Assessment. As the appeal is being dismissed for other reasons, I have not done so.

Planning Balance and Conclusion

35. The proposal would not be in a suitable location for housing having regard to the spatial strategy for the area. Further, it would be harmful to the character and appearance of the area and harmful to the living conditions of the residents at The Silvers and Chapel House. These matters carry significant weight against the proposal.
36. On the other hand, the proposal would contribute to the housing stock within the Borough and would support the Government's objective of significantly boosting the supply of homes. It would contribute to the vitality of the rural community within Old Wives Lees and would be located close to local transport links. The site is a small one, so the redevelopment could be delivered quickly. The dwelling would provide quality living space for a family, would employ renewable energy sources and would deliver ecological enhancements. Given that the proposal would deliver one new dwelling, these benefits attract limited weight in favour of the appeal proposal and do not outweigh the harm that I have identified.
37. 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