



## Appeal Decision

Site visit made on 16 December 2024

**by Joanna Gilbert MA (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 January 2025**

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**Appeal Ref: APP/J2210/W/23/3335774**

**Butlers Court Farm, Blean Common, Blean CT2 9JJ**

- 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 Paul Abbott for Pineglade Developments Ltd against the decision of Canterbury City Council.
  - The application Ref is CA/23/00521.
  - The development proposed is 6 detached dwellings consisting of 3 no. one and a half storey, 2 no. two and a half storey and 1 no. 2 storey dwelling together with formation of access and associated hardstanding following demolition of existing industrial buildings.
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### Decision

1. The appeal is allowed and planning permission is granted for 6 detached dwellings consisting of 3 no. one and a half storey, 2 no. two and a half storey and 1 no. 2 storey dwelling together with formation of access and associated hardstanding following demolition of existing industrial buildings at Butlers Court Farm, Blean Common, Blean CT2 9JJ in accordance with the terms of the application, Ref CA/23/00521, subject to the 10 conditions in the attached schedule.

### Application for costs

2. A costs application was made by Mr Paul Abbott for Pineglade Developments Ltd against Canterbury City Council. This is the subject of a separate decision.

### Preliminary Matters

3. The description of development above has been taken from the appeal form and the decision notice as the appellant has confirmed that the description of development has altered since the application was submitted.
4. A signed unilateral undertaking under Section 106 of the Town and Country Planning 1990 dated 5 July 2024 was submitted during the appeal. I have had regard to the unilateral undertaking in reaching my decision.
5. Reference has been made to the draft Local Plan in the officer report, but I have not been provided with policies from the draft Local Plan. Consequently, I have had regard to the adopted development plan in determining this appeal.
6. The revised National Planning Policy Framework (NPPF) and the 2023 Housing Delivery test results were published on 12 December 2024. The main parties' comments on the NPPF and the Housing Delivery Test results have been considered as part of my decision-making.

7. The Council confirmed on 17 December 2024 that it would not be defending the second reason for refusal in relation to the Stodmarsh Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. However, I have addressed the matter as the competent authority in this regard.

### **Main Issues**

8. The main issues in this appeal are:
- a) whether the proposed development would be in a suitable location, with particular regard to the development plan and national planning policy;
  - b) the effect of the proposed development on the Stodmarsh SAC, SPA and Ramsar site, with particular regard to nutrient neutrality; and
  - c) the effect of the proposed development on the Thanet Coast and Sandwich Bay SPA and Ramsar site and Thames, Medway and Swale SPA and Ramsar site, with particular regard to recreational disturbance.

### **Reasons**

#### *Location*

9. Located outside Blean and accessed via a private road off the A290 Blean Common, the site was previously used for agricultural purposes. Currently, the site contains a builder's yard, workshops and storage buildings. To the north and north east, there are stables and a manège for exercising horses, and pasture land. To the south west adjacent to the A290, permission has been granted at appeal<sup>1</sup> for up to 85 homes.
10. The proposed development would involve the demolition of the existing buildings and erection of six detached dwellings with associated parking, access and landscaping. The proposed development would not extend beyond the existing perimeter of buildings and open storage areas within the site.
11. Policy SP1 of the Canterbury District Local Plan (July 2017) (CDLP) confirms that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
12. CDLP Policy SP4 addresses the district's strategic approach to the location of development and confirms that Canterbury, Herne Bay and Whitstable will continue to be the principal focus for development, with particular focus on Canterbury, together with development at rural service centres and local centres. The policy's supporting text also confirms that the Council's Settlement Hierarchy Study (2011) recommends a sequential approach to the allocation of land for development, with new development in rural settlements limited, proportionate to their scale and position in the settlement hierarchy.
13. The supporting text to CDLP Policy SP4 details the district's rural settlement hierarchy. As a local centre, Blean is in the rural settlement hierarchy's second tier. The Inspector remarked on the absence of delineated and mapped settlement boundaries in the aforementioned appeal to the south-west and the appellant refers to the lack of defined built confines. It is evident from CDLP Policy SP4, that housing development of an appropriate size, design, scale,

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<sup>1</sup> APP/J2210/W/16/3156397, decision issued 6 April 2023.

character and location in respect of the character and built form of the local centre of Blean would be supported, subject to meeting other CDLP policies.

14. However, the site is outside the built up area of Blean, separated from the settlement by open fields. Even if up to 85 homes were built close to the A290, the site would remain separate from Blean. As such, it falls within the open countryside, where development will be permitted by CDLP Policy SP4 if required for agriculture and forestry. As the proposed development would be for six houses, it would not accord with CDLP Policy SP4.
15. CDLP Policy HD4 deals with new dwellings in the countryside. Planning permission for new dwellings in the countryside will only be granted where the development would be for rural workers dwellings, would re-use heritage assets or existing redundant or disused buildings, or be of exceptional quality or innovative nature. None of these circumstances apply to the proposed development. While the appellant refers to the re-use of existing buildings, the proposed development would re-use the site, rather than existing buildings. Accordingly, the proposed development would conflict with CDLP Policy HD4.
16. NPPF paragraph 110 refers to actively managing patterns of growth and focussing significant development in locations which are or can be made sustainable, by limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and health. However, it also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
17. The site is just under 300m from the A290 and bus routes and is accessed via an unmade and unlit road with passing places and without a footway. The private road passes an industrial estate and six residential properties before reaching the site. Approximately 400 metres east, a cycle and pedestrian route links Canterbury and Whitstable. There are also public rights of way to the south which connect to the village of Blean and its shops and services. The site is some 800m from the village hall and 2km from Blean Primary School. It may be that an alternative route from the site to Blean will come forward as a result of the appeal for up to 85 homes, but that is not yet constructed. Good bus services link the village with Canterbury and Whitstable.
18. Though it is possible to walk to and from the site to some of the closer facilities such as the local surgery, shop, and village hall, the conditions of the private road and rights of way will vary dependent on time of day, levels of usage, and inclement weather. Given the distance to larger shops and other services in Blean and further afield and the absence of lighting and paved footways, it is likely that the proposed development's occupiers would be reliant on the private car for many of their journeys. This indicates that the proposed development would not be in a suitable location.
19. The site is presently used for commercial purposes and therefore potentially generates a greater number of vehicle movements than would result from the proposed development. However, this does not render the site a suitable location for residential development in the open countryside.
20. The appellant argues that the proposed development's sustainability credentials include detailed proposals for lighting the access road for use in hours of darkness and electric vehicle charging for each dwelling. Given the

access road's length and its countryside location, I am not convinced that lighting it would be reasonable and would not detrimentally affect biodiversity. In terms of electric vehicle charging, this would be expected by Building Regulations in any event. Reference has been made to an appeal<sup>2</sup> at Hoath Farm. While Hoath Farm is some distance from services and facilities, all the details for this appeal are not before me. It does not appear to be directly comparable in terms of the main issues in this appeal.

21. I conclude therefore that the proposed development would not be in a suitable location, with particular regard to the development plan and national planning policy. Consequently, it would fail to comply with CDLP Policies SP4 and HD4 and the NPPF as set out above. I have not concluded against CDLP Policy SP1 as I shall deal with it within the planning balance below.

### *Nutrient neutrality*

22. The Stodmarsh SAC, SPA and Ramsar site and National Nature Reserve is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). It has been designated as it supports populations of over-wintering Great Bittern and Hen Harrier and regularly supports breeding Gadwall, over-wintering Northern Shoveller and Gadwall. It also contains plant and invertebrate species of importance.
23. Water quality has deteriorated due to wastewater discharge from new homes into wastewater treatment works within the Stour Valley river catchment area. Several lakes at Stodmarsh are in a state of eutrophication, due to high levels of nitrogen and phosphorus. Algal blooms can result in reduced levels of oxygen in water, which can lead to the death of aquatic organisms.
24. As the proposed development comprises new residential development, it would introduce the risk of additional nutrient load from the increase in wastewater flows or surface water runoff if the site falls within the relevant catchment. There is dispute between the parties in this regard. If the site is located within the relevant catchment for wastewater and/or surface water runoff, it would be necessary for me as the competent authority to consider whether the proposed development would, either alone or in combination, adversely affect the Stodmarsh SAC, SPA and Ramsar site's integrity in view of the relevant conservation objectives and carry out an appropriate assessment.
25. With regard to surface water runoff, the appellant has provided a Technical Note dated 27 October 2023 by Water Environment Limited. This Technical Note confirms in writing and by use of mapping in Figure 1 that the site lies outside the Lower Stour, Upper Stour and Little Stour and Wingham Operational Catchments and outside the Sarre Penn and River Wantsum River Water Body Catchment. As such, the site would fall outside the hydrological catchments affecting the Stodmarsh SAC, SPA and Ramsar site. Accordingly, I find that the proposed development would not have an adverse effect on the Stodmarsh SAC, SPA and Ramsar site with regard to surface water runoff.
26. However, with regard to wastewater flows, if the site were to connect to mains sewerage, that wastewater would be treated at the Canterbury Wastewater Treatment Works (CWTW). CWTW falls within the catchment for the Stodmarsh SAC, SPA and Ramsar site. Accordingly, there remains a probability

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<sup>2</sup> APP/J2210/W/19/3237912, decision issued 27 March 2020.

or risk that the proposal, in combination with other plans or projects, could have a likely significant effect on the Stodmarsh SAC, SPA and Ramsar site in respect of nutrient neutrality. I am therefore required to carry out an appropriate assessment.

27. I am required to consider if any likely effect could be mitigated. The appellant's Flood Risk Assessment and Drainage Strategy (FRADS) (MT/5667/FRADS.4, February 2023) indicates that the nearest foul sewer is approximately 330m from the site. Given the distance from the foul sewer and the number of residential units proposed, there is no obligation to connect the proposed development to the foul sewer. The FRADS instead proposes a package treatment plant which would discharge to a drainage field north of the proposed development. This would ensure that the proposed development would not discharge wastewater to the CWTW or to the Stodmarsh catchment area for surface water runoff. Consequently, subject to the imposition of a condition for a drainage strategy, adverse effects on the integrity of the Stodmarsh SAC, SPA and Ramsar site would be avoided.
28. I conclude that the proposed development would not have a negative effect on the Stodmarsh SAC, SPA and Ramsar site, with particular regard to nutrient neutrality. It would therefore comply with CDLP Policies LB5 and LB6, NPPF paragraph 187, and the Habitats Regulations. These policies and legislation seek to protect sites of local, national and international conservation importance. CDLP Policy SP6 was referred to in the decision notice, but does not appear relevant in this instance.

#### *Recreational disturbance*

29. The site lies within the 6km Zone of Influence of the Thanet Coast and Sandwich Bay SPA and Ramsar site and Thames, Medway and Swale SPA and Ramsar site. The sites are subject to statutory protection under the Habitats Regulations. The classified bird interest features vary across the sites, but the sites provide passage, overwintering, and breeding habitat for bird species. Saltmarsh and grazing marsh at Swale are also of international importance for their diverse assemblages of wetland plants and invertebrates.
30. The supporting text to CDLP Policy LB5 identifies that there have been marked declines of key bird species within the Thames, Medway and Swale SPA and Ramsar site. Natural England has also advised that the planned quantum of housing in Canterbury and Thanet is likely to result in a significant effect on the bird interest of the Thanet Coast and Sandwich Bay SPA and Ramsar site. Disturbance is one potential factor, and studies have shown recreational activities to cause disturbance impacts to birds.
31. There remains a probability or risk that the proposed development, in combination with other plans or projects, could have a likely significant effect on the Thanet Coast and Sandwich Bay SPA and Ramsar site and Thames, Medway and Swale SPA and Ramsar site, as the proposed development would be likely to exacerbate existing recreational pressures on these sites. I am therefore required to carry out an appropriate assessment.
32. It is necessary for me to consider whether any potential effects could be mitigated. The Council has produced Strategic Access, Management and Monitoring Plans for the two designated sites that will be applied to development within the identified Zones of Influence to ensure that no likely

significant effect will result from recreational disturbance from development. This includes tariff setting based on unit size.

33. The legal agreement commits the appellant to provision of £5,088 to mitigate against the impact of development on the Thanet Coast and Sandwich Bay SPA and Ramsar site and £2,448.42 to mitigate against the impact of development on the Thames, Medway and Swale SPA and Ramsar site. I consider that the mitigation measures would avoid the proposed development having a likely significant effect on the Thanet Coast and Sandwich Bay SPA and Ramsar site and Thames, Medway and Swale SPA and Ramsar site. This unilateral undertaking would meet the three tests set out in NPPF paragraph 58 and the Community Infrastructure Levy Regulations 2010.
34. In conclusion, the proposed development would not have an adverse effect on the Thanet Coast and Sandwich Bay SPA and Ramsar site and Thames, Medway and Swale SPA and Ramsar site, with particular regard to recreational disturbance. It would therefore comply with CDLP Policies SP6, and LB5, NPPF paragraph 187, and the Habitats Regulations. These policies and legislation seek to ensure sustainable development and to protect sites of local, national and international conservation importance. CDLP Policy SP1 is addressed below.

### **Other Matters**

35. Several interested parties have supported the proposed development as they consider it would have a positive effect on the character and appearance and lead to a likely reduction in large vehicles accessing the site.
36. One interested party has raised concerns about the effect on the area's rural nature and the likely increase in traffic flows to and from the site and past nearby residential properties. While the proposed development would generate a number of vehicle movements on a daily basis, it was evident from my site visit that there were people working on the site during the day, several vehicles were parked on site, and vehicles were moving around the site and up and down the private road. I concur with Kent County Council and the Council that the proposed development would be acceptable with regard to highway safety. Indeed, I consider that a reduction in use of the road by large vehicles associated with the construction business is likely to be of benefit to neighbouring residents and to the area's rural nature.
37. The Parish Council and an interested party have raised concerns with regard to drainage into the nearby field ditch, including any drainage flows from the nearby 85 home scheme allowed at appeal. The Inspector in that appeal found that the relevant evidence indicated that the 85 home development would not have any significantly detrimental effects and there was likely to be a modest betterment in restricting rates of discharge. In order to ensure that drainage is appropriately managed, I have applied a condition with regard to submission and approval of a detailed drainage strategy.

### **Planning Balance**

38. The 2023 Housing Delivery Test results issued on 12 December 2024 indicate that the delivery of housing in the district is below 75% of the housing requirement over the previous three years. This indicates that the policies which are most important for determining the proposal are out-of-date

according to NPPF paragraph 11(d). Consequently, planning permission should be granted unless one of two exceptions applies. The first exception outlined at NPPF paragraph 11(d)(i) is not engaged.

39. There is conflict with the development plan in terms of the location of the proposed development in the open countryside. However, I afford this policy conflict only moderate weight given that nearby Blean offers some services and facilities. No other adverse impacts have been demonstrated.
40. The delivery of six houses would help to address the recognised housing delivery shortfall, while the proposed development would reuse a site which presently has a poor appearance and houses commercial uses in the open countryside. Indeed, small and medium sized sites can make an important contribution towards meeting the housing requirement of an area and it is also important to make as much use as possible of previously developed land and under-utilised land, particularly where housing supply is constrained by nutrient neutrality and other issues.
41. Furthermore, the proposed development would generate direct investment in the construction industry and support jobs in construction for approximately 18 months. The occupiers of six houses would support local services, pay council tax and contribute to the local economy. There would also be environmental benefits in terms of site enhancement, introduction of planting and landscaping, and sustainable construction methods. The scheme would also be likely to reduce vehicle movements and particularly heavy goods vehicle movements compared with the site's existing commercial use. Together, the benefits represent significant benefits.
42. The adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. The second exception in NPPF paragraph 11(d)(ii) is not engaged. The presumption in favour of sustainable development would therefore apply and the proposed development would accord with the policies within the NPPF when taken as a whole and with CDLP Policy SP1 as outlined above. This indicates that planning permission should be granted.

### **Conditions**

43. It is necessary to specify conditions confirming the time limit for development (1) and approved plans (2) for certainty. Two pre-commencement conditions (3 and 4) are necessary as they should be addressed before construction works begin. A condition (3) is necessary to ensure that any archaeological features are examined and recorded appropriately. A further condition (4) on drainage is needed to ensure that adequate drainage provision is made and to prevent pollution, safeguard biodiversity, and avoid flood risk. The appellant has agreed to the imposition of the pre-commencement conditions.
44. In order to ensure that materials are in keeping with the character and appearance of the area, a condition (5) requires submission and agreement of sample materials. To ensure that development does not adversely affect bats, external lighting is dealt with by condition (6). In the interests of highway safety, a condition (7) is necessary to ensure that appropriate areas are laid out for the parking and manoeuvring of vehicles. To promote cycling, I have included a condition (8) on secure cycle parking facilities.

45. To ensure that biodiversity is appropriately considered, a condition (9) is necessary to require details of biodiversity enhancement measures. The Council had suggested a condition referring to Figure 7 Proposed Landscape Strategy, but this is addressed in other conditions (2 and 9), and reference has therefore been omitted from condition (10), which is necessary to ensure that the character and appearance of the development is maintained. I have also amended the other conditions, where necessary, for clarity and certainty.

### **Conclusion**

46. For the reasons given above and subject to the conditions below, the appeal is allowed.

*Joanna Gilbert*

INSPECTOR

### **Schedule of 10 Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 2125\_001 Revision P1 Site Location Plan; 2125\_050 Revision P2 Proposed Block Plan; 2125\_060 Revision P2 Proposed Site Plan – With Roof Plans; 2125\_070 Revision P1 Proposed Site Plan – Vehicle Tracking; 2125\_101 Revision P3 Plot 1 Proposed Plans + Elevations; 2125\_102 Revision P1 Plot 2 Proposed Plans + Elevations; 2125\_103 Revision P2 Plot 3 Proposed Plans + Elevations; 2125\_104 Revision P2 Plot 4 Proposed Plans + Elevations; 2125\_105 Revision P2 Plot 5 Proposed Plans + Elevations; 2125\_106 Revision P2 Plot 6 Proposed Plans + Elevations; Figure 7 Proposed Landscape Strategy.
- 3) Prior to any development works, the appellant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority. Following completion of archaeological evaluation works, no development shall take place until the implementation of any safeguarding measures have been secured to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority. The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable. Within 6 months of the completion of archaeological works, a Post-Excavation Assessment Report shall be submitted to and approved in writing by the Local Planning Authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:
  - i. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;

- ii. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
- iii. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.

The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

- 4) Prior to any development works, full details of the proposed drainage strategy shall have been submitted to and approved in writing by the Local Planning Authority. The site drainage must be constructed and retained in accordance with the approved details.
- 5) Prior to their first use as part of the development hereby approved, samples of the materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
- 6) Prior to first occupation, a lighting design plan for biodiversity will be submitted to and approved in writing by the Local Planning Authority. The lighting design plan will show the type and locations of external lighting, demonstrating that areas to be lit will not adversely impact biodiversity consistent with section 8.1 of the Bat Survey Report (Native Ecology, Ref: 0637\_R02\_REV B\_Bat Survey Report, December 2022). All external lighting will be installed in accordance with the specifications and locations set out in the approved lighting design plan and will be maintained thereafter.
- 7) Prior to the first occupation of each unit, the area shown on 2125\_070 Revision P1 Proposed Site Plan – Vehicle Tracking for the parking and manoeuvring of vehicles shall be operational prior to the occupation of that unit. The parking and manoeuvring area shall thereafter be maintained for that purpose.
- 8) Prior to the first occupation of each unit, details of secure cycle parking facilities shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be provided prior to the first occupation of that unit and thereafter maintained for that purpose.
- 9) Within six months of works commencing, and notwithstanding approved Figure 7 Proposed Landscape Strategy, the details of how the development will enhance biodiversity will be submitted to and approved in writing by the Local Planning Authority. This will include the provision of Starling and Sparrow nest space, and the implementation of a native species-only landscape plan. The approved details will be implemented and thereafter retained.
- 10) Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.