



Appeal Decision

Site visit made on 7 May 2025

by **I A Dyer BSc (Eng) FCIHT**

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Appeal Ref: APP/E2205/W/24/3352475

Land to the south of Cider Works , Bell Lane, Smarden, TN27 8FS

- 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 David Marks and DaVinci Maidstone Ltd against the decision of Ashford Borough Council.
 - The application reference is PA/2024/1140.
 - The development proposed is erection of earth sheltered autonomous dwelling with adjoining pond and woodland.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's determination of the application, a revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024 and updated on 7 February 2025. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. Whilst there are several Listed Buildings near the proposal site, both parties are in agreement that the proposal would not affect the settings of these. I find no reason to disagree with this and so I have not considered the effect of the proposal on these further.

Main Issues

4. The main issues in this appeal are: -
 - The effect of the proposal on the character and appearance of the site and the surrounding area;
 - Whether the site is a suitable location for a dwelling, having regard to local policies for housing; and: -
 - The effect of the proposal on local biodiversity.

Reasons

Character and appearance

5. The site is located to the rear of a former cider works. This building has been converted into eight dwellings. The appeal site (the site) shares an access onto

Bell Lane with these dwellings. It lies within the Smarden Bell Farmlands Landscape Character Area.

6. The site is a roughly rectangular parcel of land lying on the edge of a small cluster of buildings within a largely flat, rural landscape. The land has, over time, become overgrown and unkempt, as nature has taken over. The site has a distinct verdant, peaceful character and appearance, reflecting that of the surrounding open countryside. Accordingly, the site has a strong visual relationship to the wider open countryside and is clearly and distinctly different from the residential development adjacent.
7. The introduction of a substantial residential dwelling, albeit that this would occupy only a small part of the totality of the site, would, nonetheless introduce an urbanising built form including an array of photovoltaic cells, residential paraphernalia and domestic activity into the area. There would thereby be a fundamental alteration of the existing character of the plot.
8. The appellants propose mitigation of this urbanising effect by extensive landscaping and planting. Landscaping primarily softens visual impacts but would not significantly mitigate the impact on landscape character as the land would still undergo a transformation from a field to housing.
9. The creation of the earth banks would reduce the visual impact of the building. Whilst largely concealing the hard structures within the site, they would create a raised landform, incongruous with the generally flat lie of the surrounding land. The proposal would harmfully extend domestic built form, paraphernalia and disturbance into the rural landscape and the proposed planting and landscaping would not provide effective mitigation for this.
10. Development in the wider area is largely sporadic and plots generally front directly onto the roads. The proposal would introduce domestic development without a significant presence to the road, incongruous with the existing pattern of development in the area.
11. The appellants have brought to my attention other development in the area that is set back off the road, Oxley Farm, Ritoweg Farm and Copperlodge Farm. These, however, appear contextually as groups of working farm buildings set in their agricultural hinterland, rather than a separate domestic dwellinghouse. The proposal, in contrast, lacks such a functional grouping.
12. The appellants further draw my attention to a development that gained planning permission on the appeal site, Council Ref: 16/01322/AS. However, no details have been provided as to the scope or nature of that development and so it has not been demonstrated to be contextually similar to the proposal before me. In any case, I have determined this appeal on its own merits.
13. Consequently, I find that the proposal would significantly harm the character and appearance of the site and surrounding area. The proposal would, therefore, conflict with Policy ENV3a of the Ashford Borough Council Local Plan 2030 (2019) (the LP) in as much as this requires, amongst other things, that development shall have regard to the landscape characteristics of the site.

Suitable location

14. The development plan seeks to focus development on locations with access to services and facilities that would satisfy their day-to-day needs and minimise the need to travel. There is no dispute between the parties that the site lies outside of any settlement boundary defined within the development plan. The site is therefore, in planning terms, in the countryside.
15. The site lies some distance from local settlements that could provide for all of the day-to-day needs of future occupiers. The intervening roads are unlit, lack footpaths and are subject to high speeds. Their nature would deter their use by pedestrians and cyclists, particularly during the hours of darkness or inclement weather. This, together with the lack of any meaningful convenient access to public transport, would result in future occupiers being almost totally dependent on the use of the private car to meet those needs.
16. Policy HOU5 allows the development of windfall housing in the countryside for dwellings of exceptional quality or innovative design which should be truly outstanding and innovative, reflect the highest standards of architecture, significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area.
17. It will be seen above that I have found that the proposal would materially harm the character and appearance of the site and the surrounding area. It would thus not act to significantly enhance the immediate setting or be sensitive to the defining characteristics of the area. The parties also dispute the design quality and innovative nature of the building.
18. The proposed building would be an autonomous dwelling, sheltered within an earthwork. It would generate power to satisfy its own needs. To achieve such self-sufficiency the building seeks to minimise its demands for energy through such means as increased thermal efficiency. This is, in part, achieved through its partial burial within an earthwork. Power is provided by photovoltaics, and this is intended to be sufficient for the needs of the dwelling without supplementation from the network.
19. The site would be remodelled to incorporate a pond and landscaping to integrate the proposal into the landscape. This would result in the need for soils to be translocated. The soil excavated within the site would balance that used in the landscaping of the site, including the earthworks around the building. This would obviate the need to import or export soil from the site. The materials and internal layout have been designed to use commonplace construction techniques and materials, so as to minimise the expenditure of carbon.
20. Whilst the earth bunding is part of a design strategy, aiming to satisfy the need to achieve high thermal efficiency for the building, with the reshaping of the site, the bunding also deliberately minimises the perceptibility of its built form. To achieve this, it minimises its visual presence through landscaping and planting, rather than harmonising with its setting.
21. The appellants have brought my attention to other sites¹ that incorporate earth bunding. These buildings have achieved critical acclaim. However, they are

¹ 'Underhill' and the Hockerton Housing Project.

particular design approaches found to respond to their individual locations. I have determined this appeal having regard to the specifics of the proposal before me.

22. Bringing these matters together I find that, whilst of uncommon design, the proposal would not demonstrate a design of exceptional quality. Therefore, the development does not meet the exception set out in planning policy and the site is not a suitable location for a dwelling, having regard to local policies for housing. It would, thus, be contrary to Policy HOU05 of the LP.

Biodiversity

23. A Preliminary Ecological Appraisal (PEA) dated October 2023 was submitted by the appellants. The site has become overgrown and contains some existing trees and scrubland. It is likely that this could provide a habitat within which local wildlife, including protected species could thrive. The PEA concluded that the site could need further survey work.
24. The Appellants consider that the issue of ecological mitigation could be dealt with by planning conditions. However, I am mindful of the advice provided in paragraph 99 of Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. The circular further advises that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. In the absence of information to determine whether mitigation is needed, possible or its scope, I cannot be satisfied that planning conditions would provide sufficient mitigation, or that appropriate mitigation could be provided.
25. I cannot be satisfied that the development would not have an unacceptable impact upon the biodiversity of the area and so the proposed development would be contrary to Policy ENV1 of the LP in as much as this seeks, amongst other things, to conserve and enhance biodiversity.

Other considerations

26. At the present time the Council is unable to demonstrate a 5-year housing land supply. However, the council have not 'failed' the Housing Delivery Test. The Council consider that they can identify a housing supply of approximately 4.4 years. This equates to a shortfall in the region of six hundred dwellings over the next five year period. The provision of one additional dwelling would go a small way towards addressing this shortfall.
27. The Framework supports the development of windfall sites, particularly small-and medium sized sites as these are often built out relatively quickly. In the short term the proposal would support the local construction industry and the supply chain through increased activity. In the longer term the proposal would support local shops, businesses and social groups and activities through the increase in the local population. The Framework recognises the importance of supporting the rural economy and communities. It further recognises that access to sustainable transport may be more limited in rural areas. The Framework supports energy efficiency in buildings. These considerations therefore weigh in favour of the proposal.

Final Balance

28. The proposal would harm the character and appearance of the area because of its design. It would undermine the Council's spatial strategy and harm local biodiversity. There would be conflict with Policies HOU5, ENV3a and ENV1 of the LP and no policies have been cited that specifically support the proposal. It would therefore not accord with the development plan as a whole and this is a matter that counts significantly against allowing the appeal.
29. However, the Government's objective is to significantly boost the supply of homes. Other provisions of the Framework give support to the development as small sites can make an important contribution to meeting the housing requirement. In Ashford Borough future supply is insufficient. Because of this, paragraph 11d) of the Framework is engaged.
30. The policies in the Framework seek to deliver a sufficient supply of homes whilst achieving well-designed places and protecting the natural environment. However, the creation of high quality places, providing sustainable development through a plan-led system and the protection of the natural environment are fundamental to what the planning and development process should achieve. This would not be so here. Although there is support for new housing in this location the benefits in terms of the overall position in the Borough would be limited. Indeed, this is a case where the importance of good design, following a plan-led process to deliver sustainable development and protecting the natural environment overwhelm the provision of a single extra windfall dwelling.
31. Therefore, 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.

Conclusion

32. 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.

I A Dyer

INSPECTOR