



Appeal Decision

Site visit made on 9 May 2025

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 JUNE 2025

Appeal Ref: APP/E2205/W/25/3358853

Land between The Paddocks and Ashdown Cottage, Church Road, Sevington, Ashford, Kent TN24 0LD

- 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 Keith Wilson (K Wilson Developments Ltd) against the decision of Ashford Borough Council.
 - The application Ref is PA/2024/0631.
 - The development proposed is described as “Erection of 3 four-bedroom houses. All supporting documentation currently held by Ashford Borough Council under application 20/00515/AS.”
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the integrity of protected European sites;
 - whether the proposal adequately demonstrates the effect on protected species and the measures necessary to avoid, mitigate or compensate for any negative effects;
 - the effect of the proposal on highway safety, with particular reference to visibility splays;
 - whether the proposal includes sufficient evidence regarding the potential archaeological remains on the site; and
 - whether there would be suitable access to local services and facilities by modes other than the private car.

Reasons

Integrity of protected European sites

3. The appeal site is within the catchment of the River Stour, which runs into the Stodmarsh Special Area of Conservation/Ramsar (SAC) and Special Protection Area (SPA). The SAC and SPA are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.

4. The SAC and SPA are wetland sites comprising open water bodies, reedbeds and grazing marshes, which together support a rich flora and fauna. The SAC is home to a sizeable population of Desmoulin's whorl snail. The SPA provides wintering and breeding habitats for important assemblages of wetland bird species, such as the Great Bittern, Gadwell and Hen Harrier. The sites' conservation objectives are to ensure their integrity, including the extent, distribution, structure, function and supporting processes of the habitats, and population and distribution within the sites of each of the qualifying features, is maintained or restored.
5. Wastewater from residential development contains nitrogen and phosphorus, which are high in nutrients. Excessive levels of nutrients can cause the rapid growth of certain plants and algae through the process of eutrophication. This can displace species that are either important in their own right or that act as sources of food and shelter for other species, thereby adversely affecting the qualifying features of the European sites.
6. The nutrient budget calculations before me, by Ground and Environmental Services Limited (GES) dated February 2021, relate to a preceding refused application for the appeal site Ref 20/00515/AS. They show that that development, without mitigation, would have increased levels of nitrogen and phosphorus entering the protected sites. Given the previous application proposed three dwellings with 4+ bedrooms, it is reasonable to assume the current appeal scheme would have a comparable impact without mitigation. I therefore find the current proposal, alone and in combination with other development, would be likely to have a significant adverse effect on the integrity and conservation objectives of the SAC and SPA.
7. It is proposed the wastewater from the appeal scheme would be treated by an on-site Package Treatment Plant (PTP). Natural England's (NE) standing advice to the Council on nutrient impacts dated March 2022 recognises that small discharges to ground from a PTP within the catchment of a designated site can present a low risk of a significant effect. However, this is subject to various conditions being met as set out in the NE advice. There is no up-to-date evidence before me of the residual levels of nitrogen and phosphorus that would be discharged from the PTP proposed in the appeal scheme, or that all the necessary conditions set out in the NE advice in relation to PTP use would be met. Whilst I note the data and commentary about PTPs provided by GES for the previous proposal, that is not directly relevant to the development I am required to assess.
8. The appellant has said they would be willing to off-set nutrients by way of purchasing credits or delivering a method to reduce nutrient loading in the immediate neighbourhood of Mersham. However, there is no pertinent technical evidence to demonstrate such measures would achieve sufficient mitigation for residual nutrients discharged from a PTP serving the proposed development. Moreover, on the evidence before me, there is no strategic mitigation scheme currently available for the Council area.
9. As competent authority, my responsibility is to ensure I am confident there is sufficient information to support my conclusion. The evidence before me is not comprehensive enough for me to be confident the development would achieve an acceptable level of nutrient mitigation, and requiring additional information later via condition would not enable me to discharge my responsibility for this decision. Bearing in mind the precautionary principle, I therefore find that, notwithstanding

the appellant's willingness to address the concerns previously raised, the effect of the development on the integrity of the SAC and SPA is likely to be significant in the absence of objective evidence to the contrary.

10. For the above reasons, I conclude the proposal would have an adverse effect on the integrity of protected European sites, with particular reference to nutrient pollution. This is contrary to Policy ENV1 of the Ashford Local Plan 2019 (ALP), which reflects the Habitats Regulations. In addition, paragraph 193 of the National Planning Policy Framework (the Framework) states that, if significant harm to biodiversity resulting from a development cannot be adequately mitigated, planning permission should be refused.

Protected species

11. Paragraph 99 of Circular 06/2005 states "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 planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted."
12. According to Kent County Council Ecological Advice Service (KCC EAS), the appeal site is known to contain reptiles and Great Crested Newts (GCN) are abundant in the surrounding area, with over 40 verified records within 2km of the site. GCN are a European protected species. KCC EAS advises the Preliminary Ecological Appraisal (PEA) and Ecological Mitigation and Enhancement Plan (EMEP) submitted with the application are out of date because they are based on surveys undertaken in 2020 and relate to a different proposed development layout. It advises the appellant to provide an updated PEA and to either commission GCN surveys or a Habitat Suitability Index (HSI) assessment of local waterbodies or join a District Level Licensing Scheme (DLLS) for GCN.
13. The PEA and EMEP before me have not been updated since June 2020 and I find them out of date for the same reasons as KCC EAS. There is also no GCN survey, HSI assessment or evidence of DLLS membership before me.
14. Consequently, I cannot be sure what measures would be necessary to avoid, adequately mitigate or, as a last resort, compensate for any significant harm to protected species, as required by paragraph 193 of the Framework; or whether such measures could be provided and secured. The proposal therefore has potential to result in significant harm to protected species. No exceptional circumstances have been demonstrated such that the updated PEA and/or additional surveys could be left to coverage by a planning condition.
15. For the above reasons, I conclude the proposal does not adequately demonstrate the effect on protected species or the measures necessary to avoid, mitigate or compensate for any negative effects. This is contrary to ALP Policies ENV1 and ENV3a and HOU5 f) vi), which are consistent with the requirements of Circular 06/2005 and the Framework.

Highway safety

16. The Highway Authority (HA) requires an up-to-date speed survey to demonstrate the proposed 43-metre-long splays would be sufficient, given the speed limit on the relevant stretch of Church Road is 60 miles per hour (mph). Such a survey would need to demonstrate that vehicular traffic at the 85th percentile travels at or below 30mph.
17. I understand the speed survey undertaken in September 2020 to support the previous application led the HA to accept the splays proposed for that scheme. Be that as it may, other development has taken place in the area since then and traffic conditions and speeds on the relevant stretch of Church Lane could have changed in the intervening period. I therefore agree with the HA that the speed survey dated 2020 is insufficient to justify the splays now proposed. A new survey is required, and the geometry of the visibility splays is too fundamental to the design of the overall proposal for this to be dealt with via condition. Absent this information, the risk of road traffic accidents would be unacceptably high.
18. For the above reasons, I conclude there is insufficient evidence to demonstrate the proposal would have an acceptable effect on highway safety. This is contrary to ALP Policies TRA7 and HOU5c), which together require development to be accessed safely from the local road network without clear risk of road traffic accidents. It is also contrary to the Framework, which states development should be refused on highways grounds if there would be an unacceptable impact on highway safety.

Archaeological remains

19. KCC Heritage advises the application site lies in an area of archaeological potential relating to multi-period activity in the Stour Valley, including pre-historic, Roman and early Medieval, with evidence of a possible mill complex from the 11th to 17th centuries directly opposite the site. Further, KCC advises new information retrieved from archaeological investigations undertaken for Stour Park since 2022, yet to be published, indicates the appeal site may contain significant archaeological remains. It therefore recommends archaeological field evaluation work, including targeted trial trenching by a suitable archaeological contractor, in accordance with a specification to be agreed with KCC Heritage.
20. The results of such an investigation are not before me. Consequently, there is insufficient information for me to be sure of the proposal's potential impact on archaeological remains. Moreover, given the potential importance of such remains on the site, it would not be reasonable to secure the investigation via condition because the results of the field evaluation could have fundamental implications for the design of the development proposed.
21. For the above reasons, I conclude the proposal does not include sufficient evidence regarding the potential archaeological remains on the site. This is contrary to ALP Policies ENV13 and HOU5 e), which read together require applications to be supported by an appropriate level of detail relating to assets of archaeological significance and the likely impact of the proposal on this significance. Further, it is contrary to paragraph 207 of the Framework, which requires developers to submit a field evaluation where necessary if the site has potential to include heritage assets with archaeological interest.

Suitable location

22. ALP Policy SP1 focusses development at accessible and sustainable locations, which utilise existing infrastructure, facilities and services wherever possible, and encourages non-car-based travel. ALP Policy HOU5 supports proposals for residential development adjoining or close to the existing built-up confines of Ashford, so long as the site is within easy walking distance of basic day-to-day services and the development is located where it is possible to maximise the use of public transport, cycling and walking to access services (criteria (b) and (d)).
23. The appeal site is near the A2070, the other side of which is Ashford Retail Park, which includes a range of shops and services with several providing for day-to-day needs. A recently constructed dedicated footpath/cycleway runs along part of Church Road close to the appeal site before turning to St Mary's Church, a level access pedestrian and cycle bridge across the A2070, and thence the Retail Park. I observed during my visit that this route has lighting and abundant signage and thus provides a relatively straightforward means of pedestrian and cycle access to the nearest services and facilities, despite being longer than the generally accepted easy walking distance of 800 metres. It also connects to a wider network of footpaths and cycle routes in the area, some of which lead into Ashford.
24. It would be necessary to travel a short distance along Church Road itself from the appeal site before joining the path, and that road is relatively narrow with no footway. Nevertheless, the stretch in question would be short enough not to be off-putting for the majority of those willing and able to use active travel modes. The proposed development would also include dedicated bike storage, which would help facilitate and encourage cycling. Consequently, even if the appeal site is not directly served by public transport, I find there would be genuine alternatives to the private car. There would also be no need for pedestrians to cross the A2070 at grade, which would be very dangerous as the Council points out.
25. For the above reasons, I conclude there would be suitable access to local services and facilities by modes other than the private car. Accordingly, I find no conflict in this respect with ALP Policies SP1 or HOU5. I also find no conflict with the Framework, where it seeks a genuine choice of transport modes.

Other Matters

26. The Grade II listed buildings known as Ashdown Cottage and Orchard Cottage lie on either side of the appeal site, with the latter separated from it by The Paddocks. Both assets date from the 17th century, with architectural significance in each case derived from surviving fabric including timber frames and painted brick and tile hung exteriors, tiled hipped roofs with central stacks, wooden casements on each floor and boarded doors. Both listed buildings also have historical significance as remnants of the early settlement of Sevington.
27. Their original setting comprised that hamlet and its rural hinterland. This has changed greatly with the arrival of the high-speed railway line, A2070, Sevington Inland Border Facility and associated commercial and transport infrastructure that now surround the cottages. Nevertheless, parts of Church Road and St Mary's Church itself still evoke some of the character of the formerly rural settlement and the appeal site contributes to this immediate setting.

28. The proposed layout of the new dwellings would respect the building line of the Cottages and their relationship with Church Road, and their overall design and appearance would complement the architecture of the listed structures. The ability to appreciate the listed buildings from Church Road would be largely unaffected. Therefore, on the evidence before me, I find the setting of the listed buildings would be preserved and there would be no harm to their significance as designated heritage assets. This may need to be reconsidered in light of any archaeological field evaluation at the appeal site, however, as that could change current understanding of the historical significance and setting of the Cottages.
29. The Council has not stated whether it can demonstrate a five-year supply of deliverable housing sites. Even if it cannot, for the reasons set out above policies in the Framework that protect habitats sites provide a clear reason for refusing the development proposed. Therefore, according to Framework paragraph 11d) (i) and footnote 7, the presumption in favour of sustainable development does not apply.
30. The delivery of three houses would nevertheless make a modest contribution to meeting housing needs in the area, boosting the supply of homes. The development would also support the local economy during the construction process and through future occupiers' use of services and facilities. These benefits would accord with the Framework's social and economic objectives, and I give them moderate weight. However, there is insufficient evidence for me to be persuaded the site meets the definition of previously developed or brownfield land, so that is not a factor weighing in favour of the scheme. Overall, the benefits of the development are not sufficient to outweigh the substantial collective weight of the harms I have identified.
31. The Council has raised no concern with the effect of the proposal on living conditions of neighbouring occupiers or the character and appearance of the area, or with living conditions for future occupiers. Nonetheless, an absence of harm in these respects is a neutral factor. There is little evidence the environmental performance of the buildings would surpass what is required under other regulatory regimes, so that is also a neutral consideration.
32. Whilst I am sympathetic to the fact that the appeal proposal is a resubmission taking into account issues previously raised by the Council and following pre-application advice, I can only assess the current proposal on the basis of the information before me.

Conclusion

33. Although I have no concern with the location of the site, the other harms I have identified lead me to find the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR