



Appeal Decision

Site visit made on 22 May 2025

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2025

Appeal Ref: APP/U2235/W/24/3355760

Land South of Howland Road, Marden, Kent TN12 9EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Nick Watts, Rural Homes and Developments Ltd against the decision of Maidstone Borough Council.
 - The application Ref is 24/502836/OUT.
 - The development proposed is Erection of 9 no 1, 2 and 3 bed affordable dwellinghouses for local people under the rural exception policy.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters except the means of access and scale reserved for subsequent approval. However, the application was accompanied by indicative plans showing the layout of the houses and landscaping (amongst other things), which I shall treat as being for illustrative purposes only.
3. The appellant has submitted additional drawings with this appeal which indicate an alternate layout which identifies a connection from the appeal site to a public right of way to the south. The Council and interested parties have been given opportunity to respond to this evidence and I have taken account of this. I am satisfied that in making my determination no prejudice to any party has occurred as a consequence.

Main Issues

4. The main issues are:
 - The effect of the proposal on the rural character and appearance of the area;
 - The effect of the proposal on highway safety in the area;
 - Whether the site is an accessible location for the proposal having regard to local and national planning policy, and the accessibility of the site to services, employment opportunities and facilities;
 - The effect of the proposal on heritage assets with particular regard to the setting of five listed buildings, The Old House; Pastures End & Poachers Keep; Bridgehurst Farmhouse; Stone Pit Farmhouse; and Stone Pit Barn; and

- The effect of the proposal on protected species and biodiversity net gain (BNG).

Reasons

Character and appearance

5. The appeal site is part of an open field accessed from Howland Road which, at the time of my site visit, was used for grazing horses. The mature boundary hedgerow bordering Howland Road filters views of the field. However, the existing access to the appeal site provides expansive views across the field towards the main settlement of Marden. As a result, the appeal site makes a positive contribution to the open, rural character of the area.
6. To the north and south of the field are a limited number of dwellings that follow a loose and informal layout. Dwellings are often detached and occupy reasonably spacious plots, which are of varying size, commensurate with their location at a transition between the more ordered, developed streets within the settlement of Marden further to the west of the appeal site and field.
7. The Maidstone Landscape Character Assessment (2013) (MLCA) highlights that the appeal site is within the Staplehurst Low Weald Landscape Character Area, and identifies, amongst other things, the importance of conserving and enhancing the small scale field pattern and sense of enclosure, encouraging restoration and management of historic field boundaries.
8. Matters such as layout and appearance are reserved matters. Nonetheless given the size and shape of the appeal site and the quantum of proposed dwellings, it seems to me, that this would result in a compact form of development, with small plot sizes, in a formal layout, and which is likely to involve the creation of a 'cul-de-sac'.
9. This would stand in contrast to the loose, informal layout of detached dwellings to the south and north of this part of the field. The form of development would also have an urbanising effect on the existing open field. Indeed, it would result in multiple dwellings positioned relatively deep within, and adjacent to, the simple landscape of the adjoining field. Consequently, the proposal would be incongruous to the prevailing pattern of development.
10. The opening of a vehicular access and associated loss of mature boundary hedge, would increase the harmful effect of the scheme whilst also allowing views into the site. This would conflict with the guidance within the MCLA which encourages the protection of the historic field pattern and boundaries. Whilst landscaping details would form part of a subsequent Reserved Matters Application (RMA), this alone is unlikely to ameliorate the visual impact of the proposal.
11. The Council has concerns about matters including the proposed materials, design of elevations and boundary treatments. However, these matters would be dealt with under subsequent RMAs.
12. Overall, the proposal would have a harmful effect on the rural character and appearance of the area. In this regard the proposal would conflict with policies LPRSP9, LPRSP15, LPRHOU6 and LPRQD4 of the Maidstone Borough Local Plan Review (2021-2038) (MLPR) and policies NE3 and BE1 of the Marden Neighbourhood Plan (2017-2031) (MNP) insofar as they require proposals to be

designed to reflect local character and integrate into their surroundings in the landscape and contribute positively to the conservation and enhancement of that landscape.

13. As outlined above the proposal would also conflict with the guidance in the MLCA and the aims of the National Planning Policy Framework (2024) (Framework) which requires the development is sympathetic to local character and history, including the surrounding built environment and landscape setting.

Highway safety

14. Howland Road at the point of the proposed access is at the national speed limit of 60 miles per hour (mph). The appellant believes that the 85th percentile of cars on this stretch of the road travel below 40 mph. However, in the absence of a speed survey, there is no substantive evidence to demonstrate that this is the case. Consequently, the length of visibility splay required for a 60 mph road, as advised in the Design Manual for Road and Bridges (DMRB), should be provided in this case.
15. It has not been demonstrated that appropriate visibility splays for the 60 mph road could be achieved. Regardless of the number of crashes recorded locally, without the necessary visibility, vehicles using this access would significantly increase the likelihood of collisions with other road users on this stretch of Howland Road. Accordingly, the development creates unacceptable highway conditions in this immediate area.
16. The appellant proposes reducing the speed limit on this section of road to 30 mph. However, the Highways Authority indicate it is unlikely that such a speed limit would accord with criteria for setting speed limits due to the rural nature of the highway in this location. In addition, the process to amend a speed limit will be subject to a Traffic Regulation Order (TRO), which is undertaken outside of any planning application. Therefore, there is no guarantee that the proposal to alter the speed limit would be accepted.
17. The appellant indicates planning conditions could be imposed to require the provision of a speed survey or the TRO relating to the speed limit. However, without an accurately measured speed survey or evidence that a TRO to reduce the speed limit would be forthcoming I cannot be certain that there will not be an adverse effect on highway safety. Therefore, and given the importance of highway safety, it is not possible to deal with this matter through the use of conditions.
18. In light of the above, I find that the development would have a harmful effect on highway safety in the area. In this regard the proposal would conflict with policies LPRHOU6 and LPRSP15 of the MLPR and policy In3 of the MNP, which amongst other matters require inclusive, safe and convenient access. It would also conflict with the aims of the Framework which requires that development should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Suitable location

19. There is no dispute that the appeal site is located outside the nearest settlement boundary as defined in the MLPR. Policy LPRSP9 states that development

proposals in the countryside will not be permitted unless they accord with other policies in the plan.

20. The proposal would provide nine affordable dwellings. Policy LPRHOU6 of the MLPR permits affordable local needs housing outside defined settlement boundaries subject to a range of criteria. Specifically, the sustainability of the site and its settlement will be a prime consideration in decision making. The council give preference to settlements and communities where a range of community facilities and services, in particular school, health, and shopping are accessible from the site preferably on foot, by cycle or on public transport. The site must also be safely accessible to and from the public highway by all vehicles using the site at all times.
21. Whilst there are shops and community facilities within Marden, the route to them along Howland Road involves walking along a lengthy stretch of road with no pavement. The road is unlit and twisty with stretches of poor visibility. The speed limit is 60 mph, and therefore passing traffic is likely to be fast moving. The Council confirm that there are no public transport links from the appeal site to the centre of Marden. Consequently, I consider this walking route is not likely to be an attractive option for the majority of people, particularly outside daylight hours and in inclement weather.
22. The submitted drawings indicate that the proposal would connect to the public footpath which runs to the south of the appeal site and which leads into Marden. The Council indicate that the path is narrow and unlit with an unsuitable surface in poor weather conditions and this is not disputed by the appellant. Consequently, I consider this is not likely to be an attractive option for the majority of people, particularly outside daylight hours and in inclement weather. Occupiers of the new dwellings would therefore be largely reliant on the private car.
23. The appellant has indicated that they could fund improvements to the route. However, the submitted evidence does not include details of how this would be secured, or whether such a contribution would meet the tests set by CIL Regulation 122 or paragraph 58 of the Framework which require obligations to be necessary, directly related to the development and reasonable in scale and kind to the development.
24. Furthermore, as set out above, I have found that the proposed access would not be safely accessible to and from the public highway by all vehicles using the site at all times.
25. Therefore, the proposal would not be within a suitable accessible location. It would not accord with Policies LPRSS1 and LPRHOU6 of the MLPR and policies BE2 and In2 of the MNP, insofar as they require proposals to be located where a range of community facilities and services, in particular school, health, and shopping are accessible from the site preferably on foot, by cycle or on public transport. There would also be conflict with the aims of the Framework which promote sustainable transport.

Heritage assets

26. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have

special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.

27. To the north of the field which the appeal site sits within are three Grade II listed buildings, The Old House, Pastures End & Poachers Keep and Bridgehurst Farmhouse. The List descriptions confirm that the properties are of similar age, likely to date from the 17th or early 18th centuries. To the south of the appeal site is Stone Pit Farmhouse and Stone Pit Barn, which are both Grade II Listed. These are more isolated buildings which formed part of a historic farmstead.
28. From my observations on the site visit and the evidence before me, the significance of the listed buildings (LBs) is derived mostly from their age and historic interest combined with the relatively unaltered setting of the group of buildings and their contribution to the understanding of the historic development of the rural area. There is no disagreement between the parties that the proposal would be within the setting of the LBs, and I see no reason to disagree.
29. I have previously found that the compact form of development, with smaller plot sizes in a more formal layout, would have an urbanising effect on the existing open field. The nine new dwellings would spread across a relatively large area to create a sprawling area of built form, which would appear in stark contrast to the rural character of the area. In addition, it would alter the setting of the group of LBs by introducing physical and visual separation between the LBs to the north of the field and those to the south.
30. I acknowledge that further details of a landscaping buffer and additional planting, within a RMA, could provide further screening of the proposal as it matures. I also note that there is currently mature vegetation which filters views from the field towards Stone Pit Farmhouse and Stone Pit Barn. As a result, from the appeal site, there is limited visibility of the LBs to the immediate south of the site due to the intervening vegetation. Nevertheless, the appeal site in its current form reflects the original setting of the group of buildings from the 17th and early 18th century origins contributing to an understanding of their original layout.
31. I conclude that the proposal would cause some harm to the setting and significance of the heritage assets due to the loss of open space which is important to the historic layout of the grouping of LBs. Overall, given the separation distances to the LBs to the north and the visual separation to the LBs to the south, I find that the proposal would cause less than substantial harm to the significance of the aforementioned designated heritage assets.
32. The proposal would therefore conflict with policies LPRSP14(B), LPRSP15, LPRENV1 and LPRHOU6 of the MLPR and policy BE1 of the MNP insofar as they require that development protects and enhances the high quality natural and historic environment, integrates with surroundings and respects and contributes positively to local character, identity and distinctiveness.
33. Paragraph 212 of the Framework advises that when considering the impact of development on the significance of a designated heritage assets, great weight should be given to the asset's conservation. Paragraph 213 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification. I will return to this under the planning balance.

Protected species and BNG

34. The appellant's Preliminary Ecological Appraisal (PEA) has been produced following a site visit and field survey which include a habitat classification survey. It includes a description of the habitats on the site and provides comments on the likelihood of protected and priority species being present on the land.
35. The PEA indicates that as there are no ponds on or adjacent the appeal site, which is bounded by a road to the east and residential development on two of its boundaries, it is unlikely to form part of a regular commuting route for Great Crested Newts (GCN). Neither are there on site ponds to attract breeding GCN.
36. However, the PEA notes there are existing wet ditches associated with the hedgerows, and 23 ponds within 500 metres of the site. Furthermore, Kent County Council Ecological Advice Service (KCC) outline that the number of protected species licences within 1,000m of the appeal site for GCN indicate that there is potential for GCN to be utilising these habitats within the site.
37. In these circumstances, surveys should be undertaken on the nearby ponds and wet ditches to ascertain the presence/likely absence of GCN. GCN are a European Protected Species (EPS) protected by the Regulations¹ and a precautionary approach should be taken. The Circular² is clear that it is essential that the presence or absence of protected species, and the extent that they may be affected by the proposal, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision
38. Therefore, on the basis of the evidence before me, I consider that the value of the appeal site for GCN has not been properly established. In particular, it is unclear whether GCN are present, what effect the development may have on them, and what mitigation measures may be needed to address any impacts.
39. A GCN survey cannot be secured by planning conditions, as this approach would not comply with guidance set out within the Circular. The need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. No such circumstances have been demonstrated in this case and it is therefore a reasonable expectation that the survey be carried out prior to any grant of planning permission.
40. The submitted PEA concludes that open areas with linear tree features along the eastern edge of the site provides foraging habitats for bat species. From the evidence before me, there are no trees which could contain roosting bats which would be removed as part of the proposal. In the absence of any evidence to the contrary, I am satisfied that adequate safeguards could have been secured through an appropriately worded planning condition, had I been minded to allow the appeal.
41. The appeal scheme is not subject to mandatory BNG due to the date on which the application was submitted. Nonetheless MLPR policy LPRSP14(A) requires the delivery of a minimum 20% BNG on new residential development.

¹ Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

² Paragraph 99 of ODPM Circular 06/2005

42. Whilst KCC took issue with certain calculations that went into the appellant's BNG Assessment, they are nevertheless of the view, holistically, that ecological improvement of the site is achievable. While the detail of the BNG provisions relies to an extent on the details of landscaping, which is a reserved matter, the indicative site layout indicates species rich hedge, the planting of new trees and enhanced grassland areas. In the absence of agreed reserved matters, I cannot be certain exactly how the BNG target would be met but I am persuaded that the proposal could deliver a 20% improvement on the baseline.
43. However, I have insufficient information to assess the extent of the impact on GCN. Consequently, I am unable to determine the effect of the proposal on GCN and cannot determine that it would not lead to significant harm. As such, I must take a precautionary approach and find the proposal would conflict with the Framework which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Without details of measures to avoid, mitigate or compensate for adverse effects, the proposal conflicts with policies LPRSP14(A), LPRSP15 and LPRHOU6 of the MLPR and policy NE4 of the MNP which collectively require proposals to enhance habitats and protect on-site biodiversity.

Other Matters

44. The appellant suggests that housing delivery and planning applications within the borough have slowed over recent years. However, the 2023 Housing Delivery Test results show that Maidstone Borough Council delivered 149% of its housing requirement over the latest 3-year period. The Council also indicate that they have a five-year housing supply.
45. The main parties agree that the dwellings would be acceptable and broadly in line with local housing need as demonstrated by the Council's Strategic Housing Market Assessment and Marden Parish's Housing Needs Survey (2022). There is clear need for affordable housing to support families and those with long-standing local connections who are currently priced out of the area. The provision of 100% community-led affordable housing is a matter which attracts substantial weight.
46. The development would provide nine additional affordable dwellings. There would be benefits associated with the proposal, such as making an efficient use of the site and contributing to local housing supply. The Framework seeks to significantly boost housing supply and emphasises the importance of small and medium sized sites. The appellant indicates that as a result of flooding to the west and south of Marden, and the use of the north of Marden for trading estates, sports fields and good agricultural land, there is a lack of available viable sites within Marden. Collectively, these matters weigh significantly in favour of the development.
47. The proposal would undoubtedly offer social and economic benefits that are also public benefits. There would be further benefits as future occupiers could support local services and facilities. There would also be economic benefits relative to the construction phase and general investment in the local area. Public environmental benefits would be secured through energy-efficiency measures including solar panels and heat pumps. Future landscaping proposals could increase biodiversity net gain and assist in filtering views of the proposal. Collectively, these matters are afforded moderate weight.

48. I understand that the developer and the landowners grew up in Marden, all having connections to the local area. The appellant indicates that alternative developers may be interested in developing close to the appeal site. Be that as it may these are matters which I afford limited weight.

Planning and Heritage Balance

49. The heritage assets include the five listed buildings of The Old House, Pastures End & Poachers Keep, Bridgehurst Farmhouse, Stone Pit Farmhouse and Stone Pit Barn that need consideration in the Heritage Balance.
50. The harm resulting from the location of the appeal scheme to the significance of the group of LBs would be less than substantial and lies within the low range of that scale of harm. Nevertheless, less than substantial harm does not equate to less than substantial planning objection and bearing in mind the statutory duty set out in the Planning (Listed Buildings and Conservation) Act 1990 the harm still attracts considerable importance and weight.
51. Starting with the heritage balance set out in Framework paragraph 215, it is necessary to weigh the less than substantial harm to the significance of the listed buildings against the public benefits of the proposal. I have set out the public benefits of the proposed development above and I have found that together they have significant weight. I find that the harm would be overcome by the social, economic and environmental public benefits provided in the appeal scheme that I have identified above. Therefore, harm to the heritage assets which I have identified which conflicts with LPRSP14(B), LPRSP15, LPRENV1 and LPRHOU6 of the MLPR and policy BE1 of the MNP is overridden by the outcome of the balancing exercise required by Paragraph 215 of the Framework.
52. Paragraph 193 of the Framework sets out the principles for how decisions should protect and enhance biodiversity. Policies LPRSP14(A), LPRSP15 and LPRHOU6 of the MLPR and policy NE4 of the MNP are consistent with the Framework. In view of my conclusions on the effect on a protected species, the appeal proposal conflicts with both the Framework and the development plan. Having regard to the statutory provisions protecting these species, I attach considerable weight to that potential for harm.
53. Policies LPRSP9, LPRSP15, LPRHOU6 and LPRQD4 of the MLPR and policies NE3 and BE1 of the MNP include measures which relate to character and appearance which development should address. These accord with the thrust of Paragraph 135a-c) of the Framework which requires development to be sympathetic to local character and to be of high quality. Whilst this is an outline scheme the details before me suggest that the scheme would adversely contrast with the character and appearance of the area. Accordingly, I afford significant weight to the conflict between the appeal scheme and these policies.
54. Finally, I have concluded that the proposal would have a harmful effect on highway safety in the area, and the site would not be in a suitable, accessible location. Given the aims of the Framework to ensure that development creates places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, I afford significant weight to the conflict with the appeal scheme.

55. I have considered the benefits of the appeal scheme particularly those relating to the provision of affordable housing and its impacts on the local economy. While these are significant benefits the harm arising from the appeal scheme in the proposed location would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
56. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole, and material considerations including the Framework do not indicate that a decision contrary to the Development Plan should be reached. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR