



Appeal Decision

Site visit made on 12 June 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1st August 2025

Appeal Ref: APP/X2220/W/25/3361491

Preston Garden Centre, The Street, Preston, Kent CT3 1ED

- 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 John Rodgers against the decision of Dover District Council.
 - The application Ref is 24/00568.
 - The development proposed is Residential development on surplus land south-east of Preston Nursery Garden Centre with vehicular access to Mill Lane and pedestrian access to The Street.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submission includes revised drawings which amend the site's 'red line' boundary in order to reduce the site area. I have considered whether it would be appropriate to accept the drawings, having regard to the guidance in the Procedural Guide: Planning Appeals – England (2025), and the tests given in the 'Holborn Studios' judgement¹. Significantly amending the site boundaries and overall site area, would be a fundamental change to the proposal that results in a different scheme than the one which was before the Council. As such, it would not be appropriate for the drawings to be accepted, as this could unacceptably prejudice those who should have been consulted. For this reason, I have determined the appeal using the original drawings that were considered by the Council and upon which the views of interested parties have been sought.

Main Issues

3. The main issues are:
 - the effect of the proposal on protected species, with particular regard to bats and dormice;
 - whether the proposal would make adequate provision towards affordable housing; and
 - whether the site is a suitable location for the appeal proposal having regard to the Council's strategy for the location of development and its effect on the rural character and appearance of the area.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Reasons

Protected species

4. The main parties are in agreement that the site is suitable for bats. Therefore, a Preliminary Roost Assessment (PRA) should be undertaken. However, a PRA is not included within the submitted evidence. In the absence of such an assessment it is not possible to confidently ascertain that there are no bats roosting within the site.
5. The ecological report also indicates that the site is considered suitable for use by dormice, as a result of the habitat and sources of food nearby. However, a further survey for dormice has not been provided.
6. Paragraph 99 of Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. 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 any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
7. The appellant has provided evidence from the National Biodiversity Network Trust showing the data records for dormice. This indicates that there are no records of the presence of dormice in the areas surrounding Preston. I also note that surveys for dormice can only be undertaken during specific periods of the year. However, even if I were to agree there is not a reasonable likelihood of the dormice being present, in the absence of a PRA in relation to the bats, the effect of the development on protected bats and their habitats, and the ability to mitigate any harm, is unknown. Given my responsibilities to protected species, the necessary confirmation of protected species on site, and the formation of potentially sufficient or proportionate mitigatory measures are matters that cannot be left to a planning condition.
8. Consequently, there is insufficient evidence to demonstrate that the proposal would have an acceptable effect on protected species and biodiversity, contrary to the relevant provisions of policy SP14 of Dover District Local Plan (2024) (LP) which requires proposals to conserve and enhance habitats, including internationally, nationally and locally designated sites, irreplaceable and priority habitats and species. As such, I must take a precautionary approach and find the proposal would conflict with the National Planning Policy Framework (2024) (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.

Affordable housing

9. Policy SP5 of the LP requires the provision of affordable housing on sites which are for 10 dwellings or more, or sites of 0.5 hectares or more. Whilst the proposal would not exceed 10 dwellings, the appellant's planning application form confirms that the appeal site area is 0.95 hectares.

10. Paragraph 65 of the Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments. Major development is defined within Annex 2: Glossary of the Framework. This states that major development, for housing, is development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more (my emphasis). Therefore, policy SP5 is in full accordance with the Framework, and given that the area of the appeal site exceeds 0.5 hectares the provision of affordable housing is required.
11. I acknowledge that the Council's new LP was adopted during the determination of the planning application, and the appellant indicates that the Council's previous planning policies did not require the provision of affordable housing for a site of this size. However, it is incumbent upon me to base my decision upon the most up to date planning policy.
12. As no affordable housing is provided, the proposal would conflict with policy SP5 of the LP, the aims of which are described above.

Location

13. The main parties agree that the appeal site is located outside the settlement boundary of Preston. Policy SP4 of the LP identifies that windfall development will be permitted within or adjoining settlement boundaries of identified towns and villages, including Preston, subject to specific criteria.
14. The supporting text to the policy outlines that, in most cases, this will require development proposals to be immediately adjoining the settlement boundary line. However, schemes will also be considered acceptable where there is a very close connection between the proposed development and the built form of the existing settlement.
15. Preston is a largely linear settlement running from north to south. However, to the north of the settlement there are large areas of modern residential development extending westwards which are accessed from Grove Road and Discovery Drive. To the south the built form extends eastwards along Mill Lane and Longmete Road.
16. Although currently overgrown, the appeal site was previously a tree planting nursery associated with the adjoining garden centre to the north west. As a result, the appeal site is not typical of the more open and flat countryside fields which are found to the east of Mill Lane. Whilst it is outside the settlement boundary, the vacant garden centre fronts The Street and contains a number of buildings, including a former café and a large car parking area.
17. The appeal site is located close to the centre of Preston. A small buffer runs between the residential properties fronting The Street and the appeal site. However, given the site's proximity to the settlement boundary there is notable built form close by, with no open countryside between the appeal site and nearest dwelling within the village boundary.
18. The proposal involves a pedestrian link ensuring that future occupiers would have direct pedestrian access, within approximately one minute walk, to The Street, which is the principal road through the village. The submitted evidence indicates that the village's facilities such as the primary school and village hall community

centre, village store, public house and butchers are all less than 200 metres and within several minutes walk from the appeal site. The appeal site also adjoins the village green. Whilst this is outside Preston's settlement boundary it is clearly one of the village's primary community facilities. The creation of public access through the appeal site would improve access from the north of the village to the village green, further consolidating the appeal site's connection to the settlement. The above reasons collectively lead me to consider that the proposal would have a close physical and functional connection to the built form within the village's settlement boundary.

19. The submitted evidence identifies trees to be removed, retained or relocated, and new trees to be planted within the appeal site. Of particular note, two rows of mature conifer trees on the eastern side of the appeal site would be retained. These provide a strong visual barrier, significantly filtering views into the appeal site from Mill Lane. As a result the proposal would be largely hidden in the majority of public views surrounding the site, including those from Mill Lane and the public footpath EE137 to the north east of the site. The proposal would therefore not be a prominent addition to the local area.
20. A new vehicular access is proposed onto Mill Lane. This would inevitably involve the removal of a stretch of hedgerow along this narrow, and verdant lane. However, the majority of the appeal site would remain enclosed by the two rows of conifer trees near the site's Mill Lane frontage, and as a result, the proposal would not result in harmful urbanisation of this stretch of Mill Lane.
21. Whilst much of Preston is linear in its layout, the orientation of the five proposed dwellings, would be similar to other dwellings within the village which are not located on The Street, such as those found within the northern edge of the village boundary. The dwellings would be well spaced, within generously sized plots, reflective of the layout of nearby dwellings on Mill Lane. The overall density of the development would not appear at odds to the surrounding village.
22. The dwellings would have a mixture of hipped roofs and 'cat slide' roof forms. Collectively, these forms prevent the proposal from appearing overly bulky, whilst the generous separation distances between dwellings would ensure that a sense of spaciousness would be maintained. The proposed materials including traditional red brickwork and black weatherboarding would be reflective of the local rural vernacular.
23. As I have found that there would be a close connection between the proposed development and the built form of the existing settlement it is not necessary to assess the proposal's compliance with criteria i-v of policy SP4.
24. For the above collective reasons, I conclude that the appeal site would be a suitable location for the proposal having regard to the Council's strategy for the location of development and its effect on the rural character and appearance of the area. I therefore find that the proposal complies with policies SP4, PM1 and NE2 of the LP insofar as they require windfall development to have a close connection to the existing settlement, achieve a high quality of design and to have particular regard to the local landscape characteristics.

Other Matters

25. The concerns expressed regarding the Council's conduct during the processing of the planning application fall outside of the remit of this decision.
26. On the opposite side of Mill Lane is a Grade II listed building (LB) known as Hardacre House. The List description confirms that it has an eighteenth century exterior to an earlier building. It is two storeys in height and, amongst other things is described as probably being timber framed, clad with painted brick and rendered elevations. To the right of its front door is a terracotta plaque of the Virgin.
27. It is principally experienced in views from Mill Lane. The significance of the LB is derived mostly from its age, architectural quality, and its setting fronting the verdant, rural Mill Lane.
28. I have had regard to the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) with respect to the desirability of preserving the setting of Hardacre House. The proposal would be separated from the LB by tall, dense planting surrounding the appeal site, and as such there would be limited intervisibility. Due to the extent of vegetation and screening, the proposal would be evident only from very limited views from Mill Lane. As a result, the design and mass of the proposal would not appear out of place, and the proposal would have a neutral effect on the setting of the LB.
29. The appeal site lies adjacent to, but outside the Preston – The Street Conservation Area (CA). I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Act.
30. From my observations on site, the character and significance of the CA stems from the arrangement of historic buildings of varying ages and styles which address The Street, often with very little setback from the public highway. The proposal is located to the rear of buildings fronting The Street. As a result of the built form, boundary screening to the rear of properties within the CA, and the separation distance, the proposal is unlikely to be visible in views from The Street within the CA. Nor would the CA be especially visible in views of the proposal from the east. Consequently, I consider that the proposal would have a neutral effect on the setting of the CA.
31. I recognise that the proposal would provide five dwellings reasonably quickly due to the small scale of the scheme. I have considered that the Framework seeks to boost significantly the supply of housing and recognises the importance of small sites in meeting the housing requirement of the area. The proposal would create temporary employment opportunities during construction and there would be associated spending in the local area on subsequent occupation of the dwellings.
32. The proposed dwellings would have good internal space, with a functional layout and future occupiers would have generously sized external amenity areas. I acknowledge that the proposal may be compliant with various other provisions of the development plan, and, for instance, would provide a policy compliant quantum of off-street car parking. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.

Planning Balance and Conclusion

33. Given the proposed development would comprise five additional dwellings, the benefits described above are moderate. However, in view of my conclusions on the potential effect on protected species and affordable housing, the appeal proposal conflicts with both the Framework and the development plan. I attach considerable weight to the potential harm to protected species and the harm arising from the lack of affordable housing.
34. Therefore, there are no matters weighing in favour of the appeal proposal that either individually or collectively justify a decision being taken contrary to the development plan, including the contribution to the supply of housing in the area that would arise. For the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR