
Appeal Decision

Site visit made on 4 May 2021

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2021

Appeal Ref: APP/K2230/W/20/3255704

Land adjacent to School Lane, Higham, Kent ME3 7JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Loft against the decision of Gravesham Borough Council.
 - The application Ref 20191222, dated 3 October 2019, was refused by notice dated 21 January 2020.
 - The development proposed is erection of 3no. self-build houses with associated garages and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3no. self-build houses with associated garages and landscaping at land adjacent to School Lane, Higham, Kent ME3 7JG in accordance with the terms of the application, reference 20191222, dated 3 October 2019, subject to the conditions in the attached schedule and the pre-payment of the Strategic Access Management and Monitoring fee.

Preliminary Matters

2. The application is submitted in outline form with all matters reserved except for access. Illustrative plans have been provided showing a potential layout of the appeal development and I have taken these into account in my decision.

Main Issues

3. The main issues for the appeal are:
 - whether the proposal is inappropriate development for the purposes of development plan policy and the National Planning Policy Framework (the Framework);
 - the effect of the development upon landscape character;
 - the effect of the development upon the North Kent Marshes Special Protection Area (SPA) and Ramsar Site;
 - whether provision for affordable housing is reasonable and necessary; and
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether the proposal would be inappropriate development

4. The appeal site is located within the Green Belt. The Framework advises that the construction of new buildings in the Green Belt should be regarded as inappropriate, other than for certain listed exceptions. The appellant contends the appeal proposal complies with two of these, being either a limited infill in a village or a partial or complete redevelopment of previously developed land (paragraph 145 (e) and (g) of the Framework).
5. In determining whether a development constitutes limited infill in a village, I note that the terms 'limited' and 'infilling' are not defined in the Framework, and thus these are matters of planning judgement. I have however been made aware of several Court cases and appeal decisions where it was determined that settlement boundaries are not definitive when assessing whether a site is part of a village. This is also reflected in the preamble to policy CS02 of the adopted Gravesham Local Plan Core Strategy 2014 (the Core Strategy).
6. The appeal site is outside of, but adjacent to, the development boundary of the village of Higham, which is drawn on the opposite side of School Lane as shown on the proposals map accompanying the Core Strategy. However, this relationship also applies to neighbouring properties at Home Farm Cottage, Meadows Cottage and the dwellings in Jupp Court, which sit to the north of the appeal site. Higham railway station and its associated car park are to the northeast and east sides of the appeal site. Although the railway station is also in the Green Belt, it is a key transport facility forming part of the village services and environs.
7. The appeal site defines a plot on the approach to the existing property of Meadows Cottage, on land that currently acts as residential garden. These properties rely socially on the village for services and public transport. There is also a strong physical connection to the village being directly opposite and visible from the built-up area of Higham to the west and abutting the railway station car park to the east.
8. Whilst there is a stark change in land levels between the appeal site and the train station car park, spatially the proposed dwellings would be situated in between aspects of the built environment and other village uses. I see no reason why the infilling the Framework accepts cannot be between residential dwellings and another use of the built village environment, particularly one as potentially intensive as a train station car park. The proposed dwellings would also share the same functional and visual relationship with the settlement as the existing dwellings on the eastern side of School Lane.
9. I therefore conclude that the proposal would not be inappropriate development in the Green Belt having regard to the Framework as it would represent limited infilling in a village. Since the proposal constitutes limited infilling in a village, there is no requirement for me to consider openness or whether other considerations amount to very special circumstances.

Landscape character

10. Policy CS12 of the Core Strategy identifies that landscape character and valued landscapes will be conserved, restored and enhanced. In this instance, the appeal site falls within the locally designated Higham Arable Farmlands landscape character area, which is noted for being open arable farmland with isolated farmsteads, views to the River Thames and undulating topography.
11. From my site visit, it was clear that the appeal site was a residential garden, laid to lawn and with domestic plantings. The appeal site is physically and visually separated from the agricultural land to the south by way of a densely landscaped boundary and is clearly in domestic use. Due to its close visual and physical relationship to the village of Higham, the appeal site cannot be considered to have any attributes of an isolated farmstead.
12. The appeal site does have a definite undulating gradient, with the higher ground being upon the site boundaries. However, the self-contained nature of the appeal site would prevent any direct loss of any of the features that contribute to the wider landscape character area. Any limited views of the proposed dwellings from the arable farmland to the south would place the development in context with the village of Higham. I find that the dwellings would not interrupt or obstruct any greater views of the wider landscape setting.
13. On this basis, the proposal would not harm the landscape character of the Higham Arable Farmlands. I conclude there would not be conflict with the purposes of policies CS12 or CS19 of the Core Strategy, which aim to conserve, restore and enhance overall landscape character.

Effect upon the North Kent Marshes SPA and Ramsar

14. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site¹, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
15. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the site within the National Site Network.
16. The appeal site falls within the 6km zone of influence for the North Kent Marshes SPA and Ramsar site. This site is designated for its environmental importance, since it provides habitats for wintering birds, wildfowl and wading birds including terns and brent geese. All sites are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have significant effects on the quality features of interest of the SPAs due to the increased recreational use. I have no reason to disagree with the Council's conclusion relating to the potential significant effects.
17. Having concluded that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an AA. In

¹ now the National Site Network following the Conservation of Habitats and Species (Amendment)(EU Exit) Regulations 2019

this AA I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives, which are to protect important migratory species of birds and to prevent disturbance to their habitat, on the identified site would be ensured.

18. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of Strategic Access Management and Monitoring (SAMM). This strategy requires financial contributions from developments, allocating detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
19. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement and making payment pursuant to Section 111 of the Local Government Act 1972. The appellant has supplied evidence of advance payment during the appeal with all requisite signatories upon the receipt and declaration, dated 14 August 2020. The Council has listed the specifics of the infrastructure to which the payment would contribute towards, in the technical report underpinning the SAMM².
20. This legal agreement would therefore serve to mitigate the recreational impacts arising from the proposal. I am therefore able to favourably conclude my AA.
21. On this basis I am able to conclude that the required mitigation would be properly secured and that the proposals would be unlikely to have a significant effect on the identified SPA or Ramsar either alone or in combination with other projects. The proposal therefore complies with policy CS12 of the Core Strategy which seeks to ensure that detrimental effects on the integrity of the SPA and Ramsar Site are avoided.

Affordable housing

22. The appeal development is for 3 open market self-build dwellings. The glossary to Framework confirms that self-build housing could be either market or affordable housing. In this instance the Council seeks a 35% contribution towards affordable housing.
23. The planning practice guidance³ sets out that planning obligations for affordable housing should only be sought for residential developments that are major developments (10 homes or more, or the site has an area of 0.5 hectares or more). Designated rural areas may choose to set a lower threshold, providing that the designation fits the description under section 157(1) of the Housing Act 1985, which refers to National Parks, Areas of Outstanding Natural Beauty or areas the Secretary of State has ordered be designated a rural area.
24. Policy CS16 of the Core Strategy states that affordable housing will be required on sites of 3 units or more, or on sites of 0.1 hectares or more, in the rural area. The proposed development would not provide any affordable housing units nor any commuted sum of equivalent value, thus rendering the proposal non-compliant with the Development Plan.
25. However, no evidence has been put to me to demonstrate that the appeal site fits the description of a designated rural area² (other than the site is not in an

² Phase 1 – Bird Disturbance Report by Footprint Ecology July 2012

³ National Planning Practice Guidance Paragraph Ref: 23b-023-20190901

urban area). The Green Belt is not listed as a designated rural area and therefore there is no national or statutory support for seeking a lower threshold for affordable housing contributions in this case. For this reason, policy CS16 is considered to be inconsistent with the national guidance and the weight of conflict with the policy is reduced.

26. A viability assessment has been submitted with the appeal, that appears to set out a reasoned case for waiving the need for affordable housing contributions from the proposals. The Council has not commented on whether the assessment is robust but has equally not indicated that the reason for refusal on this ground can be withdrawn. In the circumstances, I have had regard to section 38(6) of the Planning and Compulsory Purchase Act, which affirms that decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise.
27. In the absence of affordable housing contributions, I therefore conclude that the proposal would be in conflict, albeit limited, with policy CS16 of the Core Strategy, which seeks the provision of affordable housing.

Other Matters

28. It is common ground between the parties that the Council cannot demonstrate a 5-year housing land supply. Paragraph 11 of the Framework, through footnote 7, is therefore engaged and a presumption in favour of sustainable development applies.
29. I have already found the proposal to be not inappropriate development under paragraph 145(e) of the Framework. On other matters, the policies of the Framework do not provide a clear reason for refusal. Consequently, I will consider the proposal under paragraph 11(d)(ii) whereby permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
30. The Self Build and Custom Housebuilding Act 2015 came into place on 1 April 2016 and puts a duty on Councils to keep a register of individuals and organisations who want to acquire land for self-build homes, and to have regard to this register in carrying out its planning, housing, land disposal and regeneration functions. The appellant has put forward unchallenged figures from the register that demonstrate a clear need for such housing to be provided.
31. The Council acknowledges that it has no current policy for delivering self-build housing and an emerging policy is not imminent. In such circumstances, there are clear benefits derived from the proposal to meeting housing needs. In addition, the appeal site is in an accessible location close to public transport opportunities and local village facilities, thus contributing economically and socially to a prosperous rural community.
32. With the application made in outline form, there is no evidence before me to suggest that the proposed development would have a harmful effect on the landscaped structure of the site boundaries nor upon any wildlife therein. I noted during my visit that, despite the appeal site's sloping terrain, dwellings could be feasibly accommodated and designed without causing adverse impacts on the living conditions of nearby residents. The Highways Authority has not raised any concerns with the access or parking arrangements at the appeal site, and I have no evidence before me to give rise to a different conclusion.

33. The proposal would conflict with the Development Plan insofar as it would not provide affordable housing, contrary to policy CS16 of the Core Strategy. However, in my view, the policy is afforded limited weight for the reasons given above and therefore only limited conflict with that policy would occur. This limited conflict would not significantly and demonstrably outweigh the significant benefits of the proposal when assessed against the Framework as a whole. In these circumstances, I consider that the appeal scheme would comprise sustainable development and the presumption in favour of such, as set out in the Framework, applies. That is a significant material consideration that outweighs any conflict with some elements of the development plan. Therefore, for the reasons set out above, I conclude on balance that the appeal should succeed.

Conditions

34. The Council has provided a list of conditions it considers necessary, to which the appellant has confirmed acceptance. Notwithstanding, I have the following comments to make.
35. In the attached schedule, conditions 1, 2 and 3 are necessary to ensure the reserved matters application and the housing itself comes forward in a timely manner. Condition 4 is imposed for the avoidance of doubt as to the nature of the development hereby permitted, although this excludes those plans marked as illustrative since these are not submitted for approval⁴.
36. I have not included a separate condition with regards boundary treatments, as they form part of the 'landscape' reserved matter submission. It is however necessary to include condition 5 to secure appropriate cycle and refuse storage facilities. No evidence has been provided to justify a condition regarding contaminated land, although it is reasonable to require details of surface and foul water drainage given the sloping ground.
37. Condition 7 is necessary to ensure construction is undertaken safely and without detriment to highway safety or neighbour's living conditions. Whilst the Council has suggested submission of a scheme relating to external lighting, given the Green Belt location, I have amended the condition so as to limit the potential for such lighting. Similarly, I have imposed a condition removing permitted development rights to provide limit and control development across the appeal site.
38. Conditions 10 and 11 are imposed in the interests of highway safety for all users of the highway.

Conclusion

39. For the reasons given above, I conclude that planning permission should be granted for the proposed development.

David Wallis

INSPECTOR

⁴ Planning practice guidance paragraph ref: 21a-005-20190723

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 18_95_01 Revision C July 2019 and the Site Access Visibility drawing PCD337/001.
- 5) The reserved matters submission pursuant to condition 1 of this permission shall show full particulars of the siting of cycle storage and refuse bin storage to serve the development. The development shall be implemented in accordance with the approved details prior to the occupation of the development hereby permitted and shall be retained as such thereafter.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities; and
 - v) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 8) No means of external illumination shall be provided in the development hereby permitted unless and until details have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with these approved details and retained as such thereafter.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements to the dwellinghouse, including the roof of any dwellinghouse, or the construction of any further outbuilding within the

curtilage of any dwellinghouse, shall occur unless prior written consent has been obtained from the Local Planning Authority.

- 10) The reserved matters submission pursuant to condition 1 of this permission shall show full particulars of the car parking spaces and turning facilities to serve the development. The development shall be implemented in accordance with the approved details prior to the occupation of the development hereby permitted and shall be retained as such thereafter.
- 11) Prior to the first occupation of the development hereby permitted, vision splays of 2.0m x 2.0m shall be provided on both sides of the vehicular access points and no obstruction of sight more than 0.6m above carriageway level shall be permitted within the splays thereafter.