



## Appeal Decision

Hearing held on 21 September 2016

Site visit made on 21 September 2016

**by R W Allen B.Sc PGDip MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3 November 2016**

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**Appeal Ref: APP/E2205/W/16/3151327**

**Land Between Tyle House and Mount Pleasant, Stocks Road, Wittersham, Kent**

- 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 Tim Piper against the decision of Ashford Borough Council.
  - The application Ref 15/00459/AS, dated 2 April 2015, was refused by notice dated 30 November 2015.
  - The development proposed is outline application for the development of 27 houses including 10 affordable houses with proposed vehicular access onto Stocks Road, associated landscaping and open space.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council states that its fourth reason for refusal as set out in its decision notice, which relates to ecology matters, is no longer being pursued and that such matters can be controlled by planning conditions. With no other representations to the contrary, I have subsequently not considered the matter further in my Decision.
3. Following the Hearing, I received a signed legal agreement in the form of a Unilateral Undertaking obligation dated 27 September 2016 for financial contributions towards sports and leisure facilities, social infrastructure and education, and to provide affordable housing. The Council maintains an objection to it on policy concerns which I discuss in more detail below. I note that the County Council is satisfied that all financial contributions meet its own requirements. However as I am dismissing the appeal on the main issues, it is not necessary for me to reach any conclusions on the adequacy of the legal agreement in this regard.
4. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access, landscaping and layout. I shall treat any other details shown in relation to appearance and scale as being indicative only.

### Main Issues

5. Therefore the main issues are:
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- Whether there are exceptional circumstances exist to justify major development within the High Weald Area of Outstanding Natural Beauty (AONB);
- Whether the proposed development would preserve or enhance the character or appearance of the Conservation Area; and
- Whether the proposed development and in particular the layout would promote good design.

## **Reasons**

### *Policy context*

6. The development plan for the area comprises the Ashford Borough Local Plan 2000 (Local Plan), the Ashford Local Development Framework Core Strategy 2008 (Core Strategy), and the Tenterden and Rural Sites Development Plan Document 2010 (DPD).
7. DPD policy TRS2 states that new development outside the built confines [of Wittersham] will not be permitted unless it constitutes a local need scheme on an exception site justified by other policies in the plan. DPD policy TRS4 states that planning permission will be granted for proposals for local needs housing within or adjoining rural settlements as 'exceptions' to policies restraining housing development provided that local need justification has been clearly evidenced; it does not include market housing; that occupancy is controlled; and the development is well designed with no adverse impact on character of the surrounding area.
8. Common ground exists between the main parties that the Council cannot demonstrate a five year supply of deliverable housing land. In such circumstances, paragraph 49 of the National Planning Policy Framework (the Framework) dictates that relevant policies for the supply of housing should not be considered up-to-date. Both DPD policies TRS2 and TRS4 would therefore be out-of-date.
9. However, the Court of Appeal Judgement for *the Secretary of State for Communities and Local Government v Hopkins Homes Ltd [2016] EWCA Civ 168*, which found that the weight to be applied to out-of-date policies would vary according to circumstances and would be a matter for the decision maker. General or specifically restrictive policies are capable of being given sufficient weight to justify the refusal of planning permission despite not being up-to-date. In line with paragraph 215 of the Framework, which states that due weight should be given to policies within existing plans according to their degree of consistency with the Framework, the main parties agreed at the Hearing that appropriate weight can therefore be attached to both DPD policies mentioned above, and to others that seek to protect the landscape character and scenic beauty of the AONB and the Conservation Area, and I have no reason to disagree.

### *Whether proposed development amounts to exceptional circumstances to justify major development in the AONB*

10. The appeal site is farmland located adjacent to but outside of the settlement boundary of the village of Wittersham. Approximately an inverted 'L' in shape, it is largely flat and well screened on its boundaries with a mixture of shrubs

and trees, some of which are protected by Tree Preservation Orders. The appeal site along with all surrounding land is washed over by the AONB.

11. The main parties agree that the proposed development would be defined as major development, and I have no reason to disagree. Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty of AONBs, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 of the Framework states that planning permission should be refused for major development in AONBs except in exceptional circumstances and where it can be demonstrated they are in the public interest. Such exceptional circumstances should include an assessment of: need and the impact of permitting or refusing it on the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
12. I agree with the main parties that the provision of dwellings alone, notwithstanding the Council's five years housing position, would not amount to the exceptional circumstances to justify the proposed development in the AONB. However while I heard comments to the contrary, I agree with the main parties that addressing local housing need in the village, particularly where it could be demonstrated that the scheme would have significant local benefits, would amount to an example of an exceptional circumstance, consistent with DPD policy TRS4.
13. The main parties have drawn my attention to the Council's Housing Need Survey (HNS) dating from 2012, which identifies a need for 17 dwellings in Wittersham. The Council confirmed at the Hearing that none have yet been provided, but that four have recently been granted planning consent. While I note that the HNS is some years old, and that differing views exist on whether the HNS figure remains correct or should in fact be lower, it nonetheless remains the only quantifiable and tangible evidence on local need before me. The proposed 10 affordable units would go some way to addressing local housing need, and although indicated as comprising six 2 bed units and four 3 bed units, the exact accommodation offering could be controlled at reserved matters stage if it were felt smaller units better suited local needs.
14. The provision of the 10 affordable houses is secured in the obligation before me. However, the Council's concerns that the obligation fails to secure any of these units for local people are, I find, well founded. While the obligation identifies and defines the term 'local connection', I find no evidence that it has been applied to bind the occupation of any of the affordable housing. Instead, occupation is restricted only a mix of tenures as the Council may approve, or by tenant or leaseholder of a Registered Provider, and as such are open to a wider catchment of people.
15. Assuming that the obligation could be construed so that local housing need was secured within it, no justification or explanation has been afforded as to why market housing is necessary. At the Hearing, the appellant acknowledged that no viability exercise had been undertaken, and I do not find that it necessarily follows that delivery of local houses axiomatically requires market housing to accompany it. However, even accepting the inevitability that some market housing would be necessary to deliver affordable dwellings, no evidence has

- been afforded to warrant the level and scale of market housing as proposed here, which extensively outnumbers the affordable provision.
16. The appellant's landscape and visual assessment considers that the effect of the proposed development upon the AONB landscape would be restricted only to the change in the land use and to the shape of the settlement boundary and shape of the village, and the subsequent effects this would have on its setting. It concludes that overall, the effects to the setting of the AONB would be largely localised and would be neutralised because of the design approach and the approach to improving the boundary planting.
  17. Both the Council and third parties criticise the approach taken by the appellant in failing to acknowledge, or address the number of key objectives contained within the High Weald AONB Management Plan 2014-2019, which I was rightly reminded is a legal requirement to produce under the Countryside and Rights of Way Act 2000 for all local authorities with AONB areas. Accordingly, criticism has been drawn that the appellant has failed to understand or address the wider landscape outcomes on the AONB, preferring instead to focus on the localised implications. I agree with those concerns, and the appellant has not sufficiently explained either in written or oral evidence as to why it has afforded little consideration AONB Management Plan or what alternative assessment was used instead. Mindful of the weight I must apply to the conserving such landscapes, I find the appellant's approach to understanding the landscape is unsound.
  18. Further concerns have been raised as to the quantum of hedgerow that would be removed on the site's frontage along Stocks Road. Currently, and save for a small area on the south west corner, the site's southern boundary with Stocks Road comprises a continuous mature hedge. I observed at my site visit that it is an important visual feature in the area which positively contributes to the character and appearance of the AONB. The appellant asserts that only 10m of the hedge would be removed to accommodate the access to the development site, while new hedge planting would be provided for plots 1 and 2. However, from what I have seen of the submitted plans, the remainder of the hedge is not shown, which gives some credence to the concerns that in fact all of it would be removed, amounting to some 110m in length, which I find would cause considerable harm as a result.
  19. The appellant indicates that the site's western and south western boundaries would be reinforced with planting. Because the landscape strip is outside of the plot boundaries, I am satisfied that such planting could be maintained and retained. However, the same cannot be said for the proposed hedge planting along the remainder of the site's external boundaries, in which hedge planting would be within plot boundaries, and it has not been adequately demonstrated that the garden sizes for the plots on the northern edge would be insufficient to allow such hedgerows to establish. Nevertheless, little evidence is before me as to how such hedgerows would be protected, and I find there would be a considerable risk of them being removed in the fullness of time, perhaps being replaced with a harsher boundary treatment, which would considerably expose the site and undermine the strong and planned landscaped approach undertaken by the appellant.
  20. In the absence of sufficient demonstration that alternative sites to meet local needs have been considered, I find that none of the exceptional circumstances

tests as specified in paragraph 116 of the Framework have been met. As directed by the Framework, planning permission should therefore be refused. The proposed development would fail to meet the relevant policy objectives of DPD policy TRS4 which I have set out above, or with DPD policy TRS17 and Local Plan policy EN9, which states that development in rural areas should have particular regard to any relevant guidance given in the AONB Management Plan, and where significant damage to landscape features occurs development will not be permitted.

*Whether preserve or enhance the Conservation Area*

21. S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 132 of the Framework says great weight should be given to a heritage asset's conservation. Core Strategy policy CS1 states the Council will apply the principle of conservation and enhancement of the historic environment and built heritage of the borough approach in deciding planning applications.
22. The south western boundary of the appeal site borders the Wittersham Conservation Area. The Council states that the significance of this part of the Conservation Area portrays a distinctive character, with the northern side being developed with eighteenth and nineteenth century vernacular buildings while the southern side is open with the Memorial Gardens, allowing the buildings on the northern side to have an open and imposing setting. I observed nothing at my site visit to dispute the Council's view, noting in particular that that these buildings read very much as part of the village and as such the intervisibility and inter-relationships with other buildings is an expected feature and not harmful to their significance.
23. In contrast, I find that the open backdrop adjacent to the Conservation Area boundary plays little role in the appreciation of these buildings and the understanding of their importance. From the crossroads area, which is at a lower land level than the appeal site, I saw that the presence of tree screening prevented any views into the appeal site, and Tyle House Oast restricted any wider views to the countryside and ancient woodland in the distance. While undoubtedly and from a closer aspect the proposed dwellings particularly the roofs of such buildings would be visible, I am satisfied that the effective tree and shrub planting, both extant and proposed, would be capable of softening the effect.
24. Third parties consider that the proposed development would harm the setting of Mill House, which is Grade II listed. However, Mill House is not adjacent to the appeal site and is further separated by the existence of two residential properties to its frontage. I am satisfied that sufficient distance would exist between the two that the setting of Mill House would not be undermined or harmed, and it would remain appreciable when viewed from Stocks Road. The Council did not raise this as an issue.
25. For the reasons set out above, I find the proposed development would preserve the character and appearance of the Conservation Area, and that it would accord with Core Strategy policy CS1 and the relevant part of the Framework.

*Layout*

26. The proposed layout would contain a spacious mix of predominately market detached dwellings, although some semi-detached and a terrace of three properties are also shown. A notable and consistent feature of the layout would be the extensive use of soft landscaping, including the provision of front gardens and native hedgerows reinforcing the front boundaries of each property, and the careful placing of the parking areas to the side. Taken with the areas of communal green spaces, the area of market housing would appear well landscaped and appropriate for its semi-rural setting.
27. However, an abrupt change would occur at the north west corner of the site, and where the allocation of affordable houses would be. I heard at the Hearing that these properties would be constructed utilising the same materials as the market housing. Nevertheless they would be decidedly smaller plots than the remainder of the site, the frontage areas would be dominated by hardstanding and parking spaces, with a notable absence of any provision of garage allocations or front gardens. This part of the site would contrast unfavourably with the market dwellings. It would not promote a coherent and inclusive design; rather the development would appear as two separate and diverse developments, with the affordable element clearly identifiable and distinguishable. This would not amount to good design.
28. I further share the Council's concern in respect to the positioning of the protected oak trees in relation to Plot 2. The submitted drawings indicate that the crown spread of the tree would extend considerably close to the proposed property. Having regard to the positioning of its rear garden and the daily path of the sun, I am satisfied that this tree would cause a considerable nuisance to the living conditions of the future occupiers of this property in respect to overshadowing. While any decision to prune or remove the tree would rest with the Council, continued pressure to undermine its health and appearance would be an inevitable consequence. The drawings indicate a similar occurrence would be less severe for the living conditions of the future occupiers of plots 13-15, and I am satisfied that there would be no significant harm.
29. I acknowledge that a new residential development of this size would contrast with the surrounding urban grain and the established pattern of the village, which has largely grown organically. However, this would be an inevitable consequence of any new development such as this, and it is not as a matter of principle a reason to dismiss the scheme out of hand. In any event, I do not find that the proposed scheme would necessarily contrast unfavourably with pattern of surrounding development to cause significant harm to its character. I also acknowledge that the proposed development may introduce overlooking to surrounding properties particularly those which project towards open countryside. However, I am satisfied that the proposed properties would be sufficient distant such that it would not cause any significant harm to the living conditions of surrounding properties.
30. Nevertheless I find the proposed layout would not promote good design. It would not accord with Core Strategy policies CS1 and CS9 or with the relevant parts of the Framework.

## **Other Matters**

31. Concerns have been raised in respect to the effect of the proposed development on the local highway network particularly from the proliferation of access points and whether adequate parking exists on the site. I observed at my site visit that Stocks Road was moderately busy and there was a steady stream of fast travelling cars in both directions. Nevertheless, insufficient evidence is before me to demonstrate that any harm would occur from the proposed development and its access, or that the junctions could not be adequately designed to ensure sight lines would be effective to ensure adequate egress. The Council does not raise this as an issue.
32. The proposed development would result in the loss of agricultural land, and I note paragraph 112 of the Framework requires local authorities to take into account the economic and other benefits of the best and most versatile agricultural land. Neither main party has indicated this to be an issue. In the absence of sufficient evidence which indicates the economic harm that would be caused I have no reason to disagree. Matters relating to drainage have not been sufficiently advanced and I have no obvious reason to consider the matter further in my Decision.
33. Reference is also made to the remainder of the site being 'phase 2'. While it may be the intention of the appellant to seek residential development on this land, this is not a matter before me, and such matters have had no bearing on my Decision.

## **Planning Balance and Conclusion**

34. As the Council is unable to demonstrate five years of supply of housing, the Council's development plan policies which are relevant to the supply of housing are out-of-date, and paragraph 14 of the Framework directs the grant of planning permission for development in such circumstances. However, such support is removed where specific policies in the Framework indicate development should be restricted. Paragraph 116 of the Framework gives such a direction for major development in the AONB unless exceptional circumstances can be justified. While the scheme would provide much needed market and affordable housing, as well as having a preserving effect on the character and appearance of the Conservation Area, there are no exceptional circumstances exist to justify the development. I also find that the proposed layout would not promote the principles of good design and would amount to considerable harm.
35. Therefore for the reasons given above I conclude that the appeal should be dismissed.

*R Allen*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mrs Jane Hirst	PBA Associates
Mr Tim Allen	PBA Associates

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lucy Holloway	Planning Officer
Ms Claire Tester	High Weald AONB Unit

OTHER PARTIES:

Mrs Miriam Lewis	Local Resident
Mrs Mary Walton	Local Resident
Mr Bruce Cova	Local Resident
Mrs Gillian Kerk	Local Resident
Mr Dan Bennett	Local Resident

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Copy of Tree Preservation Order for the appeal site

Richborough Estates