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## Appeal Decision

Site visit made on 7 February 2017

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 7 March 2017**

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**Appeal Ref: APP/U2235/W/16/3161893**

**Apple Tree House, Ware Street, Weaving, Kent ME14 5LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs J Callen against the decision of Maidstone Borough Council.
  - The application Ref 16/500159/FULL, dated 21 December 2015, was refused by notice dated 27 April 2016.
  - The development is proposal for ten detached dwellings plus other ancillary works with alterations to highway access onto Ware Street.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effects of the proposal on:
  - the character and appearance of the area;
  - the living conditions of the occupiers of 127 Hocking Lane with particular regard to outlook; and whether
  - adequate information has been provided to allow the proposals for surface water drainage to be assessed;
  - adequate information has been provided to allow the effects of the proposal on biodiversity and existing trees on the site to be assessed;
  - the proposal makes adequate provision for social infrastructure.

### Reasons

#### *Character and Appearance*

3. The appellant accepts that site has a countryside location. Saved Policy EV28 of the Maidstone Borough-Wide Local Plan 2000 (LP) presumes against development which would harm the character and appearance of the countryside. The policy goes on to identify the types of development which may be appropriate in countryside locations, but there is nothing to indicate that the appeal proposal would fall within any of those categories. Policy SP17 of the submission version of the Maidstone Local Plan 2016 (ELP) is similarly restrictive and, amongst other things, seeks to protect the setting the Kent Downs Area of Outstanding Natural Beauty (AONB). This aim is consistent with paragraph 115 of the National Planning Policy Framework (the Framework).
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4. The site also falls within a Special Landscape Area where LP Policy ENV34 requires particular attention to be given to the protection and conservation of the scenic quality and distinctive character of the landscape. The site is omitted from any landscape protection designation in the ELP. Nevertheless, the policies of the ELP cannot be afforded full weight and, until it is adopted, LP Policy ENV34 remains in force.
5. The Council has referred to the Maidstone Landscape Character Assessment March 2012 (LCA) and the Maidstone Landscape Capacity Study: Sensitivity Assessment January 2015 (LCS). Whilst these publications do not amount to formal planning policy, they provide a considered assessment of the landscape setting for the proposal. Both identify the area as forming part of the setting for the AONB. Bearsted golf course, which adjoins the appeal site, garden and field boundaries and the limited development along lanes are recognised as key characteristics in the LCA. Whilst it finds that key elements are mostly indistinct, in order to strengthen the setting of the AONB, the LCA recommends avoiding suburban influences and maintaining the rural undeveloped character of the landscape. The LCS finds that the area is sensitive to change and recommends that development is limited to infill within village boundaries. I am not persuaded therefore, that the site has the low landscape value implied by the appellant's description of it as 'white land.'
6. The appeal site is free from significant built development and is mainly laid to grass. Whilst it is bounded to the south and west by linear residential development and a further detached dwelling is located to the north, to the east the land is more open and, for most of its length, the eastern boundary adjoins the open and locally significant Bearsted golf course. The land slopes up steadily to the north and, as such, is characteristic of the wider area's undulating landform.
7. In response to the sloping land at the northern end of the site, the natural ground level would be reduced and a retaining wall some 3m in height constructed close to the northern boundary. The wall would return along parts of the eastern and western boundaries. Its scale would be much greater, and its appearance more stark, than the retaining structure which runs along the northern boundary of the dwelling at 129 Hockers Lane. Although the introduction of the retaining wall would allow the houses at the northern end of the site to be at a lower level, which would reduce their visual impact, it would give the development an engineered appearance out of keeping with the local undulating landform.
8. The proposed dwellings would be laid out in two, fairly tightly spaced lines either side of a central access running the length of the site. At the southern end of the site, the access would make two sharp turns and pass between the closely spaced houses on plots 2 and 10. The houses on plots 5, 6 would be sited close to the retaining wall and the spaces between them and those on plots 3, 4 and 7 would be narrow. The houses on plots 4, 5 and 6 would have single storey garages to the sides. Nevertheless, overall I consider that the proposed layout would appear cramped.
9. Moreover, whilst a belt of planting would run along the eastern site boundary, there would be no significant areas of landscaping within the site. The development would, therefore, have a very compact, urban character. The development would also broaden and consolidate the linear development along

Hockers Lane. As such, the proposal would be at odds with the locally distinctive pattern of limited development. The resulting incursion of closely spaced development into the undeveloped countryside would also fail to maintain the setting of the AONB contrary to the aims of the LCA and LCS. Consequently, I find that the proposal would have a harmful effect on the character and appearance of the area, contrary to LP Policies ENV28 and ENV34 and ELP Policy SP17. Nor would it accord with Framework paragraphs 17, 56 or 58 to the extent that they seek to ensure that development respects local character.

#### *Living Conditions*

10. The chalet bungalow at 127 Hockers Lane is sited close the northern boundary of the appeal site and has a number of large windows facing the site. I have already referred to the proximity of the houses on plots 5 and 6 to the retaining wall on this boundary. Plot 5 would be directly in front of No 127 at a distance of some 9m. Whilst the proposed houses would be at a significantly lower level than the neighbouring property, they would be two storeys in height with fairly steeply pitched roofs. The roof of plot 5 would, therefore, be very prominent in close range views from the ground floor windows of No 127.
11. Consequently, I find that the proposal would have a detrimental effect on the living conditions of the occupiers of No 127 by reason of loss of outlook. As such, it would conflict with LP Policy ENV28 insofar as it presumes against development in the countryside which harms the amenity of surrounding occupiers and would not accord with Framework paragraph 17 which, among other things, seeks a good standard of amenity for existing occupiers of buildings.

#### *Surface Water*

12. The proposal is for surface water from the houses and roads to be discharged into soakaways. However, no information has been provided on the location or capacity of the soakaways, the infiltration capacity of the ground or the design of the system in accordance with relevant standards. The Council therefore considers that insufficient information has been provided to allow a proper assessment of the surface water drainage proposal.
13. Whilst the details of surface water drainage can sometimes be secured by condition, in this case the site layout shows very limited space outside of individual development plots to accommodate soakaways for the proposed access road. Nor does the proposal demonstrate that regard has been had to the implications for ground water of reducing the ground level at the northern end of the site. Consequently, I consider that it has not been adequately demonstrated that a satisfactory surface water drainage system could be accommodated within the site. The proposal would not, therefore, accord with Framework paragraph 103 which requires decision makers to ensure that flood risk is not increased elsewhere. Paragraph ID Reference ID: 7-002-20140306 of the Planning Practice Guidance advises that flood risk includes flooding from all sources, including directly from rainfall on the ground surface, groundwater, overwhelmed sewers and drainage systems.

### *Bio-diversity and Existing Trees*

14. An Extended Phase 1 Habitat and Habitat Suitability Index Survey<sup>1</sup> was submitted with the appeal. It found that one building on the site has low potential to support roosting bats and should be the subject of further surveys and that measures should be taken to protect nesting birds. However, no designated sites, BAP Priority Habitats or ancient woodland would be affected by the development and the site has negligible potential to support other protected or notable species. The Council has not disputed the findings or recommendations of the Survey and I see no reason to question its conclusions. Had I been minded to allow the appeal, the further actions and ecological enhancements recommended in the Survey could have been secured by condition.
15. An Arboricultural Implications Assessment<sup>2</sup> was submitted with the appeal. Whilst the scheme assessed was for seven dwellings, rather than the 10 proposed, the site area assessed is larger than that for the appeal scheme. Whereas the assessed scheme would require the removal of a group of three maple trees considered to be Category B (of moderate quality and value), the appeal scheme would allow for their retention. Two other Category B trees would need to be removed to accommodate the proposed access alterations. The Assessment also found that an area of no-dig construction would be needed for part of the access drive in order to safeguard off site oak trees and made recommendations for the protection of retained trees.
16. The Council has not disputed the findings or recommendations of the Assessment and I see no reason to question its conclusions. Had I been minded to allow the appeal, conditions could have been used to secure a landscaping scheme based on the finding of the Assessment and to ensure that the recommended construction method and tree protection measures were implemented.
17. Overall therefore, I find that adequate information has been provided to allow the effects of the proposal on biodiversity and existing trees on the site to be assessed. Moreover, that information demonstrates that the proposal would not be harmful in these regards. As such, the proposal would not conflict with paragraph 118 of the Framework or Circular 06/2005 insofar as they seek to conserve and enhance biodiversity.

### *Social Infrastructure*

18. Policy CF1 of the LP requires new residential development which generates the need for new community facilities, or for which spare capacity does not exist, to make suitable provision or contributions. The Council requested financial contributions of £2360.96 per dwelling towards the provision of ICT equipment at St Johns Primary School and £48.02 per dwelling towards additional library books. Information provided by Kent County Council shows that the number of pupils at the Primary School is currently above its capacity and that pupil numbers are forecast to increase further. The dwellings proposed would be likely to create additional demand for places and, therefore, I consider that a financial contribution would be justified. The County Council has also provided information to show that the library bookstock in Maidstone Borough is below

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<sup>1</sup> Greenspace Ecological Solutions report number J20350

<sup>2</sup> Broad Oak Tree Consultants Limited ref J.52.94

the County and national average, as well as figures to support the size of contribution sought.

19. Consequently, I find that the contributions sought are necessary, relevant and reasonably related in scale and kind to the development in accordance with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The appellant has submitted a signed Unilateral Undertaking (UU) to Kent County Council which has been amended following comments from the County Council's legal services department. The UU is intended to provide for the contributions sought. The submitted version is not dated on the second page. Nevertheless, had I been minded to allow the appeal, it is likely that this omission could have been rectified. On this basis, the proposal would have made adequate provision for social infrastructure and would have accorded with LP Policy CF1.

#### *Other Matters*

20. The Council and the appellant disagree over whether the Council can demonstrate a five year supply of housing land as required by paragraph 47 of the Framework. Paragraphs 14 and 49 advise that relevant policies for the supply of housing should be considered out of date where there is not a five year supply. LP Policy ENV28 is a restrictive policy which seeks to limit housing development in the countryside. As such, it has the effect of constraining the supply of housing land and so, for the purposes of this appeal, should be regarded as a relevant policy for the supply of housing.
21. The appellant's position is largely based on the findings of a number of appeal decisions<sup>3</sup> which call into question whether a five year supply has been demonstrated as a result of the Council's Housing Topic Paper which was published in May 2016 and updated in September 2016.
22. Only the decision for the site at Yalding takes into account the Interim Findings of the Inspector examining the emerging Maidstone Borough Local Plan (dated December 2016). In respect of housing land the examining Inspector found, among other things, that a 20% buffer to take account of historic under-delivery is not justified; that the objectively assessed housing need should be reduced by 900 units from the 18,560 units set out in the Housing Topic Paper and that the trajectory of delivery should be smoothed over a 10 year period.
23. The appellant emphasizes that the Council's housing land supply relies on draft allocations. However, the Interim Findings also reviewed the South East Maidstone Strategic Allocation, other South Maidstone allocations and other broad housing locations. As a result, the Inspector suggested adjustments to a number of the draft allocations. He nevertheless concluded that smoothing the trajectory of delivery over 10 years should strengthen the five year supply position at 1 April 2016 and that the position should also be strong in April 2017.
24. Therefore, although as the Inspector in the Yalding decision notes, the Interim Findings do not state conclusively that there is a five year supply, if there is currently a shortfall, it is unlikely to be large. In these circumstances Policy ENV28 may still carry weight. Indeed, the underlying aim of the policy is

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<sup>3</sup> Appeal references APP/U2235W/15/3131945, APP/U2235/W/15/3139288 APP/U2235/W/15/3140679, APP/U2235/W/16/3146765, APP/U2235/W/16/3153903 APP/U2235/W/16/3145575and APP/U2235/W/16/3151289

consistent with Framework paragraph 17 which recognises the intrinsic beauty and character of the countryside as a core planning principle. Consequently, I consider that it should be afforded moderate weight.

25. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

### **Planning Balance and Conclusion**

26. Framework paragraphs 7 and 8 require the three roles of sustainability to be considered together. The construction of the development would bring minor, short term, economic benefits and future occupiers would contribute to the Council tax base and support local facilities. The provision of ten dwellings would also make a modest contribution to the social dimension of sustainability. The housing land supply position adds weight to this consideration.

27. However, I have found that the proposal would be significantly harmful to the character and appearance of the area contrary to LP Policies ENV28 and ENV34 and the aims of the Framework. It would also be harmful to the living conditions of the occupiers of 127 Hockers Lane. Moreover, insufficient information has been provided to demonstrate that the proposal would make adequate provision for surface water drainage. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development.

28. For the reasons set out above, the appeal should be dismissed.

*Simon Warder*

INSPECTOR