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## Appeal Decision

Hearing Held on 11 January 2018

Site visit made on 10 January 2018

**by Cullum J A Parker BA(Hons) MA MRTPI IHBC**

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

**Decision date: 17<sup>th</sup> January 2018**

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**Appeal Ref: APP/Z2260/W/17/3180810**

**Brooke Mockett Trust Land and Former Gas Works, St Peter's, Broadstairs, 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 Mockett Trust Ltd against the decision of Thanet District Council.
  - The application Ref OL/TH/16/0394, dated 17 March 2016, was refused by notice dated 20 April 2017.
  - The development proposed is described as '*Outline application with access to be determined at this stage and all other matters reserved for future approval (appearance, landscaping, layout and scale) for a mixed development of 140 houses, 70 unit sheltered housing scheme, a scout hut, community woodland and recreation facilities*'.
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### Decision

1. The appeal is dismissed.

### Background and Main Issues

2. The main parties agree that at the time of the Hearing, the Council is unable to demonstrate a five year supply of deliverable housing sites. Consequently, policies for the supply of housing should not be considered up-to-date. In accordance with Paragraphs 49 and 14 of the *National Planning Policy Framework* (the Framework) the 'tilted balance' is engaged. Put simply, this indicates that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the Policies of the Framework as a whole.
3. A legal agreement under S106 of the *Town and Country Planning Act 1990*, as amended, has been submitted by the Appellant. The main parties agree that this would address the second and third reasons for refusal. I have taken this into account in forming the main issues.
4. Consequently, the main issues are:
  - The effect of the proposed development on the aims, character and appearance of the Green Wedge, and;
  - If there are any adverse impacts (or harm), whether this would significantly and demonstrably outweigh any benefits of the proposal, having regard to Paragraph 14 of the National Planning Policy Framework.

## Reasons

### *Planning Policy*

5. The appeal site is located within an area allocated within the adopted development plan as a Green Wedge. This designation is covered by Policy CC5 of the *Thanet Local Plan 2006* (LP). This indicates that development within the Green Wedge will not be permitted unless it is not detrimental or contrary to the aims of the policy itself, or that it is essential for the development to be located within the Green Wedge.
6. To paraphrase, the four principal aims of Policy CC5 are: to retain the separate physical identities of the towns; to prevent the consolidation of development on the boundaries between built up areas and open countryside of the Green Wedges; to conserve and protect the essential rural and unspoilt character and distinct landscape qualities of the countryside separating urban areas; and to prohibit all but essential development which does not detract from the character and appearance of the area.
7. I have been directed to an earlier appeal decision<sup>1</sup>, which was allowed. In that case, the Inspector found that policy CC5 was consistent with Paragraph 17 of the Framework, in respect of taking account of the different roles and characters of different areas. And also with Paragraph 157 of the Framework in respect of local plans identifying land where development would be inappropriate. She therefore attached significant weight to Policy CC5. I concur with this approach and see little that suggests I should take a different stance in relation to the appeal before me and how I should deal with Policy CC5.

### *Effect on aims, character and appearance of the Green Wedge*

8. The appeal site comprises two main parts; an open agricultural field and the former gas works. The former lies within the Green Wedge and is surrounded by a number of public footpaths and bridleways. The Green Wedge in the appeal sites lies is located between the settlements of Margate and Broadstairs. The site itself is located towards the southern of this Green Wedge. It is clear from the written submissions that Green Wedges have been a consistent feature of local planning policy since the 1980s.
9. The Appellant points to their estimation that the existing gap between Margate and Broadstairs is about 1.7km, with the appeal scheme resulting in this reducing to about 1.55km<sup>2</sup>. I note that in numerical terms it would represent a small loss of the Green Wedge and it is important to recognise that this land is not protected in way that Green Belt land is, for example. Nevertheless, it plays an important part in trying to retain areas of open land between Margate and Broadstairs for the last 30 years or so. The appeal scheme would erode this separation; albeit it would be limited given the scale of the scheme.
10. More importantly in this case, the aims of the Green Wedge also include '*To conserve and protect the essentially rural and unspoilt character, and distinctive landscape qualities of the countryside that separates the urban areas, for the enjoyment and amenity of those living in, and visiting, Thanet*'. The proposed development includes the erection of 140 houses and a 70 unit

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<sup>1</sup> Ref: APP/Z2260/W/16/3154686

<sup>2</sup> Appellants Full Statement of Case, page 36, paragraph 5.33

sheltered housing scheme with associated roads, infrastructure and suburban paraphernalia. This would be very different from the currently open and rural agricultural use of the part of the site within the Green Wedge.

11. I note the Landscape Statement<sup>3</sup> conclusions, which include that *'The proposed development would equate to an increase in the amount of developed land at St Peter's. Although clearly the proposed development would not be consistent in character with the prevailing agricultural use of the landscape, equally it would not be out of character within the wider setting, being located on the fringe of existing urban development, and an extension to it.'*<sup>4</sup> This is both right and wrong.
12. It is right insofar as the change from an agricultural field within the Green Wedge would radically change its character from a field to an urbanised one. It is wrong insofar as it seeks to compare the site within a setting of the fringe of urban development, when this urban development does not lie within the Green Wedge. In fact, that is the character of the area outside of it, and one of the reasons that the Council seeks to protect the Green Wedge as stated in the Policy.
13. To justify the loss of part of the Green Wedge by suggesting that proposed development would not be out of character with an area adjacent to it, is to misunderstand that the purpose of the Green Wedge which is to restrict development within it. This is so it retain its environmental value to those living and visiting Thanet. The irreversible loss of this land within the Green Wedge, which can be directly accessed and viewed from nearby public rights of way and footpaths, would result in substantial harm to this part of the Green Wedge.
14. As a result, the proposal would conflict with the aims of the Green Wedge; by failing to conserve its rural and unspoilt character and detracting from the character of the Green Wedge through the permanent change of the land from an agricultural use to mainly residential.
15. Policy CC5 of the LP provides two criteria, which put simply are; that the proposal should not be detrimental to the stated aims of the policy, or it is essential for the development to be located within the Green Wedge. I have found that the proposal would be detrimental to the stated aims of the Policy.
16. In terms of it being 'essential to be located within the Green Wedge', there are two key strands in considering this. Firstly, the Council cannot demonstrate a five year supply of deliverable housing sites. In this respect, it is essential for the Council to ensure that it can demonstrate this in order to meet the housing needs of its area. However, as a matter of planning judgement, this does not equate to an 'essential' need to build dwellings on agricultural land within the Green Wedge per se. For example, it would be very strange if there were no brownfield sites or locations outside of the Green Wedge where such 'essential' development could be located.
17. I heard at the Hearing that the Council is due to shortly publish its draft local plan. This is at a fairly early stage of the process and it has not been examined in any great depth by an independent body. Accordingly, in its unpublished form, it is afforded minimal weight for the purposes of this appeal. But the fact

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<sup>3</sup> Landscape Statement, Lloyd Bore Revision C, dated 18/11/2015

<sup>4</sup> Ibid, Paragraph 6.1

remains, that in this case there remains little before me which indicates a compelling or essential need to 'release' this part of the Green Wedge to meet the overall housing need of the area at the current time.

18. On the second strand of 'essential', the Appellant indicates that the development of the former gasworks (outside of the Green Wedge) to a residential use would not be possible unless the adjoining agricultural field is also developed for housing. I heard at the Hearing that the site has been remediated to a level so that it can be used for storage. In this respect, the evidence before me suggests that the site has a realistic existing use for storage, which a landowner could implement.
19. In such circumstances, it is not 'essential' to develop the adjoining field which lies within the Green Wedge to continue any economic activity on the former gasworks site. I do not, therefore, find that the proposed development is 'essential' to be located on the Green Wedge; whether in the broader terms of housing land supply or the narrower terms of enabling residential development.
20. My attention was drawn to an allowed appeal decision at Westwood Lodge<sup>5</sup> for a scheme of roughly 156 dwellings within the Green Wedge. From plain reading of the Inspector's decision, it is clear that the physical context of that site differs greatly from that before me. For example the assessment in that case was that *'the woodland visible along the northern and eastern site boundaries would be largely retained its distinctive landscape qualities would not be prejudiced'*. It is well-established planning practice that each proposal should be considered on its own merits, as I have done here.
21. I have found that the appeal proposal here would be contrary and detrimental to the aims of Policy CC5 and there is a lack of an essential need for the development to be located there. For similar reasons, I do not find that there is an overriding need to locate housing in this part of the countryside at the current time which would justify its loss through urbanisation.
22. Accordingly, the proposal would be contrary to Policies CC1 and CC5 of the LP, which seek such aims. It would also be contrary to Policies of the Framework which include that planning should take account of the different roles and character of different areas, including recognising the intrinsic character and beauty of the countryside, and that local plans should identify land where development would be inappropriate, for instance because of its environmental significance.

### **Other Matters**

23. The appellant has submitted a completed Unilateral Undertaking. Amongst others, this would secure affordable housing, which can be a benefit in favour of the proposal. Policy H14 of the LP provides a framework for negotiating affordable housing, for which the starting point is 30%. The Undertaking secures about 23% of the proposed housing as 'affordable housing'.
24. Whilst below the 30% starting point set out in the Policy this is, in part, a reflection of the potential remediation costs of the former gasworks site for residential use. The Council raises no detailed concerns over this lower level of affordable housing in this case, and I see no reason to disagree. The provision

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<sup>5</sup> APP/Z2260/W/16/3151686 dated 13 February 2017

of affordable housing, even at a level of roughly 23% of the total, is a significant benefit in favour of the proposal.

25. It would also secure monies to offset or mitigate other direct impacts arising from the proposal; for example the need for further school places. However, as I am dismissing the appeal on its substantive issues, there is no need for me to consider these matters further.
26. I acknowledge local support in terms of the proposed Scout hut building. I heard from the Council that the Scout hut by itself may have the potential to be acceptable within the Green Wedge. However, having considered the proposal as a whole, I have found an unacceptable impact on the Green Wedge. Nevertheless, the provision of the Scout hut is a benefit in favour of the proposal, and I have considered it in the overall conclusion.
27. At the Hearing, I heard concerns raised in respect of traffic levels (and associated concerns relating to air quality), concerns over the future of Mocketts Wood; including how it might be accessed from the appeal site. However, having found the proposal unacceptable on the first main issue, I have not considered these matters further as they do not alter my findings on that issue.

### **Planning Balance and Conclusion**

28. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, sets out that the determination of proposals must be made in accordance with the development plan, unless material considerations indicate otherwise. In this case, the proposal would be contrary to the aims of Policies CC1 and CC5 of the LP. There would also be some conflict with Policies and Principles set out in the Framework.
29. The main parties agree that the 'tilted balance' set out in Paragraph 14 of the Framework should be applied in this case, as indicated earlier in this decision. There are no specific policies within the Framework which indicate development should be restricted here, satisfying the second limb of the fourth bullet point.
30. In terms of the adverse impacts, these include the loss of parts of the Green Wedge; the harm of which I afford substantial weight given its irreversible nature and the direct conflict with the aims of the Green Wedge.
31. With regard to benefits, these are listed in detail within the written submission. They include economic benefits such as; new homes bonus, the spending income of new residents. Social benefits include items such as; the provision of both market and affordable housing in an area currently with no five year supply of housing sites – all of which attract significant weight, and the potential to assist in relieving some local traffic pressures, and the provision of a Scout hut for a local Scout group.
32. Environmental benefits contain factors such as the remediation of the former gasworks to a level fit for residential dwellings to be built, the proximity to local services, and potential ecological and biodiversity enhancements. In themselves, and unless otherwise stated, the social, economic and environmental benefits of the scheme are afforded modest weight.
33. In applying the 'tilted balance' I find that the adverse impacts of granting permission would significantly and demonstrably outweigh these benefits –

whether taken individually or cumulatively. As such, the Framework as a material consideration does not indicate that planning permission should be granted in this case. Accordingly, the proposed development is contrary to the adopted development plan, when considered as a whole, with no material considerations indicating otherwise.

34. For the reasons given above, and having taken all matters raised into account, I conclude that the appeal should be dismissed.

*Cullum J A Parker*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Mike Goddard	Planning Consultant
Julian Bore	Landscape Consultant
Richard Williams	Architect
Giles Atkinson	Barrister
Andrew Gough	Solicitor

### FOR THE LOCAL PLANNING AUTHORITY:

Emma Fibbens	Principal Planning Officer
Adrian Verrall	Strategic Planning Manager
Zoe Dobson	Planning Assistant

### INTERESTED PERSONS:

Jane Broomfield	Chair of 14 <sup>th</sup> Broadstairs Scout group
John Clark	Local Resident
Camille Sutton	Local Resident and member Friends of Mockett's Wood
Margaret Hopker	Local Resident
John Dadds	Local Resident
Harry Goulbourne	Local Resident

## **DOCUMENTS SUBMITTED AT HEARING**

- 1 Amended Suggested Conditions (without prejudice)
- 2 Planning Obligation - dated 11 January 2018
- 3 Written statement of Jane Broomfield (presented orally to Hearing)