

## Appeal Decision

Site visit made on 16 January 2019

by **M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

Decision date: 18th June 2019

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### Appeal Ref: **APP/E2205/W/18/3205865**

### **Wye Depot, Bramble Lane, Wye, Kent, TN25 5EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Pathway Project 1 Ltd (Mr Biju Ramakrishnan) against Ashford Borough Council.
  - The application Ref 17/01646/AS is dated 27 October 2017.
  - The development proposed is described as a 'development of 14no dwellings with associated access, parking, and gardens, and ecological habitat area'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Ashford Local Plan 2030 ('the Local Plan') was adopted in February 2019 and replaces the Ashford Borough Local Plan (2000) and the Ashford Core Strategy (2008). The adopted policies referred to in the submissions have now been superseded by policies in the new Local Plan. The parties' views were sought on implications arising from the Local Plan's adoption, and the comments received have been taken into account in my decision. The appeal has been assessed on the basis of the new Local Plan in accordance with the relevant legislation<sup>1</sup>.
3. The Council failed to determine the application within the prescribed period. It has since confirmed that it would have refused the scheme for eight reasons<sup>2</sup>. The Council has also confirmed that the Planning Committee Report dated 14 November 2018 forms the basis of its case at this appeal.

### Main Issues

4. Having regard to the Council's putative reasons for refusal, the main issues are:
  - i. the effect of the proposal on the character and appearance of the area;

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<sup>1</sup> Section 38(6) of the 2004 Act

<sup>2</sup> Set out within the Council's Committee Report

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- ii. whether the scheme would provide adequate living conditions for future residents in respect of privacy, noise and amenity space; and for existing residents in terms of privacy;
- iii. the adequacy of the highway access arrangements; and
- iv. the adequacy of the planning obligation to mitigate the effects of the development.

## **Reasons**

### ***Character and Appearance***

5. The appeal site comprises a narrow and elongated strip of land between the railway line and the relatively recently constructed 'Havillands' housing development. The site tapers towards the north. Wye railway station is located to the south. Access to the site is via Bramble Lane across an informally laid out car park that serves the station. The land was historically a goods yard associated with the railway, but the land is now open and vacant, with some gravelled areas, and there are areas of rubble and deposits of aggregate.
6. Within the Local Plan, the site lies adjacent to the built-up confines of the village of Wye, and falls within the Kent Downs Area of Outstanding Natural Beauty (AONB). Within the Wye Neighbourhood Development Plan: 2015-2030 ('the WNDP'), the site falls outside, but adjacent to the village envelope. Policy WNP1a of the WNDP only permits development outside the village envelope where it accords with the development plan and national policy. Although the site is not specifically allocated for housing, Policy HOU5 of the Local Plan allows for residential windfall development in the countryside, subject to various criteria being met. The Council acknowledges that the site comprises 'previously developed land', and is sustainably located close to public transport and day-to-day shops and services<sup>3</sup>. Therefore, I see no reason why, in principle, residential development could not take place on the site, subject to various criteria being met.
7. I appreciate that the appellant has sought to devise an acceptable scheme for this narrow area of land. The new dwellings would be of varying designs, with some constructed parallel to the railway line and others at right angles to it. The layout makes efficient use of an awkwardly shaped site, and takes its cue from the Havillands development: for example, the dwellings around the central square replicate the orientation of the adjacent Havillands properties, with others reflecting the respective positions of existing adjacent dwellings. In these respects, I do not find the scheme objectionable.
8. That said, I have concerns about particular aspects of the scheme. It is notable that the adjacent Havillands development comprises a mix of two, two and a half, and three storey units. This successfully provides some variation and relief, and reduces the overall bulk of the development. By contrast, all the dwellings in the appeal scheme would be three storeys in height. Consequently, they would appear unduly bulky and dominant in this context. Moreover, the three dwellings at Plots 12-14 on the most northerly part of the

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<sup>3</sup> A list of local facilities is set out within the appellant's Transport Statement (June 2018), Paragraph 2.3

- site would extend well beyond the existing adjacent housing at Havillands, and jut out intrusively into the open countryside, harming its character.
9. I conclude on this issue that the proposal would materially harm the character and appearance of the area. It would conflict with Policy SP6 of the Local Plan which seeks to achieve high quality design in respect of character, distinctiveness and sense of place; and Policy HOU5, which allows for residential windfall development in the countryside, including adjacent or close to the existing built up area, but only where the development would preserve and enhance the setting of the existing settlement, and be consistent with local character and built form, including in terms of scale and bulk.
10. In addition, although the effect on the wider AONB would be limited, the development would nonetheless have a harmful effect on the immediate setting, thereby compromising the AONB's character. The scheme would therefore conflict with Policy ENV3b of the Local Plan which allows for proposals only where they would conserve, and where appropriate enhance or restore the rural character of the AONB. It would fail to accord with the National Planning Policy Framework ('the Framework') which requires great weight to be given to conserving and enhancing the landscape and scenic beauty of AONBs, which have the highest status of protection<sup>4</sup>. The scheme would also conflict with Policy WNP2 and WNP8 of the WNDP which require high quality design and for new development to respect the qualities of the AONB.

### **Living Conditions**

11. *Privacy*: The Council complains that the proximity of the new dwellings with those within the Havillands scheme would result in mutual overlooking, especially into garden areas, with a consequent loss of privacy. It also raises concerns about overlooking between the proposed new dwellings. In my judgement, the proposed relationship between all the dwellings would be acceptable. Some degree of mutual overlooking is not unusual in residential areas. Indeed, I note that the distances and relationships between the dwellings do not appear to be significantly different from that found at the adjacent Havillands scheme. Overall, I do not find that the appeal should fail on this ground.
12. *Noise*: The Council has raised concerns about noise from the adjacent railway line for residents of the scheme, and states that windows of the new dwellings would have to remain closed to avoid breaches of acceptable noise limits. The appellant has indicated that mechanical ventilation could be installed to ensure thermal comfort within rooms if the windows remained closed<sup>5</sup>. The appellant also proposes an acoustic barrier around the development boundary to reduce noise levels within the external amenity areas<sup>6</sup>. Overall, I consider that various design measures could be incorporated into the scheme to minimise noise disturbance, and that any noise concerns should be capable of being addressed through the provision of a mitigation scheme (including the construction of an acoustic barrier if necessary), and secured by condition.

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<sup>4</sup> Paragraph 172

<sup>5</sup> Noise Assessment Addendum : Peak Acoustics (June 2018)

<sup>6</sup> Ibid

13. *External Amenity Space*: The Council says that the external amenity spaces are inadequate for a number of the dwellings, although little precise detail is provided. Policy HOU15 of the Local Plan, dealing with private external amenity space, appears to allow some flexibility. In my judgement, each dwelling would have a sufficient area of usable private amenity space. As the appellant notes, provision appears more generous than in some of the Havillands dwellings. Therefore, I do not consider the appeal should fail on this ground.

### **Highway Accessibility**

14. The sole vehicular and pedestrian access to the site would be across the existing station car park. This area is not currently formally marked out with parking bays, and as I observed on my site visit, some of the cars were poorly and inefficiently parked. This could potentially cause obstructions to vehicles wishing to access the new dwellings. The appellant highlights that there is already an easement<sup>7</sup> allowing access across the car park, the route of which would be marked out on the ground and identified as a 'no parking' area, so as to avoid any obstructions<sup>8</sup>. I understand that discussions have taken place with Network Rail regarding the necessary improvements to the car park layout, although no formal agreement is currently in place.
15. The appellant originally suggested a planning obligation<sup>9</sup> but now prefers a 'Grampian' type condition to secure the necessary improvements to the car park so as to ensure access across the easement<sup>10</sup>. The Council has disputed the appropriateness of such an approach on the basis that the works fall outside the control of the appellant, that no formal agreement has been reached, and there is no reasonable prospect of the works being carried out.
16. Whether Grampian conditions are an acceptable solution in a particular context is a matter of planning judgement on all the evidence, but they can be used in circumstances where land is not in the control of the applicant and there is a prospect of the action in question being performed<sup>11</sup>. Notwithstanding the existence of the easement, I have concerns about allowing residential development on the site until a clear mechanism has been agreed to guarantee the necessary layout improvements ensuring no impediment to vehicles wishing to enter or exit the site (including larger refuse vehicles). As things currently stand, the access route is substandard and the proposal would conflict with Policy HOU5 of the Local Plan which, amongst other things, requires development to be safely accessed from the local road network.

### **Other Matters**

17. The Council has raised concerns regarding site accessibility for pedestrians, noting the absence of a pedestrian footpath, both across the car park and within the development itself. However, I do not consider it inherently problematic for pedestrians to walk through the car park to the site. Furthermore, the limited number of dwellings proposed means that, within the

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<sup>7</sup> Appendix A – Transport Statement Addendum

<sup>8</sup> Appendix B – Transport Statement Addendum

<sup>9</sup> Transport Statement (June 2018), Paragraph 3.1; also Part 7 – Summary and Conclusions, Paragraph C

<sup>10</sup> A condition which prohibits development authorised by a planning permission until a specified action has been taken

<sup>11</sup> See advice in the Planning Practice Guidance: Paragraph 009 – Ref ID:21a-009-20140306

development, a 'shared surface' rather than separate pedestrian route should be adequate.

18. I am aware that the WNDP noted that the site may have some redevelopment potential, although not for residential development, but rather for a car park extension<sup>12</sup>. However, this reflected a previous policy for the site in the now superseded Ashford Borough Local Plan (2000)<sup>13</sup>. Therefore, the comments within the WNDP must be viewed in that context, and therefore must carry diminished weight.
19. The Council has mentioned the proximity of an existing pumping station, and records that Southern Water observed that this could give rise to potential vibration, noise and odour to habitable rooms within 15 metres. The appellant says that no dwellings would be located within this distance. As there have been no reported problems from existing residents in the vicinity in respect of the pumping station, I do not consider the scheme should fail on this ground.
20. The Council is satisfied that matters relating to flooding, surface water drainage, ecology (including a habitat management plan), archaeology and land contamination (if present) could be satisfactorily addressed through conditions. I see no reason to disagree were development to proceed on the site.
21. The appellant states that the Council is unable to demonstrate a five year supply of housing, and therefore the presumption in favour of development or 'tilted balance' applies<sup>14</sup>. Little evidence has been adduced on housing supply and the appellant's conclusion appears to be based on out-of-date data<sup>15</sup>. The Council says the adoption of the new Local Plan, recently found to be 'sound', means that Council is now able to demonstrate a five year housing land supply. I see no reason to doubt this is the case.

### **Planning Obligation**

22. A planning obligation in the form of a Unilateral Undertaking (UU) was completed on 19 December 2018. Both the Council and County Council have confirmed that the UU is not satisfactory. The Council has set out within its Committee Report what obligations it considers necessary to mitigate the effects of the development<sup>16</sup>. However, the appellant disputes some of the Council's requests for contributions, including in respect of outdoor sports provision, and primary/secondary school contributions<sup>17</sup>. Although submissions have been made, I do not consider I have sufficiently clear information to make a cogent judgement on the matters still at issue. In any event, as I have found the scheme unacceptable in other respects, the appeal does not turn on the matter of the planning obligation.

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<sup>12</sup> Table 2.1, Pages 24-25: identified as WYE05

<sup>13</sup> Policy S69F

<sup>14</sup> Paragraph 11 of the Framework

<sup>15</sup> The appellant's Statement of Case refers to an Assessment of Housing Land Supply, dated May 2015 [Page 9]

<sup>16</sup> Table 1: Heads of Terms for Section 106 Agreement

<sup>17</sup> Letter dated 19 December 2018 from Andrew Ransome, Plainview Planning

**Conclusion**

23. Although I have found certain of the Council’s objections not sufficiently well founded to cause the appeal to fail, I have found the scheme to be unacceptable in other respects. Overall, I conclude that the proposal would conflict with Policies SP6, HOU5, and ENV3b of the Local Plan. It would also conflict with Policies WNP2 and WNP8 of the WNDP. I find there are no material considerations of sufficient weight that would warrant a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

*Matthew C J Nunn*

INSPECTOR

Richborough Estates