
Appeal Decision

Hearing held on 12 May 2015

Site visit made on 12 May 2015

by C A Newmarch BA(Hons) MRICS MRTPI

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

Decision date: 16 June 2015

Appeal Ref: APP/U2235/W/15/3003780
George Street, Staplehurst TN12 0RA

- 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 Chris Johnson against the decision of Maidstone Borough Council.
 - The application Ref 14/501185/OUT, dated 16 June 2014, was refused by notice dated 18 September 2014.
 - The development proposed is an 'outline application with all matters reserved for a scheme of 22 dwellings comprising 16 houses and 6 flats.'
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline, with all matters reserved for determination at a later stage. While the submissions confirm that the Proposed Site Layout Plan is indicative, the appellant submits that the existing substandard farm access to George Road would be modified to provide vehicular and pedestrian access to the site, and that boundary trees and hedges would be retained. Since these are matters which could be controlled by conditions, I have considered the appeal on this basis.
3. The appellant has submitted a signed and dated unilateral undertaking which is discussed further below.
4. A previous outline application, Ref MA/13/513, for 22 residential units with all matters reserved was refused by the Council.

Main Issue

5. The main issue is whether the proposal would be sustainable development with particular regard to:
 - the effect on the character and appearance of the countryside;
 - the pattern of development having regard to pedestrian access to local facilities and public transport;
 - the effect on biodiversity and the need for mitigations measures.

Reasons

6. The appeal site lies beyond the development boundary of Staplehurst village, as shown in the Maidstone-Borough Wide Local Plan (LP), 2002, and within the countryside, where LP policy ENV28 restricts the grant of planning permission to specified purposes. These purposes do not include residential development.
7. The Council concedes that its supply of deliverable housing sites is of the order of 2.1 years, and that it cannot demonstrate a five-year supply of deliverable housing sites. At the hearing the Council accepted that, due to this shortfall, LP policy ENV28 is 'out of date' in accordance with paragraph 49 of the National Planning Policy Framework (NPPF). Accordingly, while there is a presumption in favour of sustainable development, the appeal turns on whether the proposal would amount to sustainable development.

The effect on the character and appearance of the countryside

8. The site comprises a field to the north of George Street, which is partly overgrown with oak saplings and other vegetation. Its boundaries are defined by substantial trees and hedges. Notwithstanding the gradual upward slope of the site away from George Street, it was largely screened from the street and the surrounding area at the time of my visit.
9. George Street is a narrow, unlit, unclassified country road without footways. There is a short, loose ribbon of housing along the southern side of George Street, and a single dwelling adjacent to the site. The access drive to a nursing and residential care home is to the west of the site, but the building is not visible either from the road or the appeal site, and does not form part of the visual context for the site.
10. The appellant would accept a condition to retain the existing trees and hedges, except where they would need to be removed to improve the access to the site. A condition could also require additional landscaping. However, while the extent to which the proposed dwellings would be visible beyond the site would depend on details which have been reserved for future determination, it is highly likely that there would be views of the housing at the site entrance. Accepting that the submitted layout is purely indicative, the amount of housing proposed would be materially out of keeping with the very limited frontage development nearby. It would fail to recognise the intrinsic character of the countryside in this area, as required by paragraph 17 of the NPPF.
11. As such, the housing would be an incongruous addition to this rural area. It would have an urbanising effect, which would be significantly harmful to the prevailing character and appearance of the area, and contrary to the environmental role necessary for sustainable development.

The pattern of development having regard to pedestrian access to local facilities and public transport

12. George Street and the appeal site are entirely to the north of an operational railway line, whereas the village of Staplehurst, and the station, are to the south. The village centre including shops, library and other facilities are not close to the station, but further to the south. Conditional planning permission has been granted for the development of a Class 1 Retail store at Station Approach. This would be closer to the site than the village centre, but there is

no indication that its erection is imminent, and, in any event, it would be some 400m from the site.

13. Public footpath KM290 links George Street to Station Approach by a pedestrian-only level crossing. This provides the most direct route to the village on foot, but the level crossing is unstaffed and without signals to warn of approaching trains. The onus is on users to stop, look and listen before crossing. To the south of the railway line the narrow public footpath is enclosed on each side with chain-link fencing, with trees and bushes arching above the path from either side to create a tunnel effect. The path is unlit, un-surfaced and was, in part, very wet and muddy. While Network Rail does not object to an increased use of the level crossing, neither the crossing nor the footpath provides an attractive or realistic route to the station or the village.
14. George Street is not served by public buses. The closest bus stop is in the village on the A229, opposite Station Approach. George Street has water-filled ditches along much of its length and a national speed limit, and would not be suitable for pedestrians outside daylight hours.
15. The appellant has engaged in discussions with Kent County Council as the Highway Authority. The appellant's unilateral undertaking includes an undertaking to enter into an agreement with the Council under s278 of the Highways Act to make improvements to both the footpath and to George Street.
16. The footpath to Staplehurst Station would be improved by surfacing, tree clearance and the introduction of lighting to the pedestrian access before the occupation of the dwellings. These measures would make it passable at all times, but would not be able to address its narrow, secluded character.
17. The undertaking also refers to improvements to the construction and width of George Street, which would be carried out prior to the commencement of development. There are few details available about the extent of the works which would be carried out. Although the Highway Authority would not require the construction of a footway in George Street if a contribution were made towards the provision of a footbridge at the level crossing, this is not included in the undertaking, and there is no evidence that it will go ahead.
18. Notwithstanding the highway accommodation works which the appellant would provide, I am not convinced that the provisions in the undertaking would encourage pedestrians or cyclists to use George Street, particularly after dark, or to use the footpath and level crossing. It is, therefore, unlikely that sustainable transport modes would be a realistic choice for future residents. The development would fail to contribute to a sustainable pattern of growth where the fullest use could be made of public transport, walking and cycling. It would be out of keeping with the social role of sustainable development, in terms of building strong vibrant communities, and with the environmental role, as residents would be heavily dependent on private cars for almost all their journeys.
19. The Highway Authority did not attend the hearing, but the Council submitted that the undertaking does not fully address its concerns regarding the need for highway improvements. Its refusal reasons do not, however, refer to the need for a legal mechanism to secure contributions for highway accommodation works. Accordingly, the Council's suggested planning condition No 17, which

would require the appellant to enter into an agreement to carry out the surveys and street works would not be reasonable. It would also be unenforceable, as it is not appropriate to impose a condition requiring the appellant to enter into a legal agreement.

The effect on biodiversity and the need for mitigations measures

Bats

20. The appellant's ecology reports (May 2014 and January 2015) show that there is a high potential to support roosting bats in five of the trees around the boundary of the site, with medium and low potential in other trees. Trees T25 and T26, which the appellant would remove to improve the site access, have been assessed as having low potential for bat roosting. In the absence of the evidence to the contrary, and having seen the size and condition of these trees at the time of my visit, I have no reason to disagree.
21. Information on the importance of the site to bats for foraging and commuting has not been provided. Notwithstanding the appellant's willingness to retain the boundary trees, this information would be necessary for the avoidance of harm or the specification of mitigation measures.

Reptiles

22. The Council criticises the number of occasions on which reptile surveys were carried out. It is, however, apparent from the submissions that all the habitats on the site have the potential to support reptiles either for basking or foraging. Surveys have identified Great Crested Newts, small populations of Slow Worms, and Grass Snakes.

Mitigation

23. The appellant proposes to mitigate the effects of the development by the translocation of the protected species to a receptor site and other unspecified works to improve the receptor site. The proposed receptor site is the adjoining field to the north of the site, which is within the appellant's control. However, survey work to establish the suitability of the land as a receptor site had not been carried out by the time of the hearing. Notwithstanding the appellant's willingness to proceed with this survey in the very near future, it has not been demonstrated that a satisfactory mitigation scheme could be provided.

Conclusion on biodiversity and mitigation measures

24. It has not been shown that the proposal would minimise its impact on biodiversity, or that the need for mitigation measures has been addressed. As such, it would not enhance the natural and local environment, or contribute to the environmental dimension of sustainable development.

Other matters

25. The appellant estimates that work would be provided on the site for around six months during the construction period. It is further submitted that, insofar as the homes would reduce demand for housing elsewhere, there would be a downward pressure on the price of other housing sites. Given the relatively small amount of housing proposed compared to the shortfall within Maidstone Borough, I give this little weight. The proposal would, therefore, have no more than a very limited economic role.

26. The development would have a social role in providing 22 much needed homes. The appellant's unilateral undertaking would provide 45% of the homes as affordable homes, which would be in excess of the Council's usual 40% requirement. However, as there is some inconsistency between the Staplehurst Housing Survey 2010, the Parish Council's more recent estimate and the annual requirement across the housing market area for affordable homes, it is not clear whether the enhanced provision of affordable housing would be required to meet needs in the local area. If not, it could give rise to additional trips by private car.
27. The appellant refers to the Council's Cabinet report dated July 2012 which acknowledged a need for the development of 'greenfield' sites at the periphery of rural service centres. However, as the site was rejected from the Council's Strategic Housing and Economic Development Land Availability Assessment in 2014, I give this little weight.
28. In addition to the transport undertaking discussed above, the appellant's unilateral undertaking would also provide financial contributions towards healthcare, libraries and archives, parks and leisure, and the youth service. However, as the appeal is to be dismissed on the other substantive issues discussed above explained in this decision, these covenants are not determinative.
29. The Council and local objectors referred to potential housing allocations to the south of the railway which are included in the 'Maidstone Borough Local – Preparation (Regulation 18)' extract and the Neighbourhood Plan, both of which are in the later stages of preparation. Reference has also been made to an outline planning permission for residential development on one of these sites. However, as I have decided to dismiss the appeal for other reasons, these sites have not been a determinative consideration.

Overall Conclusions

30. For the reasons explained above, the development would have a very limited economic role. It would have a social role in providing additional market and social housing, but it would not be in a convenient location, and would have a poor environmental impact, both in relation to the character of the countryside and the likely dependency on less sustainable means of transport. Furthermore, there is no certainty that mitigation works could be provided satisfactorily for a range of protected species, further detracting from the environmental dimension. It would not, therefore, amount to sustainable development and the presumption in favour of sustainable development does not apply.
31. I have taken account of all other matters raised, including the need to boost significantly the supply of housing within the Borough, but they do not outweigh the harm identified or the conflict with the NPPF.

CA Newmarch

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Planning Consultant
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FOR THE LOCAL PLANNING AUTHORITY:

Tim Bloomfield
Kathryn Altieri
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Planning Officer
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INTERESTED PERSONS:

Cllr John Perry
Cllr Rory Silkin
Cllr Joan Buller
Mike Reynolds
Brian Baker

Ward Member, Maidstone Borough Council
Chairman, Staplehurst Parish Council
Staplehurst Parish Council
Local resident
Local resident

DOCUMENTS

- 1 Condition 17 (S278) – Council's suggested wording
- 2 Notification letter, and distribution list, dated 22 April 2015 giving details of revised hearing arrangements

PLANS

- A Staplehurst (page 54) extract from Borough-Wide Local Plan Local Plan map
- B 'Maidstone Borough Local – Preparation (Regulation 18)' extract: page 247 – Land at Hen and Duckhurst Farm
- C 'Maidstone Borough Local – Preparation (Regulation 18)' extract: page 250 – Land at Fishers Farm