



Appeal Decision

Site visit made on 27 March 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Appeal Ref: APP/E2205/W/23/3324686

Frith Business Park, Frith Road, Aldington, Ashford TN25 7HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Frith Business Park against the decision of Ashford Borough Council.
 - The application Ref is 21/01669/AS.
 - The development proposed is change of use of former business centre (Use Class B1c) to allow the siting of 30 residential park home caravans (over 50's age restricted) with associated services, infrastructure and landscaping at Frith Business Park following the demolition and removal of the existing commercial buildings and associated hard standing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the determination of the planning application, the appellant submitted revised plans which reduced the number of proposed park homes from 30 to 29. However, a new development description was not explicitly agreed. Therefore, the description in the banner above is replicated from the application form.
3. As part of the appeal submission the appellant has submitted a revised Illustrative Landscape Strategy¹ which reduces the number of park homes to 26 units. Also, the appellant has submitted a revised Tree Survey and Arboricultural Impact Assessment², which has been amended to take account of the revised layout.
4. The Procedural Guide³ is clear that the appeal process should not be used to evolve a scheme. The reduction in the number of proposed park homes would represent a substantive change. Moreover, interested parties have not been consulted on the latest proposed amendments. Having regard to this and the principles established in the Holborn Studios Judgment⁴, the appeal will be judged upon the proposal, for 29 park homes, that was consulted upon and was before the Council when it determined the planning application.
5. In 2018 it was confirmed that prior notification was not required for the change of use of some of the buildings from use class B1(c) to 10 dwellings and for the

¹ Illustrative Landscape Strategy, Ref. JSL3787-100 Rev. F, September 2020

² Tree Survey Report and Arboricultural Impact Assessment, Ref. JSL3787_770 Rev. B, June 2023

³ Procedural Guide: Planning appeals - England

⁴ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

demolition of the L-shaped building to ensure the amenity of future occupiers⁵. Planning permission⁶ was also granted for physical alterations and associated parking to facilitate the 10 proposed residential units. This planning permission has lapsed.

Main Issues

6. The main issues are:

- whether the site is a suitable location for residential development having regards to local and national planning policy for the provision of housing;
- the effect of the proposal on trees; and,
- whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to the provision of external space.

Reasons

Spatial strategy

7. The appeal site is located outside of the settlement confines identified in the Ashford Local Plan 2030, February 2019 (LP). LP Policy HOU5 indicates that residential developments outside but close to settlements, including Aldington, would be acceptable if they meet the specified criteria. This includes whether the site is within easy walking distance of day-to-day services or has access to sustainable methods of transport to access a range of services; and where it is possible to maximise the use of public transport, cycling and walking to access services; amongst other factors.
8. Frith Road connects the appeal site with Aldington. It is a gently undulating road which would be suitable for cycling. However, the road is subject to the national speed limit and large sections do not include a footpath or streetlights. In the dark or inclement weather, the walk between the appeal site and Aldington would be unpleasant and, in some circumstances, unsafe. LP Paragraph 6.58 indicates that day-to-day services should be within 800 metres to be considered sustainable. Whilst Aldington offers numerous services, they are over 800 metres from the appeal site. As such, the appeal site is not close to Aldington or within easy walking distance of day-to-day services.
9. The proposal includes the construction of a footpath to a nearby bus shelter which provides services to several locations, including Ashford and Folkestone. However, these bus services are very limited and would not provide suitable access to day-to-day services. As such, future occupiers would have very limited access to sustainable methods of transport to access a range of services and the appeal site is not located where it is possible to maximise the use of public transport and walking to access services.
10. The change of use of the buildings to 10 residential units was deemed not to require prior notification. There is no evidence before me that would indicate that the same scheme would require prior notification, if proposed today. Whilst weight is ascribed to that scheme and the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015, that scheme was not assessed against the spatial strategy set out within the LP.

⁵ Application refs. 18/00711/AS and 18/00714/AS

⁶ Planning Permission ref. 19/00872/AS, approved 31 July 2019

Moreover, that scheme is materially different to the appeal proposal due to the scale of that development.

11. Planning permission⁷ for the demolition of existing buildings and the erection of 3 dwellings on nearby land is also materially different as it proposed a much smaller quantum of development. Moreover, the Council acknowledged that the scheme would not be compliant with the broad aims of the spatial strategy set out within the LP but other benefits, including the removal of 'poor quality' buildings outweighed the conflict. The quality of the buildings to be demolished in the appeal proposal has not been evidenced. Whilst they are utilitarian in appearance, they are in active use, and I did not observe any significant structural defects. Based on the evidence, they are not poor quality buildings. For these reasons, neither the previously accepted residential scheme at the appeal site or the planning permission on land nearby, set a precedent for the appeal proposal.
12. The proposal would lead to less vehicular journeys than the existing commercial use. Also, the number of vehicular journeys may be less than the previous scheme for 10 market dwellings and less than forecasted, due to the age of future occupants. The proposal would therefore not have a severe impact on the road network, and in this respect would be in accordance with the National Planning Policy Framework (the Framework).
13. Furthermore, as the existing use of the appeal site is within Planning Use Class E, a change of use could occur without the need for planning permission. Moreover, the buildings could be converted to a state funded school for 3 years, subject to prior approval. Some of these proposed uses would generate significantly more vehicular journeys than the appeal proposal. However, there is no evidence that there is a greater than theoretical possibility that a change of use would occur. Therefore, only limited weight can be ascribed to these fallback positions.
14. Regardless, the number of vehicular journeys generated by a proposal is only one aspect of sustainable development. The reduction in vehicle journeys would not mitigate a residential development that is remote from day-to-day services and facilities and could lead to an isolated community.
15. A travel planning strategy for the appeal proposal is unlikely to significantly improve access to public transport given the scale of the development and the very limited services currently available. Therefore, a condition requiring a strategy to be created and promoted would not overcome the identified harm.
16. The site is not in a suitable location for residential development having regards to local and national planning policy for the provision of housing. It would be contrary to LP Policies SP1, SP2 and HOU5 which focus development at accessible locations and in rural areas the scale of housing development will be consistent with the level of services available, amongst other factors.

Trees

17. The site is visually well contained due to dense vegetation around all boundaries. The proposal includes the retention and enhancement of these verdant boundaries. As such, the proposal's effect on the landscape would be acceptable, as it would be limited and localised.

⁷ Planning permission ref. 21/01374/AS, approved August 2022

18. The precise layout of the park homes would be subject to the licensing process under the Caravan Sites and Control of Development Act 1960. However, the layout as shown on the Site Overview⁸ is the best indication of the appellant's intended layout. If the indicative layout was developed there would be approximately a 10% incursion into the root protection area of trees T23 and T24 and a requirement to prune approximately 30% of their canopies. Both trees are subject to a Tree Preservation Order.
19. During my site visit I observed that Tree T24 appeared to be damaged, and it is not clear whether it would need to be felled. Regardless, the indicative layout would as a minimum necessitate works to Tree T23, which otherwise would not be required.
20. An alternative layout could be developed and adopting a "no-dig" approach in specific areas would ensure that the root protection areas of the trees would not be harmfully affected. However, given the constrained site and the quantum of development proposed, there is no evidence to suggest that a layout could be developed which does not necessitate the extensive pruning of trees.
21. I note that the appellant offered to reduce the proposal by two units during the determination of the planning application to remove the need for works on trees T23 and T24. Nonetheless, the acceptance of amended plans is at the discretion of the Council and my assessment is based upon the appeal scheme before me.
22. It has not been demonstrated that the proposal would not have a harmful effect on trees. It would therefore be contrary to LP Policy ENV5 which advises that development in rural areas shall protect landscape features that help to distinguish the character of the local area.

Living conditions

23. The proposal would fall below the standards for private useable external space specified in LP Policy HOU15. However, these standards do not strictly apply to the proposal as they relate to houses and flats. Moreover, the proposal would comply with the Model Standards 2008 for Caravan Sites in England. These standards include control matters such as density and spacing.
24. Although, the proposed external space would be modest in size and the caravans would be permanently occupied, it has not been demonstrated that the Government's Model Standards would be inappropriate in this instance. Therefore, I conclude that the proposal would provide acceptable living conditions for future occupiers, with particular regard to the provision of external space.

Other Matters

25. The appeal site is located within the Stour River catchment, which feeds into Stodmarsh Lakes. There are several internationally protected sites within the lakes. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an

⁸ Site Overview, drawing ref. 2020-6264-001 Rev. D

appropriate assessment (AA) of the project's implications in view of the relevant conservation objectives.

26. However, as I have found the proposal to be unacceptable for other reasons, it is unnecessary for me to consider undertaking AAs nor to consider whether the scheme complies with LP Policy ENV1. For the avoidance of doubt, even had I undertaken AAs and identified no adverse effect upon the integrity of internationally protected sites, it would not have affected my overall conclusions on this appeal.
27. I note the appellant's comments in relation to how the application was processed. In particular, the time taken to determine the planning application; references to sections of the Framework and Planning Practice Guidance (PPG), and legislation which were not relevant to the appeal proposal; and making ambiguous and unjustified assertions potentially contrary to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, this is a matter between the parties and has not altered my consideration of the acceptability of the appeal proposal.

Planning Balance

28. The policy would not conform with the spatial strategy outlined in the LP and would have a harmful effect on trees. There would be conflict with LP Policies SP1, SP2, HOU5 and ENV5 and no policies cited overcome the conflict with these policies. The proposal would therefore not accord with the development plan as a whole.
29. The Council can only demonstrate 3.5 years supply of deliverable housing land. As such, on the premise of no likely significant effect on the integrity of the internationally protected sites, the presumption in favour of sustainable development would be engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework's policies taken as a whole.
30. Benefits of the proposal include the provision of 29 park homes which would help address the identified shortfall in housing land supply. Furthermore, the park homes would represent low-cost, age-restricted accommodation to help meet the demand generated by the borough's ageing population. There would also be social and economic benefits associated with the construction of the proposal, which includes single storey accommodation, and an increased population living in the area. These benefits are in accordance with the Framework and the PPG⁹.
31. It has not been evidenced that they would be for sale at a price equivalent to at least 20% below local market value. In accordance with previous appeals, I cannot determine that the proposal would conform with the Framework's definition of affordable housing. Nonetheless, given the scale of the development and identified shortfall in housing land supply, alongside the provision of low-cost accommodation, I ascribe considerable weight to the benefits of the proposal.
32. However, the Framework indicates that planning decisions should ensure that developments create places that are accessible and appropriate opportunities

⁹ Paragraph 012 Reference ID: 63-012-20190626

to promote sustainable transport modes can be taken up. Furthermore, the Framework advises that in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and planning decisions should recognise the benefits provided by trees and woodland.

33. The appeal site is an inappropriate location for the scale of the proposed residential development, and it has not been demonstrated that the proposal would not harm or necessitate work on trees that help distinguish the character of the area. I therefore ascribe substantial weight to the harm.
34. As such, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

35. The material considerations do not indicate that a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR