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## Appeal Decision

Hearing held on 15 December 2016

Site visit made on 15 December 2016

**by L Gibbons BA (Hons) MRTPI**

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

**Decision date: 31 January 2017**

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**Appeal Ref: APP/U2235/W/16/3151289**

**Land at Mount Avenue/Blunden Lane, Yalding, Kent ME18 6JF**

- 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 Pete Bland (Millwood Designer Homes Ltd) against the decision of Maidstone Borough Council.
  - The application Ref 15/509402/OUT, dated 10 November 2015, was refused by notice dated 17 February 2016.
  - The development proposed is an outline application for a residential development of 30 dwellings with access from Mount Avenue and Blunden Lane.
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### Decision

1. The appeal is allowed and planning permission is granted for an outline application for a residential development of 30 dwellings with access from Mount Avenue and Blunden Lane at Land at Mount Avenue/Blunden Lane, Yalding, Kent ME18 6JF in accordance with the terms of the application, Ref 15/509402/OUT dated 10 November 2015, subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. Following the Hearing the appellant submitted an amended certified copy of a signed Unilateral Undertaking (UU) under section 106 (s106) of the Town and Country Planning Act 1990 (as amended) dated 28 November 2016, in relation to contributions to education, libraries and doctors surgeries. It also makes provision for on-site affordable housing. I return to this matter below.
  3. The application seeks outline planning permission with access to be determined at this stage. Landscaping, appearance, layout and scale are reserved matters to be considered in the future. Although the application plans show a housing mix, site sections and elevations, and a masterplan the appellant has indicated that this is for illustrative purposes. I shall determine the appeal on this basis.
  4. During the Hearing, the Council confirmed that a Woodland Tree Preservation Order (TPO) had been made on 18 October 2016 but there had been objections to this. To date the TPO has not been confirmed.
  5. The Council refer to Policy SP17 of the emerging Maidstone Borough Local Plan (LP). This relates to development within the countryside. The plan has been the subject of consultation and the Examination is in progress. The Inspector examining the LP has issued an Interim Findings report dated 22 December 2016. There is no commentary on Policy SP17. Both parties have commented
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on the interim findings. No party would be prejudiced by my taking these comments into account. Given the stage that the LP has reached and that final and full conclusions are still to be set out by the examination Inspector, I give Policy SP17 limited weight.

### **Main Issues**

6. The main issues are:

- i) The effect of the proposed development on the character and appearance of the area including woodland and trees;
- ii) Whether there is a five year supply of housing land within the area.

### **7. Reasons**

#### *Character and appearance*

8. The appeal site is located to the east of Yalding. There is housing development to the south and west of the site. This consists of modern estate housing on Mount Avenue and Blunden Lane, and a mix of older style and modern housing on Vicarage Road. To the north are paddocks and to the east are fields. The site consists of predominantly wood and scrub. The appeal site is private land but there is an informal network of paths running through the wooded areas. There is a well-used public footpath that runs adjacent to the whole of the north boundary of the appeal site and then continues some distance to the east.
9. The appeal site is located within a Special Landscape Area as set out in saved Policy ENV34 of the Maidstone Borough Wide Local Plan 2000 (BWLP). This amongst other things seeks protection and conservation of scenic quality and the distinctive character of the area. I note that Policy ENV34 is not being carried forward into the emerging LP and that the replacement policy would not be relevant to the appeal site. Nevertheless, I consider it is not at odds with the National Planning Policy Framework (the Framework) where it relates to protecting the intrinsic character and beauty of the countryside. Saved Policy ENV28 of the BWLP seeks to restrict development in the countryside to certain uses none of which apply in this case.
10. The site is within the Yalding Farmlands character area as set out in the Council's Landscape Character Assessment 2012. This area includes features such as orchards, hedgerows and woodland blocks. The appeal site is not uncharacteristic of the woodland blocks, albeit it is unmanaged and contains a considerable amount of scrub. I acknowledge that the large amount of wooded area is unusual for the village.
11. The site can be viewed in the context of residential development on Mount Avenue and Blunden Lane when approaching from the west. However, due to the orientation of the houses along these roads the site does not appear as part of the built up area. The tops of trees within the appeal site can be seen from Vicarage Road. Indeed, to my mind the site acts as a wooded backdrop to this part of the village. I consider the site makes a positive contribution to the immediate character and appearance of the area.
12. The appeal site is an integral part of the views from the footpath to the north of the site. This is the case whether travelling away from or towards Yalding.

Residential development along Mount Avenue is mainly screened by the vegetation even in winter when the trees are not in leaf. There is also a good view of the slightly more open countryside to the north although views out to the east are not possible. There is sufficient indication that the area has a rural character which differs from the nearby development.

13. The proposal is for 30 dwellings with associated access on Mount Avenue and Blunden Lane. Although the masterplan is for illustrative purposes it shows a layout which would be mainly focused on the west, central and southern portions of the site. Approximately half of the site would be developed. A number of trees would be retained and there are proposals for landscaping and planting which would include a small orchard and also an attenuation pond.
14. The Landscape and Visual Appraisal that accompanies the proposal identifies a number of potential viewpoints. Due to the topography of the wider area and surrounding vegetation, the appeal proposal would not be seen from the public footpath approaching from the east. The development would not be visible when travelling along Vicarage Road due to the land sloping up to the north and the intervening residential development.
15. However, there would be a considerable amount of vegetation removed as part of the proposed development in order to accommodate the dwellings. This would open up the site and allow views towards some of the houses. It would result in development being highly visible to users of the public right of way to the north and a suburban appearance at odds with the rural character experienced along this part of the footpath. Furthermore, the provision of the accesses at Mount Avenue and Blunden Lane would introduce additional suburban features to this stretch of the road and which would draw the eye towards the appeal scheme.
16. Overall, the proposal would change the character and appearance of the appeal site and would significantly alter the experience of users of the public footpath. The site would also be opened up considerably and houses would be visible to the occupiers of properties to the south and west of the boundaries. Proposals for landscaping and strengthening the boundaries with additional native planting would take some time to mature. Although the scheme would not be visible in the wider landscape, I consider the scheme would be harmful at the very local level.
17. The Council refers to concerns over the further loss of trees due to wind damage and pressure from residents to fell trees within the site. There was no evidence presented to demonstrate that this would be the case and I give this argument little weight. However, it is not sufficient reason to overcome the harm I have found.
18. For the reasons given above, I conclude that the proposed development would cause some harm to the character and appearance of the area. It would be in conflict with Saved Policies ENV28 and ENV34 of BWLP and Policy SP17 of the emerging LP. It would be contrary to the Framework in respect of the intrinsic character and beauty of the landscape being recognised.

*Five year supply*

19. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision taking.

Paragraph 47 of the Framework indicates that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed housing needs for market and affordable housing. At the Hearing, the Council confirmed that it considered it could demonstrate a five year supply of housing land at just over 5 years.

20. The Council rely on a number of housing sites which are proposed allocations in the emerging LP. I accept that the appeal site is not one of these sites. Some of the proposed allocations have planning permission subject to s106 agreements and I consider it is reasonable to include these within the supply. Other sites are described as having no planning application. These would account for a considerable proportion of the LP supply in the first five years. I note that the Council have been in contact with a significant proportion of developers or landowners in order to assess the deliverability of the sites. I acknowledge that in a recent appeal decision<sup>1</sup> the Inspector concluded that there was more likely than not a five year supply of housing land.
21. Nevertheless, since that decision the Interim findings of the LP Inspector has been published. The Interim findings do refer to a reduction in the objectively assessed housing need figure over the plan period with a subsequent reduction in the requirement per year. However, a number of sites were also referred to in terms of removing them or altering the delivery numbers. Some of these numbers were significant. In addition, not all sites were referred to by the LP Inspector and additional details or changes may need to be considered by the Council in relation to the plan. Therefore, I cannot be certain that all the allocations would come forward or in accordance with the timeframe predicted by the Council.
22. The Council have not indicated what they consider to be the five year supply in the light of the Interim findings. I note the Inspector refers to the strengthening of the supply position and a strong position in future years. However, the Interim findings do not confirm that there is a five year supply as of April 2016. I therefore conclude that for the purposes of this appeal, the Council are unable to demonstrate a five year supply of housing land.
23. The Framework sets out that in the absence of a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up to date. The appeal site is outside of the defined settlement boundaries and is within the countryside. Saved Policy ENV28 of the BWLP seeks to restrict in the countryside and I consider it is a relevant policy for the supply of housing and would therefore be out of date. In the light of the above, I conclude that little weight should be attributed solely to the site being located in the countryside.
24. In these circumstances, paragraph 14 of the Framework sets out how the presumption in favour of sustainable development should be applied and indicates 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 as a whole. I return to this matter below.

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<sup>1</sup> APP/U2235/W/16/3151144

## **Other matters**

25. The Council raised concerns in relation to the effect of the proposal on the biodiversity of the woodland. However, the site is not managed and whilst I note that a significant proportion of the scrub and a number of trees would be removed, there was no evidence presented by the Council to indicate that this would have a negative impact on the species which are found on the site. The proposal would incorporate a number of measures including the creation of new habitats such as wildlife corridors. There is a badger sett within the site. However, this is located away from the indicative location of the housing and there was no evidence to demonstrate that this would have a negative effect on the presence of this species on the site. When taking into account the loss of part of the woodland and scrub, I consider that the range and type of mitigation and proposals for future management would result in an overall neutral effect on the ecology and biodiversity of the site.
26. I have considered the UU in the light of the statutory tests contained in Regulations 122 and 123 of the Community Infrastructure Levy Regulations (CIL) 2010, and the tests at paragraph 204 of the Framework. At the Hearing, the Council confirmed that the contributions towards local primary school enhancement, an increased book-stock at local libraries, and enhanced healthcare at local doctors' surgeries were not affected by the pooling restrictions in Regulation 123. The requirements would be in accordance with Policy CF1 of the MBLP.
27. The proposal would make provision for 40% of the units to be affordable which would be in line with the requirements set out in the Council's Affordable Housing Development Plan Document 2006. The Council raise concerns in relation to a specific time limit on the completion of the affordable housing units. I note that this is something the Council normally seek to achieve and appears to relate to the monitoring and tracking of the delivery of affordable housing. However, the UU limits the occupation of a certain amount of market housing before the delivery of the affordable housing units. This would ensure the affordable housing is delivered in a timely manner. The UU would be necessary to make the development acceptable in planning terms, is directly related to the development and fairly related in scale and kind. I have taken it into account in coming to my decision.
28. A number of residents have raised concerns in relation to highway safety across the Town Bridge and access along Mount Avenue and Blunden Lane. Concerns about parking are also raised. Town Bridge is a single lane crossing of the river and I note that this causes some delays in journeys through the village. However, the Highways Authority does not object to the proposal and does not indicate any concerns with regard to highway safety at these locations. Based on observations on my visit and the evidence before me, I see no reason to disagree with them on this matter.
29. Occupiers along Vicarage Road have raised concerns in relation to loss of privacy and potential noise and disturbance. The illustrative layout shows that some houses would be located on the south part of the site. Although the houses on Vicarage Road are located on land which is lower than that of the appeal site, the potential layout indicates that houses would be a sufficient distance apart and with landscaping proposed on the boundary so that there would be no material loss of privacy. The open space area would also be some

distance away from the houses. There is no evidence to confirm that the use of the proposed footpath from the site to Vicarage Road would lead to a significant increase in noise and disturbance from potential users.

30. As well as the appeal decision specifically referred to in my decision, my attention has been drawn to a number of others. Consistency between decision makers is important. Some of these decisions have some features in common with the appeal proposal and refer to housing land supply amongst other things. However, each of these cases also has different considerations which affect the nature of the development and the Inspectors' conclusions. In any event, I have considered the proposal before me on the specific circumstances and evidence which has been provided by the parties.

### **Conditions**

31. I have considered the conditions in the light of the tests set out in paragraph 206 of the Framework and the Planning Practice Guidance. Where necessary, I have amended the suggested conditions in order to comply with the tests, including requirements for implementation. The Council suggested conditions which would be before the commencement of development and I have amended the order of conditions to reflect this. I have imposed a condition specifying the relevant drawings as this provides certainty. Given the outline nature of the application conditions are needed to ensure that matters reserved for future approval remain subject to the Council's approval.
32. In the interests of enhancing the nature conservation and woodland opportunities of the site, conditions are needed for the submission and implementation of a scheme of ecological mitigation and a Woodland and Landscape Ecological Management Plan. A condition is also needed in relation to the external lighting in order to protect bat populations within the area. I have also attached a condition in relation to the implementation and retention of landscaping submitted in respect of the reserved matters. As trees are proposed to be retained protection measures are necessary during construction works. A condition relating to the submission and implementation of an Arboricultural Method Statement is also required.
33. As the land is on higher ground than the properties on Vicarage Road in particular, conditions are needed relating to the site levels and restricting dwellings to two storeys. Conditions are needed in the interests of highway safety in respect of the provision of adequate parking and garages, turning space and unloading/loading of vehicles. A condition is needed for the timing of the construction of the two separate accesses shown on the drawings. A condition is necessary to control the effects of construction works on neighbours living conditions.
34. In the interests of sustainability, conditions are necessary in relation to surface water including sustainable drainage (SuDS) and waste water, and also in relation to sources of energy generation and electric vehicle charging points. Details of storage facilities for refuse would also be required. In order to protect the character and appearance of the area, conditions are needed in respect of boundary treatments, and external materials including road surfaces.
35. The County Council recommended a condition in relation to the provision of superfast fibre optic broadband. However, no detailed information has been

provided on why this would be necessary or how it relates to the development. I have therefore not attached a condition.

### **Conclusion and balance**

36. The Framework identifies three dimensions to sustainable development – economic, social and environmental. The Framework makes it clear that the three roles the planning system is required to perform in respect of sustainable development should not be undertaken in isolation because they are mutually dependent.
37. Yalding has some key services which would meet the day to day needs of local residents and which residents would be likely to use. The site is in an accessible location in relation to the village centre. There are also reasonably good transport links to the larger settlements of Maidstone and Paddock Wood. The scheme would make a contribution to market and affordable housing and these matters weigh heavily in favour of the appeal scheme.
38. The proposal would cause some harm to the character and appearance of the area at the local level. However, this adverse impact would not significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
39. For the above reasons and having regard to all other matters raised, I conclude that subject to the conditions set out in the attached schedule, the appeal should be allowed.

*L Gibbons*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT

T Daniels	Millwood Designer Homes Ltd
P Court	Peter Court Associates
S Watson	Bioscan UK Ltd
S Hubert	Lloyd Bore

### FOR THE LOCAL PLANNING AUTHORITY

R Elliott	Maidstone Borough Council
S Watson	Maidstone Borough Council
G Parkinson	Maidstone Borough Council
N Gallavin	Maidstone Borough Council
H Forster	Kent County Council

### INTERESTED PERSONS

S McCloughlin	Cllr (Yalding Ward), Maidstone Borough Council
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### DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 Housing Topic Paper Supplement 2016
- 2 Tree Preservation Order dated 18 October 2016
- 3 Letter from Peter Court Associates to the Programme Officer dated 7 December 2016
- 4 Assessment of Housing Land Supply November 2016 by Peter Court Associates
- 5 Appeal decision APP/U2235/W/16/3151144
- 6 Housing Topic Paper Update 1 September 2016
- 7 Strategic Housing Land Availability Assessment Final Report May 2009
- 8 List of amended and new conditions

## SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 2664-10 Rev A – Site location plan; 8050C/902 Rev C – Proposed access and typical cross sections.
- 4) A scheme of ecological mitigation and enhancement must be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on the site (including vegetation clearance). The mitigation and enhancement strategy must be informed by valid, up to date ecological surveys and include the following:
  - a) Purpose and conservation objectives for the proposed works;
  - b) Review of site potential and constraints;
  - c) Detailed design(s) and/or working methods to achieve stated objectives;
  - d) Extent and location/area of proposed works on appropriate scale maps and plans;
  - e) Type and source of materials to be used where appropriate e.g. native species of local provenance;
  - f) Timetable for implementation demonstrating that works are aligned with the proposed timing of development;
  - g) Persons responsible for implementing the works;
  - h) Details of initial after-care;
  - i) Details of ecological enhancements to be incorporated into the built development including swift bricks, bat tubes and bat bricks, and;
  - (j) Demonstrate that any SuDS features are designed to benefit biodiversity.

The scheme of ecological mitigation and enhancement will be implemented in accordance with the approved details.
- 5) A Woodland Landscape and Ecological Management Plan (WLEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The content of the WLEMP shall include the following:
  - a) Description and evaluation of features to be managed;
  - b) Ecological trends and constraints on sites that might influence management;
  - c) Aims and objectives of management;
  - d) Appropriate management options for achieving aims and objectives;

- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including an annual workplan capable of being rolled forward over a five year period);
- g) Details of the body or organisation responsible for implementation of the plan, and;
- h) Ongoing monitoring and remedial measures.

The WLEMP shall also include details of the legal and funding mechanisms by which the long-term implementation of the plan will be secured by the developer with the management body or bodies responsible for its delivery. The plan shall also set out (where the results from monitoring showed that conservation aims and objectives of the WLEMP are not being met) how contingencies and all remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The WLEMP will be implemented in accordance with the approved details.

- 6) Prior to the commencement of development details of existing and proposed long and cross-section sites level shall be submitted for prior approval in writing to the Local Planning Authority. The development shall only be carried out in accordance with the approved plans.
- 7) Prior to the commencement of development, the following shall be submitted to and approved in writing by the Local Planning Authority:
  - a) Details of facilities by which construction vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances at the application site. The approved facilities shall then be provided prior to the works commencing on site and thereafter shall be maintained in an effective working condition and used before vehicles exit the site and enter onto the adopted highway for the duration of the construction works;
  - b) Details of construction vehicle loading/unloading and turning facilities, and;
  - c) Details of parking facilities for site personnel and visitors during the construction phase.

The approved facilities shall then be provided prior to the works commencing on site and thereafter shall be maintained for the duration of the construction works.
- 8) Prior to the commencement of development, the proposed new accesses shall be provided in accordance with the approved plans.
- 9) Prior to the commencement of development a scheme for the disposal of (a) surface water (which shall be in the form of a SuDS scheme) and (b) waste water shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained permanently thereafter.
- 10) Prior to the commencement of development full details of tree protection shall be submitted to and approved in writing by the Local Planning Authority. Any trees to be retained must be protected by barriers and/or ground protection in accordance with BS 5873 (2005) 'Trees in Relation to Construction – Recommendations'. The approved barriers and/or

ground protection shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers and/or ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the Local Planning Authority.

- 11) Prior to the commencement of development an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. This shall include any details such as positions of any services/drainage runs and any access facilitation pruning requirement. The development shall be carried out in accordance with the approved AMS.
- 12) Prior to the development reaching damp proof course level, details of all fencing, walling, railings and other boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and all features maintained thereafter.
- 13) Prior to the development reaching damp proof course level, details of satisfactory storage facilities for the storage of refuse on the site shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided in accordance with the approved details and maintained thereafter.
- 14) Prior to the development reaching damp proof course level details of all external materials (including wearing services for the roads, turning and parking areas), shall have been submitted in writing for the approval of the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 15) Prior to the occupation of the buildings hereby permitted, a minimum of one electric vehicle charging point shall be installed at every residential dwelling with dedicated off street parking, and shall thereafter be retained for that purpose.
- 16) The details submitted in pursuance to condition 1 shall not include any dwelling exceeding two storeys in height.
- 17) The details submitted in pursuance of condition 1 shall show adequate land, reserved for parking or garaging to meet the needs of the development. The approved area shall be provided, surfaced and drained in accordance with the approved details before the buildings are occupied and shall be retained for the use of occupiers of, and visitors to, the premises. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access to this reserved parking area.
- 18) The details submitted in pursuance of condition 1 shall show adequate land, reserved for vehicle loading/unloading and turning facilities to meet the needs of the development. The approved area shall be provided,

surfaced and drained in accordance with the approved details before the buildings are occupied and shall be retained as such. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, shall be carried out on the land so shown as vehicle loading/unloading and turning facilities.

- 19) Landscaping details submitted pursuant to condition 1 shall be implemented in the first available planting season following first occupation of the development hereby approved. Any part of the approved landscaping scheme that is dead, dying or diseased within 5 years of planting shall be replaced with a similar species of a size to be agreed in writing beforehand with the Local Planning Authority.
- 20) The details submitted in pursuance of condition 1 shall include details of how decentralised and renewable or low carbon sources of energy will be incorporated into the development hereby approved. The development shall be implemented in accordance with the approved details and all features shall be maintained thereafter.
- 21) No surface water shall be discharged onto the public highway.
- 22) No external lighting shall be installed until details have been submitted to and approved in writing by the Local Planning Authority. This submission shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles). The scheme shall be in accordance with the requirements outlined in the Bat Conservation Trust and Institution of Lighting Engineers document 'Bats and Lighting in the UK'. The approved scheme shall be installed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation.