
Appeal Decision

Hearing held on 19 October 2016

Site visit made on 20 October 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 9 December 2016

Appeal Ref: APP/U2235/W/16/3151144

Land north of Lenham Road, Headcorn, Kent TN27 9TU

- 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 J Clarke & Mr A Cheale against the decision of Maidstone Borough Council.
 - The application Ref 15/509288/OUT, dated 9 November 2015, was refused by notice dated 31 March 2016.
 - The development proposed is for the construction of up to 57 dwellings including 40% affordable housing, associated public open space, ecological mitigation land and new vehicular access from Lenham Road (all matters reserved except access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A signed S106 agreement dated 18 October 2016 between the Local Planning Authority (LPA), Kent County Council and the owners of the site was given to me at the Hearing. I address this in more detail below.

Main Issues

3. The main issues are whether:
 - (a) the Council can demonstrate a five year supply of deliverable housing sites (5YHLS)
 - (b) the proposed development would harm the character and appearance of the area
 - (c) the proposal would be sustainable development as defined by the National Planning Policy Framework (NPPF) in the context of the development plan and emerging local policy

Reasons

Five Year Housing Land Supply (5YHLS)

4. When the LPA refused the application it acknowledged that it did not have a 5YHLS. Since then the Council has submitted its new emerging Local Plan¹ (ELP) to the Secretary of State. Part of that submission was a Housing Topic

¹ Maidstone Borough Local Plan – Publication (Regulation 19) version February 2016

- Paper (HTP) dated May 2016, which stated that the Council could demonstrate a 5YHLS based on what it considers to be the full objectively assessed need (OAN) for 18,560 additional dwellings in the Borough during the plan period of 2011-2031, as set out in the latest (June 2015) iteration of the Strategic Housing Market Assessment (SHMA). That document maintained that the LPA could demonstrate a HLS of 5.12 years, taking a base date of 1 April 2016.
5. Prior to the start of the ELP's examination hearings in October the Council partially updated the HTP by adding in dwellings completed and permissions for new dwellings granted between 1 April and 31 August 2016, giving an indicative position of HLS on 1 September 2016. As part of this update the LPA also attempted to contact the owners and developers of the sites where five or more dwellings are to be delivered where no previous information had been received at the time of writing the original HTP. As a result of this update the LPA says that it now has a HLS of 5.71 years.
 6. The appellants disagree and maintain the Council only has a HLS of 4.48 years, essentially for four reasons, the first being that the OAN has not yet been established. In this regard the appellants cite a recently allowed appeal² in the Borough. In that case the Inspector, despite having seen the Council's evidence of a 5YHLS in the May HTP, stated that he could not be satisfied of the existence of a 5YHLS because the authority's up-to-date OAN had yet to be demonstrated, tested and endorsed through the thoroughness and robustness of the local plan process.
 7. I agree that the authority's housing requirement has not yet been determined because the examining Inspector is still conducting the ELP examination and consequently has not yet issued his report. In this context I am mindful of the court judgement in *Hunston*³ where it was held that a S78 appeal is not the place to arrive at a housing requirement figure since it is impossible for any rounded assessment similar to the local plan process to be done, because the process is an elaborate one involving many parties who are not present at or involved in the S78 appeal.
 8. But the Council has presented to the ELP examination a housing requirement figure of 18,560 dwellings to be delivered within the plan period based on the evidence of OAN set out in the updated SHMA. Whilst I agree with the appellants that the final housing requirement may be higher it could, for the reasons put forward by Headcorn Parish Council (PC), be lower.
 9. The alternative figures of 19,600 and 17,660 dwellings put forward by the appellants and the PC respectively are in any case not so wildly different to 18,560. Even if the appellants' figure of 19,600 dwellings was determined to be the requirement it would not reduce the Council's HLS below 5 years, given the supply from the sites set out in the latest HTP. So whilst I acknowledge that the Council's housing requirement has yet to be determined, the evidence would suggest that it is likely to fall within the range of the above figures.
 10. Another reason why the appellants maintain the HLS falls below 5 years is because Inspectors in three recent appeal decisions in the Borough have said so, including in the above appeal. But in paragraphs 96-102 of that decision the Inspector concluded that he would still have allowed the appeal even if the

² APP/U2235/W/15/3131945 (the Lenham appeal)

³ *Hunston v SSCLG [2013] EWCA Civ 1610*

Council could have demonstrated a 5YHLS because the scheme's benefits outweighed the harm to the character and appearance of the area. So it was clear that his conclusion that he could not be satisfied a 5YHLS existed was not the principal reason for allowing the appeal.

11. With respect to the other two recent appeal decisions cited by the appellants⁴ I acknowledge the Inspectors in these cases did not conclude that there was a 5YHLS. But in the Marden appeal the lack of a 5YHLS appears to have merely reinforced the decision to allow the appeal because the development was acceptable anyway (paragraph 21), as per the situation in the Lenham case.
12. In the Sutton Valence appeal the Inspector clearly did not have enough information to determine the HLS in advance of the ELP examination (as per the Lenham decision) especially since it is stated in paragraph 12 of that decision that the parties had agreed there was only a HLS of 3.3 years. I have not seen all the documentation submitted in respect of those two appeals and although the decisions post-date the Lenham decision I cannot be sure that the Council's HTP was presented to the two Inspectors in those written representations cases. There is no mention of it in the decisions and so they cannot be used as valid comparisons to justify the appellants' case that there is no 5YHLS now.
13. The appellants' third reason justifying the current lack of a 5YHLS is that the Council has a record of persistent under-delivery of housing and that there should be a buffer of 20% of sites rather than 5% moved forward from later in the plan period. They state that there has been under-delivery in every one of the first five years of the ELP period (2011/12 to 2015/16).
14. However, Planning Practice Guidance states that a local delivery record is likely to be more robust if a longer-term view is taken, since this is likely to take account of peaks and troughs in the housing market cycle. The court judgement in *Cotswold*⁵ also makes clear that in order for there to be a record of under-delivery the decision maker needs to have regard to a reasonable period of time, including for instance in terms of delivery performance under a previous plan regime.
15. In this regard simply taking the last five years as evidence of persistent under-delivery is clearly too short a period. The PC suggests that assessing delivery over the last ten years would be more realistic and meet the above tests. I agree. There is dispute between the Council and the appellants as to what the target should have been between 2011/12 and 2013/14.
16. The LPA maintain that the target up to 2013/14 was 554 dwellings per year, the target from the South East Plan, whereas the appellants state it must have been 928 dwellings per year from 2011/12, the first year of the ELP period. It would seem to me unfair if the Council were to be held to account for failing to meet a target that did not emerge until the completion of the recent SHMA. But even if I was to agree with the appellants regarding under-delivery over the last five years based on a target of 928 dwellings from 2011/12, this would still not amount to a persistent under-delivery for the above reasons. I therefore conclude that the buffer should be 5% and disagree with the appellants' calculation of current HLS as 4.48 years.

⁴ APP/U2235/W/15/3140679 (the Marden appeal) & APP/U2235/W/16/3146765 (the Sutton Valence appeal)

⁵ *Cotswold District Council v SSCLG* [2013] EWHC 3719

17. The appellants' fourth reason for saying there is no 5YHLS is that the supply of dwellings listed in the appendices to the HTP are likely to be reduced in light of objections to the Council's allocated housing sites in the ELP and historic over-estimation of the capacities of housing sites.
18. The Council did not dispute at the Hearing the evidence contained in the appellants submissions regarding historic over-estimation of capacity⁶. But it pointed out that it had re-assessed the capacity from a number of sites in the latest version of the HTP, including reducing the supply on some of the sites identified by the appellants⁷, and had received feedback from the owners/developers of 81% of the sites as documented in the September HTP rather than only 59% in the original HTP.
19. For these reasons the housing supply from the sites listed in the appendices of the latest HTP is likely to be more robust than that in the April HTP. Whilst that does not mean that it can necessarily be relied on, it is not for me carry out a detailed assessment of supply from individual sites in the absence of specific evidence concerning them and the absence of an agreed housing requirement figure. That is a matter more appropriate for the ELP examining Inspector, who is likely to have submissions from a wider number of owners/developers than I have been provided with in this appeal.
20. For all of the above reasons I conclude that it is more likely than not that there is currently a 5YHLS, albeit that Maidstone's definitive housing requirement figure remains to be determined in the ELP.

Character and Appearance

21. The site comprises about 6 hectares (ha) of pasture land on the north-east edge of Headcorn, a large village classified as a Rural Service Centre (RSC) in the ELP. It comprises an irregular shaped field parcel bordered by a mature hedge on its southern boundary along Lenham Road. Within it are two ponds connected by a drainage ditch or swale that runs into a stream that forms its north-western boundary. This ditch is generally lined with mature oaks and there are free standing veteran oaks both within the site and in the adjoining fields.
22. As such the site and the adjoining fields to the north and east are typical of the Low Weald national landscape character area and specifically of the Headcorn Pasturelands local character area⁸. The landscape sensitivity of this area is considered to be high⁹. The Low Weald is defined as a Special Landscape Area (SLA) in the LP, whose scenic quality and distinctive character Policy ENV34 of the development plan, the Maidstone Borough-Wide Local Plan 2000 (LP), seeks to protect.
23. Adjoining the site to the west is a new residential development currently under construction by Kingsbridge Homes. South of the site, between Lenham Road and Grigg Lane, is greenfield land also the subject of several recent permissions for residential development and on which housing is currently being constructed. All those sites lie just outside the current Headcorn settlement boundary as defined in the LP, but are housing allocations within it

⁶ Assessment of Housing Land Supply by Peter Court, September 2016 – Section 5

⁷ Ibid paragraphs 5.6-5.9

⁸ As set out in the Maidstone Landscape Character Assessment, amended 19 July 2013

⁹ Maidstone Landscape Capacity Study: Sensitivity Assessment, January 2015

- as defined by Policy SP7 of the ELP. However, the appeal site remains outside the new proposed settlement boundary.
24. This site would therefore adjoin the new built-up area of the village. The proposed indicative scheme seeks only to build dwellings on 1.34 ha on the south-west of the site closest to Lenham Road and the new Kingsbridge development. The remainder of the site would be left open, planted with a wildflower meadow and enhanced ecologically and in landscape terms by new ponds, a new swale, additional tree planting and strengthening of hedgerows along the site boundaries and in the land to the north in the appellants' wider ownership.
 25. The appellants argue that as a result of this enhancement the proposal would only cause a low level of visual harm to the character of the area since the S106 agreement includes a suitably worded management strategy for this open space. In particular they draw my attention to the strengthening of the currently poorly landscaped boundary of the site with the adjacent housing site and the hedge on Lenham Road and the intention to inset the dwellings on this frontage from the highway.
 26. I acknowledge that these aspects of the proposed development would be beneficial to it and help to mitigate its impact. But it would still involve the loss of a large part of a field that is typical of the scenery of the Low Weald. Whilst there would be additional tree and hedgerow planting this open field and the public footpath running through it would undoubtedly be urbanised. The southernmost part of the footpath would run past houses and there would be a clear open view of the new housing when approaching the development on this footpath from the north.
 27. The open space would be perceived as a backdrop or foreground to the new dwellings rather than open countryside as it is perceived now for walkers on the footpath. Whilst public access would be afforded to the 4.73 ha of open space the perception of a clear break between the housing on this edge of the village and the open countryside would be blurred and weakened.
 28. The appellants state that the vehicular access to the site was deliberately moved eastwards from its originally conceived position in order to maintain the rurality of the development. However, in my view it would have the opposite effect of extending urban development eastwards further exacerbating its impact on the open countryside.
 29. For the above reasons the proposal would harm the character and appearance of the area. Whilst such harm would not be major in terms of its effects on the overall character of the Low Weald it could not be described as a low level of visual harm to the Headcorn Pasturelands or local area.
 30. The proposed development would not therefore protect the scenic quality and distinctive character of the SLA as required by LP Policy ENV34 and would conflict with LP Policy ENV28 because it would harm the character and appearance of the countryside in this area. Although these Policies are relevant policies for the supply of housing I accord them full weight in view of my above findings on HLS.
 31. However, even if there was found to be no 5YHLS they would still carry a degree of weight because they accord with the National Planning Policy

Framework (NPPF), which aims to recognise the intrinsic character and beauty of the countryside and protect and enhance valued landscapes like the Low Weald.

32. The appellants' agents argued at the Hearing that of the 423 new dwellings allocated across the five new sites in Headcorn in ELP Policy SP7 328 of them are located in the Low Weald SLA and that officers had no objection to the proposal on character and appearance or landscape impact in the Council's Committee Report. Be that as it may these are insufficient reasons in themselves to justify further harm to the SLA, especially given that the Council has not chosen to allocate this site for housing.

The Planning Balance and Sustainability

33. The PC argues that the development is not sustainable, and that landscape impact is part of an assessment of sustainability. It states that this site along with all the other allocated sites in Headcorn would be the least sustainable sites allocated in the ELP. The LPA agreed at the Hearing that this site and the other housing allocation sites in Headcorn would fall in the bottom half of sites ranked in accordance with the methodology in the ELP's Sustainability Appraisal. But it maintained that this methodology was predominantly focussed on the proximity of sites to services and transport infrastructure.
34. The LPA acknowledges that RSC's including Headcorn contain a reasonable level of services, which is why they are the subject of various allocations, including for housing, in the ELP. The PC challenges the accessibility of secondary schools, employment opportunities and hospitals by public transport from Headcorn. But it is a fact that the village has a good range of shops and services including a primary school, doctor's surgery, railway station and a regular bus service, at least some of which are within walking distance of the site. Whilst the PC has provided detailed representations in this regard it is not the role of a S78 appeal to examine the Council's spatial strategy and housing allocations – that is clearly the role of the ELP's examining Inspector.
35. The LPA has seen fit to allocate, despite their relatively low sustainability credentials, a number of housing sites in Headcorn and has already given planning permission for 497 dwellings since 1 April 2011, the majority of which are on those sites. However, it has not allocated this site.
36. I note that the Council's Strategic Housing Land Availability Assessment (SHLAA) concluded that this site is somewhat visually divorced from the existing settlement and would represent a significant intrusion into the countryside. I acknowledge that the site referred to in the SHLAA comprised the totality of the appellants' land ownership, a much larger area including the land to the north east. But for the reasons indicated above I have concluded that the appeal site alone also falls foul of this description.
37. Whilst not yet adopted the ELP has reached an advanced stage and due weight should be given to it especially in light of the above permissions on the adjoining and nearby sites allocated in Policy SP7. I also note that the Headcorn Neighbourhood Plan (NP), the Examination of which was on the day before this Hearing, does not allocate the appeal site for housing but retains it as countryside.

38. The NPPF stresses the importance of the plan-led system. The proposed development would conflict with Policies ENV28 and ENV34 of the development plan as well as Policies SP7 and SP17 in the ELP and the emerging NP. Allowing such development, in the absence of overriding material considerations which indicate it should be allowed, would be contrary to S38(6) of the Act¹⁰. It is therefore necessary to conduct a planning balancing exercise to ascertain if the benefits of the proposal outweigh its conflict with the development plan and the harm to the character and appearance of the area.
39. The development would provide 57 additional dwellings 40% of which would be affordable in an area which certainly until recently did not have a 5YHLS and has a clear need for additional affordable homes. I acknowledge the PC's arguments that Headcorn is not a suitable place for large numbers of affordable dwellings and the lack of demand for such but the provision of such homes is a current policy prerogative Borough wide. The provision of market and affordable homes is an important social benefit.
40. I also acknowledge that the creation of the public open space associated with the development would be a benefit not just to the people living in it but to the wider village, but I disagree that it would enhance the local landscape or character of the area. There would also be likely to be proportionate economic benefits to local companies and workers involved in the construction and supply of materials for the development and the support of local services by future residents' expenditure.
41. Set against this is the harm to the character and appearance of the area including the local landscape of this part of the Low Weald and the conflict with adopted and emerging policy that accords with the NPPF. The identified benefits would not outweigh such harm, especially in view of my conclusion that it is more likely than not that the Council has a 5YHLS. The proposal to build houses on this site would not therefore be sustainable development as defined by the NPPF.

Other Matters

42. The S106 agreement provides for various financial contributions to the Borough and County Councils, the delivery of the affordable housing and open space and its future management. But these obligations are conditional on the grant of planning permission and so I do not need to consider them any further.

Conclusion

43. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR

¹⁰ The Planning and Compulsory Purchase Act 2004

APPEARANCES

FOR THE APPELLANT:

Peter Court BA Hons, DipTP, MRTPI Tom La Dell	Peter Court Associates LaDell Wood
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FOR THE LOCAL PLANNING AUTHORITY:

Ashley Wynn Stuart Watson	Planning Officer, Maidstone BC Planning Policy Officer, Maidstone BC
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HEADCORN PARISH COUNCIL

Dr James Ker Dr Rebecca Driver Dave Andrews	Chair, Planning Committee
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DOCUMENTS SUBMITTED AT THE HEARING

1. Letter and list of addressees amending the date of the Hearing and providing details of its location
2. Headcorn settlement boundary maps in LP and ELP
3. SHLAA entries for appeal/wider site and Kingsbridge site with map showing sites
4. Headcorn Parish Neighbourhood Plan
5. Analysing the Sustainability of Housing Development in Headcorn, Report for Headcorn PC by Dr Driver, December 2014
6. Signed s106 agreement dated 18 October 2016

End of Documents List