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# Appeal Decision

Site visit made on 26 July 2016

**by Nick Palmer BA (Hons) BPI MRTPI**

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

**Decision date: 4 August 2016**

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**Appeal Ref: APP/U2235/W/16/3146765**

**Appleacres, Maidstone Road, Sutton Valence, Kent ME17 3LR**

- 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 outline planning permission.
  - The appeal is made by Mr Brian Matthews against Maidstone Borough Council.
  - The application Ref 15/509996/OUT is dated 29 November 2015.
  - The development proposed is six detached dwellings plus other associated works.
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## Decision

1. The appeal is allowed and planning permission is granted for six detached dwellings plus other associated works at Appleacres, Maidstone Road, Sutton Valence, Kent ME17 3LR in accordance with the terms of the application, Ref 15/509996/OUT, dated 29 November 2015, subject to the conditions as set out in the attached schedule.

## Procedural matters

2. The application is for outline planning permission with matters of access and layout submitted for approval. Details of scale, appearance and landscaping are reserved for subsequent consideration.
3. The appeal is against the failure of the Council to give notice of its decision within the statutory period. The Council has indicated that had it made a decision it would have refused permission and has set out its reasons. I have considered the reasons as set out in the Council's statement as forming the main issues in my decision but in doing so I have also taken into account the views expressed by interested parties.

## Main Issues

4. The main issues in the appeal are:
    - i) the effect of the proposed development on the character and appearance of the area including its effect on the setting of the adjacent listed building; and
    - ii) the effect of the proposed development on biodiversity and ecology.
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## Reasons

### *Character and Appearance*

5. The site is in the countryside and outside the development boundaries as defined in the Maidstone Borough-Wide Local Plan (LP) (2000). Sutton Valence is about 1 km to the south although there is frontage development along Maidstone Road and around the junction with Warmlake Road and Chartway Street. The site is a former orchard which lies between a group of buildings in business use and the dwelling known as 'Appleacres'. There are further dwellings along Maidstone Road in both directions. Planning permissions have been granted for residential development on the rear part of the adjacent business estate and on the opposite side of the road, the latter on appeal<sup>1</sup>. Thus while the site is in the countryside it adjoins a significant amount of existing and proposed development.
6. The proposal would provide six detached houses on either side of a cul-de-sac extending back from Maidstone Road. The development would extend to the rear of the adjacent dwellings but no further back than the business estate. For these reasons although the development would occupy open land it would be closely related to the existing developments on either side.
7. Part of the existing orchard on the road frontage would be retained and enhanced as an open landscaped area and other open areas would be retained within the site. The development would maintain a sense of openness that would harmonise with the rural character of the area.
8. Directly adjacent to the site and within the business estate there is a late 19<sup>th</sup> century oast house which appeared on my visit to be in use as offices. This building is listed at grade II. It has two brick circular kilns with truncated conical roofs facing the site and weather boarded stowage accommodation on the other side. The building forms part of a group of buildings which are adjacent to Warmlake Farmhouse and which have been converted to business units. The oast house is seen in the context of those buildings. The appeal site is separated from that group by a high conifer hedge along much of its boundary and there is no evidence that the site has historically been functionally associated with the oast house.
9. However the site currently forms an open area of land which is adjacent to one side of the listed building albeit that the orchard trees obscure views of the building from the road to some extent. The proposal would retain a significant area of open land on the frontage of the site thereby maintaining those views.
10. Most of the development would be to the rear and separated from the business estate by the conifer hedge. The proposed dwelling closest to Maidstone Road would be adjacent to the listed building but separated by its garden. The garage of that dwelling would be closest to the listed building. Although details of scale and appearance are not matters for consideration the likely size of the garage combined with its distance away from the listed building would not adversely affect its setting.

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<sup>1</sup> APP/U2235/A/14/2228989

11. I give great weight to the conservation of the heritage asset in terms of its setting. However for the reasons given I find that there would be no harm to the setting of the listed building. Furthermore I find that there would be no harm to the character and appearance of the area.
12. The Council acknowledges that it cannot demonstrate a five year housing land supply as required by the National Planning Policy Framework (the Framework) and the parties agree that the supply stands at 3.3 years. In this circumstance, paragraph 49 of the Framework states that policies for the supply of housing should not be considered up-to-date. The Council states that its draft Local Plan is about to be submitted for examination and that this would make provision for the objectively assessed housing need. However, the draft Local Plan carries little weight at this stage. Although the Council may have identified a supply in its draft submission this does not mean that the sites identified are available for development.
13. Paragraph 14 of the Framework states a presumption in favour of sustainable development. Where relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework as a whole, or specific policies in the Framework indicate that development should be restricted.
14. Policy ENV28 of the LP restricts development that can take place in the countryside and in as far as it restricts housing development it is a policy for the supply of housing. In the absence of the required housing land supply that policy is out of date. The proposal would not accord with policy ENV28 but because it is out of date I can give only limited weight to this conflict.

#### *Biodiversity/Ecology*

15. The site contains apple trees that were used as an orchard until the 1980s. There is no evidence before me that any biodiversity or ecology survey has been carried out and the Council has put forward no expert evidence regarding the likelihood of species being present. Neither has any evidence been provided regarding the potential effect on any nearby site identified as being of nature conservation value.
16. Given that any necessary mitigation measures could be carried out following a suitable survey which could be secured by a condition I conclude that there is insufficient evidence that the proposal would harm biodiversity or ecology.

#### *Other Matters*

17. An interested party has raised concern about additional traffic on the A274 that would result from this and other planned developments in the area. The Highway Authority considers that the road has sufficient capacity to accommodate the traffic that would be generated by the proposal and I see no reason to differ.
18. The proposed dwellings would be sited to avoid overlooking or any other harmful effect in terms of the living conditions of adjacent occupants.
19. Kent County Council requested financial contributions towards education and library provision to be secured by a planning obligation. However the Planning

Practice Guidance<sup>2</sup> states that tariff-style contributions should not be sought from developments of 10 dwellings or less.

### **Planning Balance**

20. I have found that there would be no harm to the setting of the listed building or to the character and appearance of the area. Furthermore there would be no harm to biodiversity or ecology subject to the imposition of a suitable condition. The proposal would be of benefit in addressing the shortfall in housing supply and that benefit would not be significantly and demonstrably outweighed by any harm.
21. The proposal would meet the social dimension of sustainable development by provision of needed housing. The Council has no objection regarding the accessibility of the site to services and facilities by means other than the car following the appeal for the site opposite referred to above. I concur with the Council and with the Inspector's findings on this matter. The accessibility of the site to services and facilities would accord with the three dimensions of sustainable development. The absence of harm in terms of character and appearance would accord with the environmental dimension. The development would be supportive of the local economy both during its construction through the generation of employment and by the future residents supporting local businesses. The proposal would accord with the economic dimension in this respect. For these reasons considered as a whole the proposed development would be sustainable.

### **Conditions**

22. I have imposed the conditions suggested by the Council with two exceptions. In doing so I have had regard to the tests in paragraph 206 of the Framework and I have made some changes to the suggested wording of the conditions to accord with those tests.
23. A condition requiring layout and access to be in accordance with the approved plan is necessary in the interest of certainty.
24. Conditions requiring approval of details of external facing materials and hard surfacing materials, landscaping and means of enclosure are necessary to ensure the appearance of the development is acceptable. A landscape management plan is necessary to ensure the future maintenance of the landscaped areas that are not included within residential plots.
25. Conditions requiring provision for vehicles entering the site during the construction of the development and provision of the required visibility splays and car parking facilities are necessary in the interest of highway safety.
26. A condition restricting lighting is necessary in order to prevent light pollution within the rural area.
27. Details of foul and surface water drainage are required in order to ensure that there is no flooding or pollution of surface waters.
28. A condition requiring a biodiversity and ecology survey is necessary to identify any necessary mitigation measures and to ensure that those measures are

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<sup>2</sup> ID 23b-031-20160519

- carried out. A condition restricting clearance of trees and vegetation during the bird breeding season is necessary to avoid impact on breeding birds.
29. A condition requiring renewable energy measures is necessary in the interest of sustainability.
30. The Council suggested a condition restricting permitted development rights. However the Planning Practice Guidance states that such conditions should not normally be imposed. I find that the suggested condition would not meet the tests of necessity or reasonableness.
31. I have not imposed the suggested condition requiring the provision of swift bricks and/or bat boxes because this is imprecise and measures for protection of biodiversity and ecology are required by a separate condition.
32. The County Council requested a condition requiring high speed broadband connection but there is no evidence as to whether such a connection would be feasible or reasonable.
33. The hedgerow on the road frontage would be moved back and a 2 metre wide footpath would be provided. The Highway Authority suggest that an additional area of land for a bus stop waiting area would be desirable but there is no evidence that such a facility would be necessary as a result of the proposed development.

### **Conclusion**

34. For the above reasons I conclude that the appeal should be allowed and that planning permission should be granted.

*Nick Palmer*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping 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 take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out in accordance with the details of access and layout shown on drawing number 3658/sk05 rev b.
- 5) No development shall take place until samples of all external facing materials and hard surfacing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 6) No development shall take place until details of all fencing, walling or other boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before occupation of the dwelling to which they relate.
- 7) No development shall take place until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Before the development is first occupied or brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 10) No development shall take place until details of parking provision and a vehicle turning area to each dwelling have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the parking provision and vehicle turning area serving that dwelling have been provided in accordance with the approved details and are available for use. The car parking and turning areas shall thereafter be kept available for those purposes.

- 11) The visibility splays shown on the approved plan shall be provided before any dwelling is occupied. The visibility splays shall thereafter be retained and maintained and kept clear above 1 metre in height.
- 12) No development or ground works shall take place until the following details have been submitted to and approved in writing by the local planning authority:
  - provision of parking facilities for site personnel, operators and visitors for the duration of construction;
  - provision of wheel washing facilities for the duration of construction; and
  - provision for construction vehicle loading/unloading and turning facilities for the duration of construction.

The development shall be carried out in accordance with the approved details.

- 13) Details of all external lighting shall be submitted to and approved in writing by the local planning authority prior to its installation. The details shall include details of measures to shield and direct light from the light sources so as to prevent light pollution. The lighting shall be installed in accordance with the approved details and thereafter retained.
- 14) No development shall commence until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The details shall include measures to prevent the discharge of surface water onto the highway. Development shall take place in accordance with the approved details.
- 15) No site clearance of trees, hedges or shrubs shall take place during the bird breeding season (mid-March to July inclusive) without the site having first been screened by a suitably qualified ecologist.
- 16) No development or clearance of vegetation shall take place until a biodiversity and ecological survey report for the site has been submitted to and approved in writing by the local planning authority. The report shall identify and make an assessment of any biodiversity and ecological interests present on the site and incorporate, if required appropriate measures to be undertaken to mitigate the impact of the proposed development on such interests. Any mitigation measures shall be undertaken in accordance with the approved biodiversity and ecological survey report.
- 17) No development shall take place until details of renewable energy sources to be incorporated into the development have been submitted to and approved in writing by the local planning authority. The approved renewable energy sources shall be provided before any dwelling is occupied.