

## Appeal Decision

Site visit made on 19 February 2016

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 9 March 2016

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**Appeal Ref: APP/U2235/W/15/3136916**

**Land east of The Lodge, Vicarage Road, Yalding, Kent, ME18 6DX**

- 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 Anderway Ltd against the decision of Maidstone Borough Council.
  - The application Ref 15/503928/OUT, dated 5 May 2015, was refused by notice dated 24 July 2015.
  - The development proposed is nine detached dwellings, garaging and new highway access plus other ancillary works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is in outline with access and layout to be decided at this stage. Appearance, landscaping and scale are reserved matters.

### Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area including protected trees, whether it would preserve the setting of an adjoining listed building at Wardes Moat, the effect on biodiversity and whether the proposal would be a sustainable form of development having regard to the National Planning Policy Framework.

### Reasons

#### *Character and appearance*

4. The appeal site is an undeveloped area of land of almost 1ha on the eastern edge of Yalding that has been used recently for horse grazing. It contains a number of large protected trees at the western end and along the southern boundary with the track that leads to Wardes Moat. Railings remain along its sides so that it has some semblance of former parkland whilst self-seeded trees in the centre give the land a partially wooded character.
  5. Housing lines Vicarage Road up to and beyond the appeal site in what the Council describes as a "ribbon" pattern. The Lodge is immediately to the west and is the end dwelling on that side of the road but because of its recessed position and scale is not an important 'marker' as such. Nevertheless the appeal site is very much at a point of transition where development starts to peter out and the village merges into the countryside beyond.
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6. The proposal would be outside the settlement boundary and therefore defined as countryside for the purposes of the Maidstone Borough-Wide Local Plan of 2000. Development here is confined to certain categories by Policy ENV28 and this list excludes new dwellings. However, as a 5 year supply of deliverable housing sites cannot be demonstrated relevant policies for the supply of housing should not be considered up-to-date according to paragraph 49 of the Framework. Because of this, Policy ENV28 should not be treated as definitive in considering whether the proposal would be suitable or not.
7. Nevertheless there would be a number of adverse environmental effects arising from the proposal. Firstly, the attractive treed character of the appeal site would be replaced by a collection of 9 houses grouped around a cul-de-sac. Whilst the development would be low density and it is intended to keep the main trees, the existing 'green' and open attributes of the land would be seriously eroded and compromised.
8. Furthermore, the formation of a new access involving the loss of hedgerow to create visibility splays and the introduction of a footway would introduce hard, urban elements. These would be at odds with the 'soft' appearance of the site and the proposed landscape planting zone along the road frontage would take time to mature. Moreover, the proposed layout would be inward looking and suburban and would bear no relation to the linear form of Vicarage Road. Neither would it create a distinctive new sense of place that relates to the surroundings in some way. Rather a group of large buildings would be placed on the land in a manner which pays little or no heed to the existing form of development and would appear alien and incongruous as a result.
9. The visual impact of the proposed off-site footway alterations to the west would be minimal. The site to the west identified as an acceptable housing site for up to 65 dwellings in the Housing Site Assessments for the emerging Local Plan may or may not come forward. Even if it does there is no indication that this development would change Vicarage Road to the extent that the assessment above should be put aside. Further tree planting is suggested on land to the east owned by the appellant but there is no information about how this would be beneficial given the existing greenery there. In any event, landscaping elsewhere would not adequately compensate for the harm caused.
10. The appellant claims that the site is outside the Low Weald Special Landscape Area (SLA). However, the plan produced to support this is headed Landscapes of Local Value which is not the same designation and therefore I rely on the Council's evidence on this point. Local Plan Policy ENV34 is currently in force and should be applied in this case whether or not it changes in the future.
11. Whilst the site has many pleasing qualities it is not obviously part of the countryside. Neither has any analysis been provided to show how it contributes positively to the wider landscape of the SLA. The proposal would also be on the periphery of Yalding. Due to these factors the aim in Policy ENV34 of protecting and conserving the scenic quality and distinctive character of the SLA would not be transgressed.
12. The intention is to retain the protected trees and they are located on the site boundaries away from the houses. Nevertheless BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* indicates that a tree survey should be used to inform feasibility studies and design options. The failure to do this or to undertake an arboricultural assessment is

not, in itself, objectionable. However, it is not clear whether the proposal would achieve the objective of a harmonious relationship between trees and structures that can be sustained in the long term.

13. This is because it has not been established whether the trees and proposed buildings would co-exist satisfactorily. The BS indicates, for example, that the default position is that structures should be located outside the root protection areas of trees to be retained. In addition, mature trees are generally less able to withstand damage to their roots or alterations to groundwater. The possibility of future pressure for removal of large trees because of their relationship to buildings is also highlighted in the BS. As far as the proposal is concerned the proximity of T11 to the flank of the house on Plot 8 and the enclosure of the south-facing garden of Plot 5 by T9 and T10 are specific matters of concern.
14. Given the value of the trees in their own right and because of the significant contribution they make to the locality a cautious approach is justified. The lack of detailed evidence means that the potential risk to the health and longevity of these important specimens is therefore a further point against the scheme.
15. Overall the proposal would harm the character and appearance of the area and because of this it would be contrary to Policy ENV28. This conclusion is not altered by the appeal decision at Kenward Road, Yalding<sup>1</sup> where the Inspector found that the 3 proposed houses would be a logical extension of the village and would not impact on the countryside in any meaningful or adverse way. That case would have been decided on an individual basis and can be distinguished from the proposal in a number of ways as explained by the Council. Not least that the site already had a domestic appearance and the scale of development was much less.

### ***Setting of listed building***

16. Wardes Moat is a Grade II listed building located to the south-east of the appeal site. It is a handsome 3-storey brick property that originates from the eighteenth century when it was built as a vicarage. Alterations have occurred over the years but apart from the architecture and history the main feature is the water that encircles it. Section 66 of the Act sets out a general duty to have special regard to the desirability of preserving listed buildings or their settings. This is a matter of considerable importance and weight.
17. When considering the impact of a proposed development on the significance of a designated heritage asset, the National Planning Policy Framework also provides that great weight should be given to the asset's conservation. The setting of a heritage asset is defined as the surroundings in which it is experienced and its importance therefore lies in what it contributes to the significance of the heritage asset.
18. The listed building largely stands on its own with a few, lesser buildings nearby. It is accepted that there would be no direct inter-visibility between the proposal and Wardes Moat. Indeed, because the location of Wardes Moat is discrete and separate the appeal site makes a limited contribution to the appreciation of its visual qualities. The site is shown as parkland on the 1909 OS Map and it is presumed that it was associated at that time with Wardes Moat. However,

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<sup>1</sup> Ref: APP/U2235/W/15/3028963

there is limited evidence in this respect and any former links in terms of land ownership are not obvious.

19. The private drive to Wardes Moat runs between undeveloped land including a residential garden and a former tree nursery. Notwithstanding the housing built since the listing this gives a feeling that the village is being left behind and confirms arrival at a place of importance. The proposal would be on one side of the approach to Wardes Moat and the backs of the proposed houses would be apparent when travelling towards it for a considerable stretch of the journey. In addition, it is likely that fencing would be required to afford future occupiers privacy. Because the extent of the proposed development would intrude into the approach the understanding of the listed building as an important local property would be impaired. In the words of the Framework this would lead to less than substantial harm to the significance of a designated heritage asset.
20. In conclusion the proposal would not preserve the setting of Wardes Moat nor would it conserve this heritage asset in a manner appropriate to its significance in line with the Framework.

### ***Biodiversity***

21. The appellant's preliminary ecological appraisal recommends surveys because of the likelihood of the presence on the site of great crested newts, reptiles and bats and its use as a foraging habitat for badgers. ODPM Circular 06/2005 provides that it is essential that the presence or otherwise of protected species and the extent to which they may be affected is established before planning permission is granted. Otherwise all relevant material considerations may not be addressed.
22. The appellant has been unable to undertake such further work because of the limited times when this is possible. However, the fact remains that presence/absence surveys have not been done and given that a grant of planning permission would settle the amount and location of development this is not a matter that should be left to condition. The appellant draws attention to a condition imposed in the appeal referred to earlier but it is not clear from the wording that this required further survey work to be undertaken. In any event, given the number of protected species identified that would potentially be affected by the proposal this would not be a sound approach in this case.
23. Therefore, because of the lack of suitable information, there is a risk that significant harm to biodiversity could result from the development contrary to the intentions of paragraph 118 of the Framework.

### ***Whether sustainable development***

24. As at April 2014 the Council had a 2.1 year supply of housing assessed against an objectively assessed need of 18,600 dwellings. In these circumstances, paragraph 14 provides that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In determining whether the proposal would be a sustainable form of development there are three dimensions to consider.
25. Economic advantages would arise from the construction and occupation of 9 houses although these are not quantified. As part of the social role the proposal would provide for the supply of housing required to meet the needs of

present and future generations. There is no more up-to-date evidence of the position in Maidstone but the need for housing can be taken to be pressing and acute. Furthermore, the aim is to boost significantly the supply of housing and the proposal would assist with this in a material way.

26. The Framework seeks to manage patterns of growth to make fullest possible use of public transport, walking and cycling. In the recent appeal at Kenward Road the Inspector accepted that the site would be in a sustainable location. Given the shops and services in the High Street and as Yalding is accepted as suitable for growth similar considerations apply here. Future occupiers would not have to rely solely on use of the car. By creating a development with accessible local services that would support an existing community the social dimension of sustainable development would be furthered. The proposal would also lead to a minor improvement in pedestrian safety along Vicarage Road.
27. Set against these considerations is the harm to the character and appearance of the area as a result of various aspects of the scheme as well as the risk of detrimental implications for important trees. The setting of a listed building would not be preserved and there would potentially be significant harm to biodiversity. As a consequence the natural, built and historic environment would not be protected or enhanced.
28. Overall the adverse impacts significantly and demonstrably outweigh the benefits identified. In the light of this finding there is no need to weigh separately the harm to the significance of a designated heritage asset against the public benefits of the proposal. When looked at in the round the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including those of the Framework.

### **Other Matters**

29. There is some local evidence of traffic difficulties along Vicarage Road and on-street parking effectively reduces parts of it to a single carriageway with consequent interruptions to vehicle flow. However, there is no indication that the proposed use of the road by 9 additional households would jeopardise safety. There are no technical objections from the Highway Authority and no reason to reach a different view.
30. The land is within Zone 1 where there is a low probability of river flooding. It is the aim of the Sequential Test referred to in the Framework to steer new development to such areas. Additional buildings and hard surfacing might increase surface water run-off but this could, if necessary, be mitigated by the use of permeable surfaces or other sustainable drainage measures.

### **Conclusion**

31. For the reasons given the proposal is unacceptable and the appeal should fail.

*David Smith*

INSPECTOR