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# Appeal Decision

Site visit made on 10 February 2015

**by Clive Hughes BA (Hons) MA DMS MRTPI**

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

**Decision date: 16 February 2015**

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**Appeal Ref: APP/U2235/A/14/2226963**

**Land north of Horseshoes Lane, Langley, Maidstone, Kent M17 1TD**

- 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 Dawe Capital Ltd against the decision of Maidstone Borough Council.
  - The application Ref MA/14/0075, dated 16 January 2014, was refused by notice dated 12 June 2014.
  - The development proposed is described as outline permission for fifteen units.
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. The Council described the proposals as “outline application for the erection of 15 two-storey dwellings with access to be considered at this stage and all other matters reserved for future consideration”. The appellant adopted this revised description for this appeal and I have used it for this Decision as it provides a more comprehensive description.
3. The appellant submitted a completed Unilateral Undertaking (UU) dated 15 December 2014 with the appeal. By email dated 23 January 2015 the Council stated that it has no objections to the provisions of the UU. It overcomes the Council’s fourth and fifth reasons for refusal relating to community contributions and affordable housing.

## Main Issues

4. The main outstanding issues are (i) whether the proposed development would result in unsustainable residential development due to future occupiers being heavily reliant on car-based journeys; (ii) the effect of the proposals on the character and appearance of the countryside; and (iii) the potential effect of the proposals on protected species.

## Reasons

### *Background – the site and its surroundings*

5. The appeal site comprises a self-contained parcel of land that was probably once a small orchard and having an area of about 0.9ha. It has road frontages to the east, south and west, while to the north is a large field in agricultural use. In the south western corner the site wraps around a pair of

semi detached houses which lie outside the site. To the south, on the opposite side of Horseshoes Lane, is a row of bungalows while to the west, on the opposite side of Back Street, are dwellings and a car sales area. To the east lies Upper Street (B2163) beyond which are open fields. Fronting this road, and immediately to the north of the site, lie Burgess Cottages. The garden to the southernmost cottage has a wooden fence on the road frontage that extends as far south as the appeal site. The appeal site itself is almost flat with a slight slope down from east to west. It contains some elderly fruit trees and is partly wooded with a mix of mostly oak and hazel as well as an area of bramble/ rough grassland.

#### *The development proposed*

6. The scheme is in outline form with all matters, apart from access, reserved for future consideration. The application was accompanied by illustrative site layout plans showing 15 dwellings accessed from two culs-de-sac, one from Back Street serving 6 affordable housing units and one from Horseshoes Lane serving the other 9 dwellings. The indicative plans show a strengthening of the planting along the Upper Street frontage and adjacent to the field to the north and the retention of significant trees. The *Design and Access Statement* (DAS) says that all the dwellings would be typically 2-storey detached and terraced dwellings with single storey elements and garages.

#### *Policy context*

7. The development plan comprises the saved policies in the *Maidstone Borough-Wide Local Plan 2000*. The site lies outside the development boundary for Langley; the boundary runs down Horseshoes Lane such that the bungalows on its southern side lie within the boundary. The boundary is tightly drawn around the village so that dwellings on the northern side of Horseshoes Lane and those in Back Street lie outside it. Saved Policy ENV28 defines the countryside as being all those parts of the plan area that are not within development boundaries. It says that in the countryside planning permission will not be given for development which harms the character and appearance of the area and that development will be confined to certain specified categories. These proposals do not fall into any of these categories and so the proposals are in conflict with this policy.
8. The Officers' Delegated Report says that the Council cannot demonstrate a deliverable 5-year housing land supply. Paragraph 49 of the *National Planning Policy Framework* (the Framework) advises that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. Policy ENV28, which restricts housing in the countryside, is clearly a relevant policy for the purposes of this advice. Paragraph 14 of the Framework says that in such circumstances for decision making, and unless material considerations indicate otherwise, this means granting permission unless the any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.

## **Issue 1: Sustainability**

9. In accordance with advice in the Framework there are three dimensions to sustainable development giving rise to the need for the planning system to perform environmental, economic and social roles. The Framework says that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view as to what sustainable development means in practice for the planning system.
10. The reason for refusal relates specifically to the likelihood of future residents being heavily reliant on car based journeys with a resultant conflict with the Government's environmental and social aims. The village has few facilities aside from a doctors' surgery and village hall. There are other facilities in Leeds, some 600m away, including a primary school and public house, but most day-to-day needs are likely to involve travelling some distance.
11. The village has the benefit of a bus service that runs to Maidstone, a little over 20 minutes away. However, the service is limited in frequency with only 5 or 6 buses in each direction on weekdays, fewer on Saturdays and none on Sundays or public holidays. The first bus to Maidstone runs at 07.55 while the last bus back from Maidstone leaves at 17.35 (16.40 on Saturdays). This limited level of service does not make this a good location for housing in public transport terms and is likely to result in reliance on the private car for most journeys. There would therefore be some conflict with the social and environmental dimensions of sustainable development as set out in paragraph 7 of the Framework.
12. I have taken account of the other approved schemes referred to by the appellant but in all cases the circumstances differ and so this proposal has been considered on its individual merits.

## **Issue 2: Character and appearance of the countryside**

13. The development would be sited outside the settlement boundary and so in the defined countryside. In effect it would extend the village northwards and result in the loss of many trees on the site. However, while it is in the countryside, it nonetheless has to be seen in context. The settlement boundary lies immediately to the south and the site wraps around existing dwellings. The curtilage of one of these properties includes a commercial outlet with signage on the road frontage. It would extend no further into the countryside than the dwellings and commercial premises on the opposite side of Back Street. To the north it would abut a field and, along the Upper Street frontage, a residential curtilage.
14. In terms of its character, the proposed development would respect the low density of housing in the area. While it would introduce housing into this wooded area, this would not be harmfully out of keeping with the residential character of most of the surrounding area. In this regard, while extending the built form into the countryside, the harm to the character of the area would be limited. While the Parish Council asserts that the site lies within the Langley Fruit Plateau Character Area, the Landscape Appraisal shows it to be in the Leeds Farmlands Character Area. The Summary of Actions for this area, as set out in the *Maidstone Borough Detailed Landscape Character Assessment* does not refer to copses but does seek to soften the urban/rural interface with native planting and to enhance the biodiversity. The

indicative scheme would provide enhanced landscaping along its boundary with the field to the north; matters of biodiversity are considered below.

15. In terms of its appearance, the site is already surrounded on two sides by built development and there is a residential curtilage along part of a third boundary. The site contains a number of fine trees, but for the most part the site trees date back to its orchard days. The indicative layout shows how the specimen trees, which make a positive contribution to the appearance of the area, can be retained within a residential development. The south east corner of the site is especially visible in the street scene, particularly when heading north along Upper Street. This is a busy through route linking the A20 with the A274 via Leeds. The site is in the direct line of sight for travellers when coming up the hill and approaching the junction with Horseshoes Lane. On this corner, and along the Upper Street frontage, there are clear views into the site. However, there is ample scope to strengthen the planting along this boundary to soften the appearance of the proposed development.
16. There are few distant views of the site. To the north there is a footpath along the northern side of the field but for the most part it runs within the orchard further north and so behind a line of trees with significant undergrowth which restrict views towards the site. The footpath is some distance away and the indicative landscaping plan shows scope for further planting along this boundary. The proposed houses would not be prominent in the landscape. From Back Street, to the north of the site, views would be blocked by the existing hedge on top of the bank. In Horseshoes Lane the existing substantial Victorian houses, known as Harrow Cottages, together with the commercial outlet, already visually dominate the frontage. These lie outside the site and would remain.
17. I have noted that in its pre-application advice the Council said that it might be possible to provide a development that sits comfortably within the landscape without causing significant harm to the character and appearance of the locality. I have also noted that in the Delegated Report, the Landscape Officer has raised no objections subject to conditions. This seems to be a reasonable conclusion. While there would be conflict with the development plan due to encroachment into the countryside, any harm would be limited and highly localised. Any permission granted could be subject to conditions requiring the submission, implementation and maintenance of a landscaping scheme and requiring the protection of retained trees during construction.

### **Issue 3: Protected species**

18. The County Council recommended that surveys for bats, dormice, great crested newt, reptiles and invertebrates are required. The appeal is accompanied by surveys in respect of bats, reptiles and invertebrates. The appellant has stated that a dormice survey has commenced with the results likely later in the year and that a great crested newt survey cannot be undertaken this early in the year and a report is due in June 2015.
19. Concerning bats, the Survey<sup>1</sup> showed that the site is used by a small number of bats but that roosting bats are unlikely to be present. The Survey makes

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<sup>1</sup> Bat Survey Report by Lloyd Bore Ltd dated 5 September 2014

a number of recommendations all of which could be the subject of planning conditions. No reptiles were recorded during the Reptile Survey<sup>2</sup> and so it is unlikely that the development will impact adversely on reptiles. With regard to invertebrates the habitat assessment<sup>3</sup> concluded that the site is of limited value to invertebrates and no further survey work is recommended.

20. The *Ecological Appraisal* says that the vegetation on the site has potential for dormice and recommends further survey work. It says that if dormice are confirmed on the site it may be necessary to obtain a European Protected Species Mitigation Licence prior to commencing work. The dormice survey has commenced with tubes and boxes set out on the site but the survey results are not yet known. The Appraisal also recommends further survey work in respect of great crested newts. There are water bodies about 20m to the south west of the site and about 280m to the north. If the newts are present in the water bodies then they are likely to be found within the site which offers potentially good terrestrial habitat.
21. The current position, therefore, is that there may be protected species present on the site (dormice and/ or great crested newts). Paragraph 99 of Circular 06/2005 says that it is essential that the presence or otherwise of protected species that may be affected by a proposed development is established before planning permission is granted. The reason for this is to ensure that all relevant material considerations are addressed in making the decision. The Circular refers to the use of planning conditions in "exceptional circumstances" when surveys can be carried out after the grant of planning permission.
22. While the appellant argues that the surveys so far undertaken are sufficient to fully understand the impact of the development on biodiversity interests, I am not convinced that this is the case. It is simply not known whether these protected species are present and, if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures.
23. Before the further surveys are completed, and before adequate and appropriate mitigation measures can be determined, there is a real possibility that protected species may be adversely affected by the development. The work so far undertaken is no more than that which would normally be produced in advance of a building scheme. It is certainly not sufficient to constitute the exceptional circumstances necessary to justify the use of planning conditions. In such circumstances paragraph 118 of the Framework advises that planning permission should be refused.

### **Other material considerations**

24. I have taken account of all the other matters raised in the written submissions. The proposals provide a number of benefits that have to be weighed against any identified harm. In particular, the benefits include the provision of 15 dwellings situated on the edge of an existing settlement. The weight that can be given to these dwellings is increased by the Council's failure to be able to demonstrate a deliverable 5-year housing land supply. Overall, this is a significant benefit.

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<sup>2</sup> Reptile Survey Report by Lloyd Bore Ltd dated 18 September 2014

<sup>3</sup> Invertebrate habitat assessment by Lloyd Bore Ltd dated 18 September 2014

25. The UU also makes provision for financial contributions towards adult social care (£15.95 per dwelling); community learning (£30.70 per dwelling); libraries (£116.71 per dwelling); parks and leisure (£1575 per dwelling); primary education (£6701.63 per applicable dwelling); and youth and community services (£8.44 per dwelling). The UU accords with section 122 of the *Community Infrastructure Regulations 2011*, with paragraph 204 of the Framework and with saved Local Plan Policy CF1. The UU, in providing six units of affordable housing, is clearly beneficial as it results in a mixed housing development to meet the needs of the community. These benefits weigh in favour of the development, although the weight is limited as they are to cover the community costs arising from the proposals.
26. The proposed new housing would be likely to bring economic benefits for businesses in Langley and the surrounding area. Other economic benefits would include construction jobs and the likelihood of local expenditure. These weigh in favour of the proposals.
27. I have taken account of local highway objections, in particular due to Horseshoes Lane carrying excessive traffic due to it being used by drivers as a rat run, but I have noted that the Highway Authority has raised no objections. Adequate sight lines can be achieved for both access points and I am not convinced that the proposals would result in any unacceptable additional hazards for other road users.

### **The planning balance and overall conclusions**

28. The Government's overarching objective, as set out in the Framework, is to boost significantly the supply of housing. As one of its core planning principles the Framework identifies that planning should be genuinely planned. It says that plans should be kept up to date and be based upon joint working and co-operation to address larger than local issues. Paragraph 47 sets out what local planning authorities should do to achieve the objective, including providing a 5-year supply of deliverable sites for housing.
29. In this case the Council acknowledges that it cannot demonstrate a robust and deliverable 5-year housing land supply. The test set out in the second bullet point of the decision-taking section of paragraph 14 of the Framework therefore applies.
30. I have taken into account the many benefits of the scheme that are set out above. In particular, the provision of additional housing, including six units of affordable housing, on a deliverable site carry significant weight, especially given the absence of a deliverable 5-year housing land supply.
31. Against this there is conflict with the development plan, and in particular with saved Policy ENV28. This conflict needs to be considered in the context of the acceptance by the Council that the relevant development plan policies are out of date by reason of a lack of a deliverable 5-year housing land supply and so Policy ENV28 carries much reduced weight. I have considered, therefore, whether permission should be granted having particular regard to paragraph 14 of the Framework.
32. Paragraph 14 sets out the presumption in favour of sustainable development. In this case I have already concluded that there would be some conflict with the social and environmental dimensions of sustainability

as defined in paragraph 7 of the Framework. In terms of the environmental role, there would be some further harm to the natural environment and to biodiversity, as also set out above. The proposals, by providing additional land for housing, would result in some economic benefits and the mix of market and social housing would accord with the social dimension. Subject to satisfactory details, the scheme should be able to result in a high quality built environment.

33. The question as whether this proposal represents sustainable development is therefore a matter of balance. Notwithstanding the economic and social benefits of the scheme, I conclude that these benefits would be outweighed by the harms identified in the three main issues so the proposals do not amount to a sustainable form of development. In particular the conflict with the development plan, and notwithstanding the much reduced weight afforded to Policy ENV28, when taken together with the potential for harm to protected species and the limited harm to the character and the appearance of the countryside, carries very great weight against the scheme. In these circumstances, I conclude that the harm would significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework taken as a whole.

34. I do not consider that the harm could be overcome by the use of planning conditions and so, for the reasons given above, I conclude that the appeal should be dismissed.

*Clive Hughes*

Inspector