

Appeal Decision

Inquiry Held between 12 and 20 March 2019

Site visit made on 20 March 2019

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th April 2019

Appeal Ref: APP/H2265/W/18/3209279

The Cabins, 78a Rochester Road, Aylesford ME20 7DX

- 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 Clifford Thurlow of Aylesford Heritage Ltd against Tonbridge & Malling Borough Council.
 - The application, Ref TM/17/02971/OA, is dated 18 October 2017.
 - The development proposed is demolition of existing buildings, structures and hardstanding, land raising of development area, development of up to 146 dwellings as a mix of houses and apartments and provision of a local centre for Use Classes A2 (financial and professional services), A3 (café/restaurant), D1 (clinics/creche) and D2 (assembly and leisure) up to a total floorspace of 1,256 sq m (13,519 sq ft), and provision of new access road and pedestrian/cycle access, and provision of open space.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The application is for outline permission with details of access submitted for approval and all other matters reserved. An illustrative masterplan has been submitted which shows a possible layout.
3. A screening direction was issued by the Secretary of State on 16 January 2019 that the development is not Environmental Impact Assessment (EIA) development. This direction was made on the understanding that the quarry restoration of the appeal site, which has been subject to a separate application to Kent County Council, is carried out before commencement of the proposed development. It is also on the understanding that any land raising required by the proposal would only require material to be sourced and moved on the quarry site via internal roads and would not exceed 0.5m above the restored levels. The Council maintains that the development should be considered together with the restoration scheme as a single project and that on this basis the development is EIA development. No further information or evidence was presented at the inquiry that would alter the basis for the Secretary of State's direction, however.

Background

4. Six putative reasons were provided by the Council in its Statement of Case. Subsequently, and prior to opening of the Inquiry, the Council advised that it

did not wish to defend its first reason which concerned the impact of the development on the setting of the Kent North Downs Area of Outstanding Natural Beauty (AONB).

5. Shortly before the Inquiry, Kent County Council approved an amended restoration scheme for the part of Aylesford quarry in which the development would be located. The Council advised during the Inquiry that it did not wish to pursue its third and fourth putative reasons which concerned the need for approval of the restoration scheme and mineral safeguarding.
6. The parties reached agreement during the Inquiry as to the level of affordable housing that could viably be provided and a Statement of Common Ground on this matter was submitted. This overcomes the Council's fifth putative reason.
7. During the Inquiry, the Council advised that it did not wish to pursue its case in terms of prematurity in relation to the emerging Tonbridge and Malling Local Plan, although the Council maintains that very significant weight should be given to the emerging Plan.
8. The remaining matters at issue between the parties are the impact of the proposal on the landscape and on the settings of heritage assets.

Main Issue

9. The main issue in the appeal is the effect of the proposal on the character and appearance of the area, including the effect on the settings of heritage assets.

Reasons

Planning Policies

10. The relevant development plan policies are in the Tonbridge and Malling Core Strategy (2007) (CS) and the 'Managing Development and the Environment' document (2010) (MDE). The site is within part of a quarry and adjoins the settlement of Aylesford. This is defined in Policy CP13 of the CS as a rural settlement where development will be restricted to minor development appropriate to the scale and character of the settlement. The site is within the countryside as defined in the development plan. Policy CP14 restricts the types of development that can take place in the countryside. The proposal does not accord with those policies.
11. The Council cannot demonstrate a 5-year supply of deliverable housing sites, and on this basis the presumption in favour of sustainable development, as set out in paragraph 11 of the National Planning Policy Framework (the Framework) must be considered. Although the parties differ on the level of housing land supply, for the purposes of this appeal it is agreed that this is within the range of 2.7 years to 3.1 years. In accordance with footnote 7 of the Framework, Policies CP13 and CP14 are out-of-date and this limits the weight that can be given to them.
12. The Tonbridge and Malling Local Plan (LP) has been submitted to the Secretary of State for examination. The site remains outside the settlement in that plan and not in accordance with it. At the time of the Inquiry necessary evidence documents had not been produced and these could potentially lead to the need for main modifications to the plan. The Council stated that approximately 2,500 objections had been received. Natural England has objected to an

allocation within the AONB. Historic England has also raised an objection. Detailed evidence on the nature and extent of unresolved objections to the LP was not available to the Inquiry but, from the information that is available it seems to me that there are significant unresolved objections to the plan. This limits the weight that I can give to it.

Heritage Assets

13. The quarry has been in existence for more than a century. Silica sand and soft sand have been extracted and the silica sand reserves are no longer economically viable to extract. The quarry workings have resulted in the creation of two lakes, one on either side of Bull Lane. The lakes are immediately north of the village. The proposed development would be adjacent to the east lake and to the quarry access from Rochester Road. The site is about 9 to 10 metres lower than the adjacent parts of the village on Mount Pleasant. A restoration scheme has been approved by Kent County Council which would be carried out before the development. Further land raising would take place which would not exceed 0.5m above restored levels. The banks around the southern boundary of the site are wooded and the woodland is protected by a Tree Preservation Order. The existing access would be closed to vehicular traffic but maintained for pedestrian and cycle use. A new access road would be constructed which would join Rochester Road further to the north.
14. The adjacent part of Mount Pleasant to the south of the site forms part of the Aylesford Conservation Area (ACA). This covers the historic core of the village, including Aylesford bridge, the church of St Peter and St Paul and The Friary. To the immediate south of the site there is a row of 19th century cottages at 22-32 Mount Pleasant which are in the domestic revival style and are grade II listed. On the other side of Mount Pleasant is the rear of grade II* listed almshouses at Trinity Court which front onto Rochester Road. The rear boundary wall and arch to Trinity Court on Mount Pleasant is grade II listed. Thus, the immediately adjacent part of the village is of significant historic interest. The proposed new access road would also pass around two sides of the curtilage of Old Mill House, which is grade II listed.
15. The 17th century almshouses are physically separated from the appeal site by Mount Pleasant, which is at a higher level than the listed building. The significance of the building lies in its age and use as well as its architecture. The main elevation faces Rochester Road, away from the appeal site and this would not be affected by the proposal. A full-length extension was added to the rear of the building in the 1960s and the original architecture of the rear elevation has been obscured. In addition to Mount Pleasant forming a physical barrier, the wooded bank to the quarry along Mount Pleasant and the lower level of the site are further separating features. For these reasons the proposal would not affect the setting of Trinity Court Almshouses.
16. There are 2nd floor side dormer windows in 32 Mount Pleasant which would be likely to afford views over the site clear of the tree cover. At ground level, I saw that views of the site from Mount Pleasant are limited by the trees and vegetation but that there are glimpsed views through the trees. Any street lighting within the site would increase the likelihood of the development being seen through the trees and the extent to which this may be the case may vary according to the time of year, given that most of the trees are deciduous.

17. Detailed matters of scale and layout are not part of the application, but the illustrative plans give typical building heights ranging from 9.9m for a two-storey house to 16.65m for an apartment block. Although the finished site levels do not form part of the application, based on the depth of the quarry as given by the parties and shown on the restoration scheme drawings, the development would project significantly above the level of Mount Pleasant. The development would clearly intrude on the open setting as seen from N^o 32.
18. Because Mount Pleasant forms the boundary to the village, the settings of 22-32 Mount Pleasant and the boundary wall and arch to Trinity Court are rural in character. The presence of the quarry beyond the trees does not alter this in terms of the general openness. Although the quarry is currently despoiled land, the restoration scheme will secure the creation of a naturalistic landscape.
19. For the reasons given above, the setting of 22-32 Mount Pleasant would be affected by the proposal as it would be intrusive in views from the windows of N^o 32. The effect on the setting of the boundary wall and arch to Trinity Court would be less. However, to the extent that the development would be visible through the trees, the rural setting would be significantly altered. For this reason, although the effect on the setting of the wall and arch would be limited, there would be some harm.
20. The harm to the settings of these buildings would be less than substantial because of the separation provided by the trees. For the same reason, any effect on the setting of the ACA would be limited.
21. Old Mill House dates from the 17th century and its significance mainly lies in its architecture and age. It was historically associated with an adjacent mill. Its historic use aids an understanding of its design and informs its significance. The mill building was demolished in the late 19th century and the mill pond, which was to the north of the buildings was removed at about the same time.
22. There appears to be no evidence of the former mill building. The stream which fed the pond runs to the side of the house. The pond was partially within the current garden of the house and partly outside its boundary fence. I saw that there is a distinct depression in the land to the north of the boundary fence which enables the former existence of the pond to be appreciated.
23. This forms part of the significance of the house. In addition to this, although the rear elevation of the house faces north, it has a clear relationship with the adjacent open farmland. The boundary is formed by a post and wire fence and the trees and vegetation along the boundary permit clear views through.
24. The proposed access road would run very close to the curtilage boundary of the house. It would be raised by over 2 metres where it crosses the stream. It would effectively sever the link between the house and the open countryside and would conceal the remaining evidence of the former mill pond. For these reasons the proposed road would harm the setting of this listed building.
25. The primary significance of the house is in its architecture and design and this would not be harmed. In as much as evidence of the former pond would be removed, there would be a direct effect on significance but although the historic use is referred to in the list description the remnant of the pond is not.

For these reasons, the direct effect on significance would be limited. The other effects on the setting would be indirect.

26. In the Bedford judgment¹ it was found that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. This would not be the case in this appeal. Therefore, the harm to the setting of Old Mill House would be less than substantial.
27. This harm must be considered in the context that there are implemented planning permissions for a quarry haul road. Both alternative approved routes would cross the field to the north of Old Mill House and are comparable to the appeal proposal. The first of the approved routes, which was approved in 2000 would be routed directly adjacent to the boundary with Old Mill House. The second route, which was approved in 2005, would cross the centre of the field and would be sited away from the boundary. Part of the haul road which is common to both of those applications, to the west of Old Mill House, has been implemented. The appellants have stated an intention to construct one of the approved routes if this appeal is dismissed.
28. There are economically viable reserves of hoggin in the quarry which could be extracted if this appeal were to be dismissed. There is no evidence before me to demonstrate that the haul road would be essential to allow for hoggin extraction, or that the existing access could not be used for this purpose. For these reasons I have some doubt as to whether construction of the haul road is realistic.
29. In both approved schemes, the stream would be culverted. The plan for the first scheme states that the culvert would be 1.5m in diameter. The approved roads would pass through a cutting to the west of Old Mill House, similarly to the proposed road. The levels of the approved roads as they cross the stream are not stated on the drawings, but neither is any proposed embankment shown. On the assumption that it would be necessary to place the culvert at least partially below ground level to accommodate the stream, the approved haul roads would not be greatly above existing ground levels. The Environment Agency has changed its requirements since the earlier approvals such that a clear span bridge with a height of about 2m is now required in order to allow wildlife to pass through. The proposed bridge and the associated embankment would be much higher and more intrusive than either of the approved haul roads would be.
30. It is a condition of the approvals that acoustic fencing is erected along the boundary of Old Mill House. Such fencing, which is shown on the plan as being 2m high, would reduce the inter-visibility between the curtilage and the land to the north. However, the haul road would be temporary and would be required to be removed within two years of completion of mineral extraction or by 21 February 2042. Of course, it is possible that an application to extend this period could be submitted, but there is no evidence before me to indicate that the extraction of hoggin would be likely to extend beyond that date. Indeed, the Hoggin Summary financial model submitted as part of Mr Pavlou's evidence assumes that extraction of the hoggin reserves would take place over less than 14 years.

¹ Bedford Borough Council v Secretary of State for Communities and Local Government and Nuon UK Ltd [2013] EWHC 2847 (Admin)

31. Evidence has been put forward to show that the use of the approved haul road by HGVs would result in more noise than the appeal proposal. Such noise may affect the surroundings in which the heritage asset is experienced. However, any difference between the approved and proposed roads in this respect would be limited in terms of the effect on the setting.
32. I give great weight to the less than substantial harm to the setting of Old Mill House. The potential fall-back position carries limited weight for the reasons given and does not outweigh that great weight.

Public Benefits

33. There would be clear public benefits arising from the provision of new housing. Given that it is agreed between the parties that the housing land supply stands at 2.7 to 3.1 years, the shortfall is significant. The Council has previously had a good record of delivery and the shortfall has arisen quite recently. The level of supply has declined since March 2018, when there was 3.7 years' supply.
34. A Section 106 Agreement would secure provision of affordable housing at 19.2%, this being the level agreed between the parties as being viable, taking into account the other contributions. This level would be well below the requirement of Policy CP17 of the CS for 40%, but it would nonetheless help to address local need. In the context of the supply shortfall the proposed provision of up to 146 new homes, including affordable homes would be of very significant benefit.
35. The parties agree that the restoration scheme would take 3 months to carry out and that the housing would be constructed over 3 years following this. The housing could be delivered well within 5 years and would be of value in helping to address the shortfall. The housing would be easily accessible on foot and by bicycle to shops and facilities in the village and to public transport services. Taking these matters into account, I give very significant weight to the social benefits that would flow from the proposed housing.
36. The proposed local centre could also be of benefit both socially and economically. However, no substantive evidence has been put forward to demonstrate a need for the proposed facilities, or of prospective occupiers. A need for new or improved medical facilities has been identified, but the Clinical Commissioning Group will not commit to provision of a new facility until permission has been granted.
37. As there is no substantive evidence underpinning the proposed local centre, I have doubt as to its realistic prospect of delivery and for this reason I can give only limited weight to this potential benefit.
38. There would be economic benefits arising from construction and from the expenditure of the occupiers of the development. If the development were to go ahead, however, there would be no existing access available to extract the reserves of hoggin. Planning permission would be required for a new access to the northern part of the east lake where the hoggin reserves are. For this reason, there is uncertainty as to whether extraction of hoggin would be realistic. The potential loss of the opportunity for hoggin extraction would be an economic disbenefit which would weigh against any economic benefit as identified above. Any net economic benefit would therefore be limited and I give limited weight to this.

39. It is intended that provision would be made for public access to the lake shore. The illustrative plans show a path along the shore and three jetties. There is no planning permission for use of the lake for recreational activities, however. On this basis any increased opportunity for public enjoyment of the lake would be limited and I give this limited weight.
40. The approved restoration scheme includes provisions for biodiversity and in this context the proposed development would be unlikely to offer any advantage. I cannot accord weight in favour of the proposal on this basis.
41. Contributions would be secured by the section 106 agreements towards public services and highway improvement works would be secured. Those services and infrastructure improvements would be necessary as a result of the development and would not amount to wider public benefit.
42. I give great weight to each of the individual identified harms to the settings of listed buildings. The fall-back position of the approved haul road is of limited weight in counteracting that weight in the case of the setting of Old Mill House. However, taking this into account the combined weights of the harms to heritage assets remains great. The very significant and limited weights that I have given to the public benefits of the proposal are not sufficient to outweigh the great weight that I give to the harms.

Landscape

43. The site is within the Medway Valley Lower Landscape Character Area in the Landscape Assessment of Kent (2004). This landscape is described as incoherent with many detracting features. There are industrial areas which detract from landscape quality but the immediate area to the north of Aylesford and beyond the quarry is open farmland which stretches to the North Downs AONB. Although the quarry is despoiled land, it is required to be restored. On this basis it is not previously-developed land as defined in the Framework, and this does not alter the essentially rural character of the area. The development would be clearly visible from the footpath to the east of the site. It would also be likely to be visible from the footpath along Bull Lane, although views would be filtered by the hedge along that road. The proposal would urbanise the setting and change its current rural character.
44. Mitigation measures would be incorporated into the new road. There would be no raised kerbs or footpaths and no street lighting other than at the junction with Rochester Road. The land raising necessary to bridge over the stream would be carried out with gentle gradients to minimise change to the landform. New trees and shrubs would be planted along both the new road and the footpath to the north. The new road would, however be visible across the wider landscape, including from the footpath. In the context of the countryside setting the road would be visually intrusive notwithstanding the mitigation measures.
45. Policy CP1 of the CS requires development to result in a high-quality sustainable environment. The need for development must be balanced against the need to protect and enhance the natural and built environment. Policy CP24 of the CS requires that development is not detrimental to the character of the countryside. Policy SQ1 of the MDE requires proposals to protect, conserve and, where possible, enhance character and local distinctiveness and the distinctive setting of, and relationship between, the pattern of settlement and

the landscape. For the reasons given above, the proposal would not accord with those policies, which carry full weight.

46. For the reasons given, the proposal would result in harm to the landscape. The doubt that I have as to the realistic prospect of the haul road being built, and its temporary nature, means that this potential fall-back position does not outweigh the landscape harm that would result from the proposed new road.
47. Because the quarry is separated from the village and the ACA by the trees, I give limited weight to the harm to the setting of the ACA. I also give further limited weight to the landscape harm from the new road, taking into account the new planting and other mitigation measures. I conclude on the main issue that the proposal would unacceptably harm the character and appearance of the area.

Overall

48. Where there is not a five-year supply of deliverable housing sites, as is the case here, paragraph 11 (d) (i) of the Framework provides that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the proposal.
49. I have found that the proposal would cause less than substantial harm to the settings of heritage assets and I have found that that harm is not outweighed by the public benefits of the proposal. In accordance with Section 16 of the Framework, this exercise provides a clear reason to refuse permission.
50. I have also found additional harms to the character and appearance of the area in terms of landscape impact and the setting of the ACA. The proposal would not accord with development plan policies which seek to protect the character of the area. Neither would the proposal accord with policies for housing development, or with the emerging LP, both of which carry limited weight. Considered in total, material considerations do not outweigh the conflict with the development plan.

Conclusion

51. For the reasons given I conclude that the appeal should be dismissed, and planning permission refused.

Nick Palmer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Russell Harris, of Queens Counsel

He called

David Thaddeus FRICS, DipMS	Consultant, Matthews & Son LLP
Jaquelin Clay BSc, MSc, CMLI, FAE	Managing Director and Principal Landscape Architect, JFA Ecosystem Services Ltd
Joanna Burton BA, MPhil, MSt, FMIHBC	Director, Barton Willmore
Paul Lulham MSc, MA, CMILT	Director of Transport Planning, DHA
Clifford Thurlow BA (Hons), Dip TP, MRTPI, DMS	Planning Director, Aylesford Heritage Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Juan Lopez, of Counsel, instructed by Kevin Toogood BSc (Hons), Solicitor-Advocate of Tonbridge and Malling Borough Council

He called

Robin Gilbert BSc, Dip TP, MRTPI	Principal Planning Officer
Nigel De Wit MRTPI	Principal Planning Officer
Emma Keefe MA, BA (Hons) Dip TP, MRTPI	Development Manager

DOCUMENTS SUBMITTED DURING THE INQUIRY:

- 1 Letter dated 5 March 2019 from Council's Solicitor-Advocate to Head of Planning, Kent County Council
- 2 Email exchange between Council's Solicitor-Advocate and Head of Planning, Kent County Council dated 5 March 2019
- 3 A20 Corridor Junction Assessments A20 VISUM Model 10-044-02 rev D (March 2019)
- 4 Technical Note Forecasting Report A20 VISUM Model 18-044-03 Rev B (March 2019)
- 5 Signed Statement of Common Ground dated 8 March 2019
- 6 Planning decision notice – TM/18/2549/(KCC/TM/0491/2018) dated 11 March 2019
- 7 Planning decision notice – TM/18/2555 (KCC/TM/0492/2018) dated 11 March 2019
- 8 Kent County Council Planning Committee report, March 2019

9	Policies CP11, CP12, CP13 Tonbridge and Malling Core Strategy 2007
10	Landscape and Visual Appraisal report March 2019
11	Statement of Common Ground on Housing Land Supply dated 13 March 2019
12	Covering letter relating to application TM/04/04319 to expand on decision attached to Mr Thurlow's proof appendix 4
13	Plan submitted with application TM/17/00458/EASC
14	Development programme note by Avison Young
15	Briefing Note on calculation of KCC Section 106 contributions for CIL compliance by Avison Young
16	Statement of CIL compliance by LPA
17	Email from K Toogood to C Thurlow 12 February 2019
18	Housing need and supply table
19	Statement of Common Ground on viability
20	Journal of Planning & Environment Law: Michael Mansell v Tonbridge and Malling BC and Croudace Portland and the East Malling Trust
21	Journal of Planning & Environment Law: Cheshire East BC v Secretary of State for Communities and Local Government and Renew Land Developments Ltd
22	Housing Delivery Test: 2018 measurement
23	Schedule of Conditions
AHL42	Email from TMBC Local Plan Programme Officer, letter to TMBC dated 1 March 2019, reply from TMBC dated 8 March 2019
AHL43	Statement of Common Ground
AHL44	Extract from Procedural Practice in the Examination of Local Plans, Examination of the Lancaster District Strategic Policies and Land Allocations Development Plan – Pre-hearing note to the Council
AHL45	Decision notice from KCC TM/18/2555
AHL46	Decision notice from KCC TM/18/2549
AHL47	Extract from Planning Practice Guidance
AHL48	Section 106 Agreements
AHL49	KCC letter to Mr Thurlow 11 March 2019 TM/17/02971/OA