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## Appeal Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

**by Kevin Gleeson BA MCD MRTPI**

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

**Decision date: 9 December 2016**

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**Appeal Ref: APP/U2235/W/16/3145575**

**Wind Chimes, Chartway Street, Sutton Valence, Kent M17 3JA.**

- 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 Vincent Woodcock against the decision of Maidstone Borough Council.
  - The application Ref 15/507493/OUT, dated 9 September 2015, was refused by notice dated 15 February 2016.
  - The development proposed is described as outline application for residential development.
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### Decision

1. The appeal is allowed and outline planning permission granted for residential development of up to nine dwellings considering access from Chartway Street with all other matters (appearance, landscaping, layout and scale) reserved for future consideration at Wind Chimes, Chartway Street, Sutton Valence, Kent M17 3JA in accordance with the terms of the application Ref 15/507493/OUT, dated 9 September 2015, subject to the conditions in the schedule at the end of the decision.

### Application for Costs

2. An application for costs was made by Mr Vincent Woodcock against Maidstone Borough Council. This is the subject of a separate decision.

### Procedural Matters

3. During the determination of the application a revised description was agreed between the appellant and the Council. I have used this in my formal decision as I consider that this more accurately describes the proposed development.
  4. The application was submitted in outline with only means of access to be determined at this stage. Appearance, landscaping, layout and scale are reserved for subsequent consideration.
  5. A signed and dated Unilateral Undertaking (UU) in accordance with Section 106 of the Town and Country Planning Act, 1990 was submitted by the appellant prior to the hearing. This contains obligations in respect of affordable housing and contributions towards libraries and education. I return to the obligations later in my decision.
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## **Main Issues**

6. The main issues are:
  - a) The effect of the proposed development on the character and appearance of the area; and
  - b) Whether or not the proposed development would provide a suitable site for housing having regard to the principles of sustainable development and the supply of housing.

## **Reasons**

### *Character and Appearance*

7. The appeal site is located at the junction of North Street to the west of the site and Chartway Street to the north. On both of these boundaries there is a well-established tree belt although the site is visible from breaks in the trees on Chartway Street. One of these breaks is formed by the existing access to the site whilst a second break marks the location of the proposed access. Glimpses of the site are also possible from further east on Chartway Street.
8. The eastern boundary of the site is marked by wooden post fencing which allows views out of and into the site from the public right of way which runs north-south approximately 100m to the east beyond an arable field.
9. Outline planning permission is being sought for up to nine dwellings. Some off-site highways works are also proposed to the west of the proposed access in order to widen Chartway Street, extend the existing footway and relocate the existing bus stop westwards.
10. The Warmlake area of Sutton Valence has seen development approved on a number of sites recently particularly to the north of the appeal site. Approaching the site from the north, along Maidstone Road demonstrates that there is no clear break in development apart from the appeal site. The appeal site is the only undeveloped quadrant of the Warmlake crossroads and because of its corner location it has some prominence. At its western end, Chartway Street has a residential character with houses to the north and east of the appeal site. Whilst the sites to the west, namely Warmlake Nursery and Warmlake Place, are not densely developed the presence of development does demonstrate that the site is not situated in open countryside.
11. Whilst some degree of urbanisation would inevitable result from the proposed development through buildings, hardstanding and the access road the visibility of the site at the junction would not be materially reduced as the boundary screening would be largely maintained. The removal of some trees on the Chartway Street frontage would be necessary to create the new access but subject to a suitable landscaping scheme the proposed access would not have an adverse visual impact. Consequently the proposed development would have limited impact on this visual break in the existing built form.
12. In terms of depth the site would not extend eastwards much beyond the depth of other properties on North Street. The proposed development would consolidate the existing pattern of frontage development along Chartway Street but would not result in an extension of built form into open countryside. Development would infill the existing linear development along North Street

and Chartway Street but would be closely related to existing development. Additionally, with no more than nine dwellings the density of development would be low and not out of keeping with the immediate setting or harmful to the character of the countryside.

13. The introduction of woodland planting on the eastern boundary could be secured through conditioning of the landscape strategy. This would ensure that the impact of the proposed development when viewed from outside of the site, and particularly from the public right of way would be limited. Consequently, with existing and proposed screening the visual impact of the proposed development would be acceptable.
14. Policy ENV28 of the Maidstone Borough Wide Local Plan, 2000 (the MWBLP) states that within the countryside planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers subject to a number of exception, none of which cover the proposed development. Whilst the proposed development would not cause harm to the character and appearance of the area, being development outside of the development boundary for Sutton Valence would bring it into conflict with Policy ENV28. It would also conflict with Policy SP17 of the Maidstone Borough Local Plan, May 2016 (the MBLP) which similarly seeks to protect the character and appearance of the open countryside and restrict new development identifying the provision of small scale residential development to meet local needs as an exception.
15. According to the Maidstone Landscape Character Assessment, 2012 the appeal site lies within the Kingswood Plateau. On the basis of my findings in respect of character and appearance I do not consider that the proposed development would result in material harm in respect of landscape character or be contrary to the Landscape Character Assessment which includes the aim to maintain open space between swathes of development.
16. With regard to the National Planning Policy Framework (the Framework) I find that the proposal would not be in conflict with paragraph 58 which requires developments to respond to local character or paragraph 61 which seeks to ensure that development is integrated into the environment.

#### *Suitability of the Site for Housing*

17. Paragraph 14 of the Framework sets out 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 assessed against the Framework as a whole.
18. Paragraph 47 of the Framework advises that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed need (OAN) for housing and can demonstrate a supply of specific deliverable sites sufficient to provide more than five years' worth of housing against this need. At the time when the application was determined by the Council its position was that it had a 3.3 year supply of housing assessed against the OAN of 18,560.
19. The MBLP is currently progressing through its examination. Based on the OAN figure and a 5% buffer the Council indicated that it now had a supply of 5.12

- years. This was set out in depth in the Council's Housing Topic Paper which has a base date of 1 April 2016 which accompanied the MBLP submission. The appellant is of the view that the Council can only show a 4.48 year supply.
20. Paragraph 49 of the Framework also states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Policy ENV28 of the Local Plan seeks to restrict development outside of defined settlement boundaries and is therefore relevant to the supply of housing. However, on the basis of its MBLP submission the Council considers that housing policies could be considered up to date.
  21. Paragraph 216 of the Framework advises that the weight to be given to emerging plans is dependent upon their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of relevant policies in the emerging plans to the policies in the Framework. Whilst the plan is at an advanced stage of preparation I understand that there are significant unresolved objections to a number of policies including Policy SP17 which mirrors the adopted Policy ENV28. The MBLP is also subject to challenge in terms of the Council's OAN.
  22. In terms of five year housing land supply the Council case as set out in the original Housing Topic Paper totals 6,896 dwellings comprising extant permissions of 4260 dwellings, proposed allocations in the MBLP of 2540 and 96 dwellings on windfall sites. At the hearing the Council provided an update to its Housing Topic Paper dated 1 September 2016 showing an increase in five year housing land supply to 5.71 years. However, this document has not been subject to the full review provided by the local plan examination and therefore it too must be treated with caution.
  23. The OAN has yet to be fully tested through the local plan process and this figure is fundamental to the determination of whether supply addresses housing need. With regard to the buffer, whilst the appellant argued that this should be 20% on the basis of a persistent record of under delivery I am not convinced by this argument. During the first two years of the plan period when the South East Plan was the relevant development plan the target was exceeded and taking account of longer terms housing market cycles I consider that a persistent record of under delivery has not been demonstrated and so a 5% buffer is reasonable.
  24. The evidence I heard at the hearing leads me to conclude that in a number of cases the Council has over-estimated the capacity of its allocations as the permission granted was significantly below the identified allocation. This leads to doubts about the capacities of other sites to meet their allocation. As these allocations have yet to be fully tested through the local plan examination it is far from clear that all of the proposed allocations would be deliverable.
  25. On behalf of Warmlake Residents Association it was argued that the windfall sites contribution was too low and that an allowance for small sites should be made in each of the first five years together with a large site windfall figure. The Council's approach which avoids double counting sites with planning permission and the assumption that fewer large windfall sites will come forward

as they are likely to have already been allocated is both reasonable and in line with the Framework.

26. Consequently I find that the Council cannot demonstrate a five year supply of deliverable housing sites. Therefore, as Policy ENV28 of the MBWLP and Policy SP17 of the MBLP are relevant policies for the supply of housing they are out of date and so little weight should be given to the fact that the appeal site is located in the countryside. Additionally, having regard to the provisions of paragraph 49 of the Framework, the need for housing weighs in favour of the proposal.
27. On the basis of paragraph 7 of the Framework it is necessary to consider whether the proposed development would address the economic, social and environmental roles of sustainable development. The proposed development would contribute to the economic role as house building promotes economic growth through construction activity and future occupiers of houses would provide custom for existing shops and services in Sutton Valence.
28. In terms of the social role the provision of up to nine houses would make a modest contribution towards meeting housing need within the borough and would meet the Framework requirement to boost housing supply. The site is also reasonably accessible to Sutton Valence on foot and bus services to Maidstone can be accessed from bus stops at the Warmlake crossroads.
29. I have found that the proposals would not be harmful to the character and appearance of the area and I have identified no other environmental harms. Consequently the environmental role of sustainable development would be met.

### **Other Matters**

30. Concern was expressed by many residents in writing and at the hearing that the proposal would result in a danger to highway users. However, the access and off-site highway works would be in accordance with the relevant technical standards and have been accepted without objection from the highway authority, subject to a number of conditions. In the absence of substantive evidence to the contrary, I have no reason to disagree with that view.
31. On behalf of Warmlake Residents Association it was suggested that the density of the proposed scheme was low and that subsequently a higher density scheme could be proposed which would create additional traffic. However, that is not the scheme before me and if such proposals were to emerge they would need to be considered as part of a fresh application.
32. Other concerns raised in representations including air quality, pollution, noise and disturbance have not been substantiated through evidence and therefore provide no reason to dismiss the appeal. Concerns about drainage can be addressed through an appropriately worded planning condition.

### *Conditions*

33. The Council suggested a number of conditions to be imposed were I to allow the appeal. These were discussed with the main parties at the hearing and I have also had regard to the conditions in the light of the Framework and Planning Practice Guidance (PPG).

34. A condition relating to the submission of reserved matters and the timing of commencement is needed due to the outline nature of the application (Condition 1). A condition is necessary to address the potential archaeological interest in the site (2) as are conditions to address the biodiversity and woodland of the site (3 and 4). Condition 5, relating to external lighting is necessary in order to protect the appearance of the area and to limit the impact of lighting on the wider environment.
35. Conditions 6 and 7 are necessary to address the layout of the scheme submitted under condition 1 and to ensure that the parking and manoeuvring of vehicles is not detrimental to other road users or amenity. However, I have amended these conditions to remove those elements which would have restricted permitted development rights as PPG states that such conditions should not normally be imposed. The elements I have deleted would not meet the tests of necessity or reasonableness.
36. Conditions are also required in order to address matters of highway safety during the construction phase (8) and when operational (9 and 11). It is also necessary to impose a condition to ensure that the existing vehicular access to the site is removed in the interests of the appearance of the area (10). Conditions are also required to ensure appropriate arrangements for sustainable water management (12) and to protect the existing trees in the interests of amenity (13 and 14). I have amended the proposed condition relating to energy efficiency as this does not directly relate to the reserved matters (15). The condition is necessary in the interests of sustainability. Finally, a condition specifying the relevant plans is required as this provides certainty (16).
37. It is not necessary to have conditions relating to the materials to be used in construction or to address landscaping details as these would be dealt with at reserved matters stage or to specify that no surface water shall discharge onto the public highway as this would not meet the tests of enforceability and in any event can be addressed through condition 12.
38. PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In this respect it is necessary for conditions 2, 3, 4, 8, 9, 12, 13 and 14 to be conditions precedent as they are so fundamental to the development that it would otherwise be necessary to refuse the application.

#### *Planning Obligations*

39. The appellant has undertaken to contribute £2360.96 per dwelling for the provision of educational needs arising from the proposed development and £48.02 per dwelling in respect of a library contribution. On the basis of Kent County Council's comments I am satisfied that the contributions are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development and therefore consistent with Policy CF1 of the Local Plan and Regulation 122 of the Community Infrastructure Levy Regulations, 2010 (as amended). Whilst, PPG states that tariff-style contributions should not be sought from developments of 10 dwellings or less, as the gross floor area is likely to exceed 1000sq.m the criteria for seeking contributions would be met. The contributions are also in line with pooling restrictions as set out in Regulation 123 which requires

obligations to relate to projects where fewer than five contributions have already been provided. On this basis I find the contributions towards education and library provision to be acceptable.

40. The UU also makes provision for 40% of the housing to be affordable. This would be in line with the guidance as set out in PPG and with Policy AH1 of the Local Plan and the Council's Affordable Housing SPD because the site area exceeds 0.5ha and the gross floors area would be likely to exceed 100sq.m notwithstanding the fact that the number of units would be less than 10. On this basis the provision of affordable housing is appropriate.

### **Conclusion**

41. The proposal would result in development outside of the defined settlement boundary in conflict with Policy ENV28 of the MBWLP and Policy SP17 of the MBLP. However, these are policies for the supply of housing and are not up to date. I have found that in other respects the proposed development would accord with development plan policies and the provision of housing would be a clear benefit in the light of the Framework aim to boost significantly the supply of housing. I have also concluded that the development would meet the three dimensions of sustainable development as set out in the Framework. These are very significant considerations that are sufficient to outweigh the limited conflict with Policies ENV28 and SP17 in this case.
42. For these reasons, and taking into account all matters presented in evidence and raised at the hearing, I conclude that on balance the appeal should be allowed.

*Kevin Gleeson*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT

Peter Court	Peter Court Associates
Tom La Dell	La Dell Wood
Heather Sargent	Landmark Chambers

### FOR THE LOCAL PLANNING AUTHORITY

Rachael Elliott	Maidstone Borough Council
Stuart Watson	Maidstone Borough Council

### INTERESTED PARTIES

Paul McCreery	PMC Planning, on behalf of Warmlake Residents Association
Eileen Riden	Chairman, Sutton Valence Parish Council
Janet Burnett	Clerk, Sutton Valence Parish Council
Paul Burnett	Neighbouring Resident
Patricia Trodd	Neighbouring Resident
Simon Green	Neighbouring Landowner

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Housing Topic Paper Update 1 September 2016, submitted by the Council.
2. Supplementary Statement by Paul McCreery.
3. Up to date Position on the Threat of Urbanisation, submitted by Paul McCreery.
4. Housing Sites Assessment – Site 9 and Site 3, submitted by Paul McCreery.
5. Letter from Simon Green to The Planning Inspectorate dated 1 November 2016.
6. Statement of Common Ground.
7. Costs application submitted by the appellant.

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

8. Details of Warmlake Residents Association submitted by Paul McCreery.

9. Extract from Landscape Character Appraisal, 2012 submitted by the Council.
10. Council's response to appellant's cost application.

## **SCHEDULE OF CONDITIONS**

1. Details of the appearance, landscaping, layout 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.

Application (s) for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun on or before the expiration of two years from the date of approval of the last of the reserved matters.

2. Prior to development commencing a programme of archaeological works in accordance with a written specification and timetable shall have been submitted to and approved in writing by the Local Planning Authority. No development shall take place other than in accordance with the programme and written specification.
3. Prior to development commencing, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall take account of any protected species that have been identified on the site, shall include the enhancement of biodiversity through integrated methods into the design and appearance of the dwellings by means such as swift bricks, bat tube or bricks and in addition shall have regard to the enhancement of biodiversity generally. It shall be implemented in accordance with the approved proposals prior to occupation and shall be maintained permanently thereafter.
4. Prior to development commencing, a woodland management plan for the site shall have been submitted to and approved in writing by the Local Planning Authority. This shall include details of the long-term retention and enhancement of the wooded western and northern boundaries of the application site. It shall be implemented in accordance with the approved proposals within it and shall be maintained permanently thereafter.
5. No external lighting shall be installed until details have been submitted to, and approved in writing by the Local Planning Authority. This submission shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles). The approved scheme shall be installed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation. The scheme shall be in

accordance with the requirements outlined in the Bat Conservation Trust and Institution of Lighting Engineers documents Bats and Lighting in the UK.

6. The details submitted in pursuance of Condition 1 shall show adequate land, reserved for parking or garaging to meet the needs of the development. The approved area shall be provided, surfaced and drained in accordance with the approved details before the buildings are occupied and shall be retained for the use of the occupiers of, and visitors to, the premises, permanently thereafter.
7. The details submitted in pursuance of Condition 1 shall show adequate land, reserved for vehicle loading/unloading and turning facilities to meet the needs of the development. The approved area shall be provided, surfaced and drained in accordance with the approved details before the buildings are occupied and shall be retained permanently thereafter.
8. Prior to development commencing the following shall be submitted to and approved in writing by the Local Planning Authority:

Details of facilities, by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances at the application site. The approved facilities shall then be provided prior to the works commencing on site and thereafter shall be maintained in an effective working condition and used before vehicles exit the site and enter onto the adopted highway for the duration of the construction works;

Details of construction vehicle loading/unloading and turning facilities; and

Details of parking facilities for site personnel and visitors during construction phase.

The works shall be carried out in accordance with the approved details and retained for the duration of the construction works.

9. Prior to development commencing, the proposed new access shall be provided and the area of land within the vision splays shown on the approved plan shall be reduced in level as necessary and cleared of any obstruction exceeding a height of 0.6 metres above the level of the nearest part of the carriageway and be so retained in accordance with the approved plan.
10. Prior to occupation of the first dwelling, the existing vehicular access from Chartway Street shall be blocked up and landscaped in accordance with the details submitted and approved as part of the landscaping scheme.
11. Prior to development reaching damp proof course level the applicant shall enter into a Section 278 Agreement with the highways authority for works to include closure of the existing access, localised road widening, establishing visibility splays and construction of new access, footway and kerbing details including a step free raised border at the bus stop where suitable. All approved works, including any diversions of statutory undertakers' equipment, and necessary signage and restrictions shall be completed prior to the occupation of any part of the development in accordance with a copy

of the approved agreement for works that shall have been previously submitted to and approved by the Local Planning Authority.

12. Prior to development commencing a scheme for the disposal of (a) surface water (which shall in the form of a SUDS scheme) and (b) waste water shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained permanently thereafter.
13. Prior to development commencing full details of tree protection shall have been submitted to and approved in writing by the Local Planning Authority. Any trees to be retained must be protected by barriers and/or ground protection in accordance with BS 5837 (2005) 'Trees in Relation to Construction-Recommendations'. The approved barriers and/or ground protection shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the Local Planning Authority.
14. Prior to development commencing an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837:2012 shall have been submitted to and approved in writing by the local planning authority. This shall include details such as the positions of any service/drainage runs and any access facilitation pruning requirements.
15. Details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved shall be submitted to and approved in writing by the local planning authority prior to occupation of the first dwelling. The development shall be implemented in accordance with the approved details and all features shall be maintained permanently thereafter.
16. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Ecology Phase 1 Habitat Survey
  - Ecology Bat Activity Surveys
  - Transport Statement
  - Tree Survey Issue 2
  - Drawing number 2245/15/B/6A (Site Location Plan)
  - Drawing number 2245/15/B/5A (Site Layout) (Illustrative) - Matters relating to point of access only.