



# Appeal Decision

Site visit made on 30 January 2024

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 February 2024**

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**Appeal Ref: APP/L2250/W/23/3319436**

**Land at White Horse Lane, Rhodes Minnis, Canterbury CT4 6XP**

- 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 & Mrs Kent against the decision of Folkestone and Hythe District Council.
  - The application Ref 22/2030/FH, dated 27 November 2022, was refused by notice dated 1 February 2023.
  - The development proposed is the erection of a chalet bungalow.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023, which I have had regard to as a material consideration in my decision making. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.
3. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became 'National Landscapes'. Nevertheless, the Framework still refers to AONBs and their legal designation and policy status remain unchanged. Therefore, I will still refer to the Kent Downs AONB within this decision.
4. The application which is the subject of this appeal was made as an outline application with all matters (access, appearance, landscaping, layout and scale) reserved for future consideration. As such I have considered the appeal on this basis.

## Main Issues

5. The main issues are:
  - whether the proposed development would be in a suitable location for new housing with regard to the accessibility to services and facilities;
  - the effect of the proposed development on the character and appearance of the surrounding area, the Kent Downs AONB and the North Downs Special Landscape Area (SLA); and

- the effect of the proposed development on biodiversity.

## Reasons

### *Location*

6. The appeal site is a vacant area of land bordered by fencing with gated access onto White Horse Lane. It is located in a rural area in the AONB and SLA surrounded by open paddocks which are divided by hedging and post and rail fencing, with a number of sporadically located dwellings in the surrounding area. Evidence has been provided showing a building previously on the site, however this was removed some time ago and any remnants of this structure are limited and have largely blended into the landscape.
7. Policy SS1 of the Folkestone and Hythe District Council Core Strategy Review 2022 (the CS) defines the open countryside as anywhere outside settlements within Table 4.4 Settlement Hierarchy. Rhodes Minnis, where the appeal site is located is not included as a settlement within this table. Therefore, the appeal site falls outside of any defined settlement boundary and is within the open countryside.
8. Policy SS3 of the CS states that development is directed towards existing sustainable settlements to protect the open countryside. However, policy CSD3 of the CS states that development in locations outside the settlements identified in the settlement hierarchy may be allowed if a rural location is essential, identifying a list of developments which would be acceptable in principle in these locations. However, no evidence has been provided to suggest that the rural location is essential or that the appeal proposal would fall under any of these exceptions and therefore it would not accord with this policy.
9. Policy SS3 also states that a design-led and sustainable approach should be taken to density and layout ensuring development is suited to the locality and its needs, and transport infrastructure (particularly walking/cycling). Paragraph 83 of the Framework highlights that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. This should include consideration of providing support for local services even in a village nearby. There are very few local services or facilities within close proximity to the appeal site. However, the nearby settlement of Lyminge has a number of facilities, such as several shops and a primary school. A full range of services and facilities are also available within the nearby towns of Hythe and Folkestone.
10. There is a bus stop located in close proximity to the appeal site which, although there are no pavements, is easily accessible by foot. This offers public buses running to Lyminge, Hythe and Canterbury. However, even for a rural location, these are relatively infrequent and only run for limited hours. Therefore, this service could not be reliably used by the future occupiers of the dwellings to access all the services and facilities they require on a day to day basis and throughout the day. The nearest settlements are some distance from the appeal site and there are no footpaths available to provide safe access to them via foot. The surrounding roads are also relatively narrow with no dedicated cycle lanes, thereby making cycling an unattractive option for day to day family needs. As such, the future occupiers of the proposed dwelling would largely be

reliant on the use of a private vehicle to access the necessary services and facilities, contrary to the objectives of Policy SS3.

11. It is noted that there may have been car movements to and from the former use of the site. However, the site has been vacant for a long period of time and therefore additional car use, albeit by a limited number, would result from the proposal. It is also understood that, due to the location, the occupiers of surrounding dwellings are likely to rely on the use a private vehicle. However, this does not negate the requirement for new development to offer a genuine choice of transport modes and ensure that safe and suitable access to the site can be achieved for all users. Furthermore, due to the scale of the development, the benefit to services within villages nearby would be limited. Therefore, the proposed development would be given limited weight in relation to paragraph 83 of the Framework.
12. In conclusion, the necessary services and facilities which would be required by the future occupiers of the proposed dwellings would not be readily accessible and one additional dwelling would not provide significant support for local services nearby. Whilst there are some sustainable transport options, such as a public bus, these options are limited and therefore the future occupiers would still largely be reliant on the use of a car to serve their day to day needs on a regular basis. Consequently, the proposed dwellings would not be located within a socially or environmentally sustainable location and would not be in an appropriate location for new housing.
13. Therefore, the proposed development would conflict with Policies SS1, SS3 and CSD3 of the CS as detailed above. It would also be contrary to the relevant sections of the Framework which promote sustainable development in rural areas.

#### *Character and Appearance*

14. The appeal site is currently an unoccupied piece of land surrounded by open paddocks. Although any hedgerows or vegetation on the site have been removed, its open and spacious appearance at present is still in keeping with the rural nature of the area and has a positive impact on the character and appearance of the surrounding area and the scenic beauty of the AONB. Whilst a building may have been present on the site previously, any remains have blended into the landscape and therefore it does not form part of the current character and appearance of the site or the surrounding area.
15. There are a number of residential dwellings in the surrounding area, set out informally as sporadic development on large plots surrounded by rural fields. Although set in rural fields, the dwelling proposed would be on a relatively small plot. Whilst the site may be able to accommodate such level of development, compared to the size of neighbouring properties, the proposal would appear cramped and out of keeping with the surrounding pattern of development. Furthermore, due to the lack of built form directly adjacent to the appeal site and the open nature of the surrounding fields, a building in this location would be an overly prominent addition to the site.
16. The presence of a residential dwelling on the appeal site, and the paraphernalia this entails, would significantly alter the character of this currently undeveloped site. Whilst the appellant intends the development to assimilate into the surrounding area, it would add to the overall domestication of the area, which

is still predominantly open countryside, to the detriment of the character and appearance of the surrounding landscape and the scenic beauty of the AONB.

17. Therefore, for the reasons given above, I conclude that the proposed development would significantly harm the character and appearance of the surrounding area, the Kent Downs AONB and the SLA and would conflict with Policy CSD4 of the CS. This policy requires planning decisions to have close regard to the need for conservation and enhancement of natural beauty in the AONB and its setting, ensuring new development does not jeopardise the protection and enhancement of the distinctive and diverse local landscapes.
18. The proposal would also conflict with the Framework which states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues and that the scale and extent of development within this designated area should be limited.

### *Biodiversity*

19. The Council's biodiversity officer has indicated that habitats on the appeal site provide the potential for protected and priority species. However, I saw on my site visit that the site has been cleared and any previous grassland, woodland and hedgerow removed and replaced with wood chippings.
20. Nevertheless, due to the rural nature of the site and the surrounding area, protected and priority species could still be present. Therefore, an Ecological Impact Assessment should be provided to establish the impact on protected and priority species from the development proposed. This would require a survey to establish the presence of such species on the appeal site or in the surrounding area. The government circular 06/2005 states that ecological surveys should be carried out before planning permission is granted and only secured by condition in exceptional circumstances. There are no exceptional circumstances in this instance and therefore the ecological appraisal should be completed before planning permission is granted.
21. Therefore, without a suitable assessment to suggest otherwise, the proposed development would harm local biodiversity and would be contrary to Policy CSD4 of the CS and Policy NE2 of the Folkestone and Hythe District Places and Policies Local Plan 2020 (the LP). These policies seek to ensure development avoids a net loss of biodiversity and states that development proposals that would adversely affect protected species will not be supported unless appropriate safeguarding measures can be provided. It would also be contrary to the environmental objectives of the Framework in this regard.

### **Other Matters**

22. A number of sites in the surrounding area have been brought to my attention which were granted planning permission for new residential properties. Limited information has been provided regarding these other sites, however from the Council's submission it appears that these examples are materially different from the appeal proposal as they are either replacement dwellings, located within the settlement boundary or are policy compliant. Therefore, they do not set a precedent for the development proposed.
23. The appellant has stated that the proposal would not result in any loss of privacy to the surrounding neighbouring occupiers, that the proposed

accommodation would meet minimum space standards and that environmentally friendly, sustainable materials would be used. However, these are neutral factors which do not outweigh the harm identified.

24. The Council has stated that the appeal site is located within the Stour Operational Catchment and a likely significant effect on the internationally designated Stodmarsh sites (SAC, SPA and Ramsar site) cannot be ruled out due to increases in wastewater from the proposed development. They indicate that sufficient information has not been provided for a Habitats Regulations Assessment (HRA) to be carried out to ensure the proposed development would not result in an adverse effect on the integrity of the sites identified.
25. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

### **Conclusion**

26. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

*E Grierson*

INSPECTOR