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## Appeal Decision

Site visit made on 24 November 2020

**by M Philpott BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> December 2020**

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**Appeal Ref: APP/Z2260/W/20/3252380**

**Land rear of 96 to 102 Monkton Street, Monkton, Ramsgate**

- 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 Jacob Taylor (Heyhill Land) against the decision of Thanet District Council.
  - The application Ref OH/TH/19/0409, dated 26 March 2019, was refused by notice dated 27 January 2020.
  - The development proposed is outline planning application (with all matters reserved except for means of access) for residential development of up to 49 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Outline planning permission is sought with matters of access to be considered at this stage. I have taken the proposed site plan (drawing reference IT1860/TS/02 Rev I) into account insofar as it relates to matters of access and otherwise treated the submitted drawings as illustrative.
3. The Council sets out within its appeal statement that the Thanet District Council Local Plan (LP) has been adopted. The main parties have commented on the implications of this to the appeal. I have considered the appeal based on the development plan which is currently in place.
4. The appellant has submitted a Section 106 legal agreement with the appeal. It intends to secure the provision of affordable housing. It also sets out offers of financial contributions towards education, healthcare and library facilities, improving Monkton Recreation Ground and mitigating the effects of the development on Thanet Coast and Sandwich Bay Special Protection Area (the European site). The Council has stated that its second and third reasons for refusal are addressed by the agreement.
5. The appellant has stated that the process of completing the agreement revealed a discrepancy on the site location plan. An updated plan (reference RL001 Rev E) has thus been submitted. It appears to make slight alterations to the boundaries of the site. The Council is party to the agreement and has not objected to its introduction. I have therefore taken the updated plan into account.

## **Main Issues**

6. The main issues are: (i) whether the proposal would be in an appropriate location, with particular regard to the development plan's spatial strategy and the effect on the landscape; and (ii) the effect of the proposal on best and most versatile agricultural land (BMVL).

## **Reasons**

### *Location*

7. The site largely comprises a field which is accessed from Monkton Street. It is located partly behind residential properties fronting onto the street and adjacent to a builders' yard, a caravan park and playing fields within the Monkton Recreation Ground.
8. Notwithstanding the access, the site is located outside the settlement boundary of the village of Monkton, as defined by the LP. It is therefore within the countryside for the purposes of planning policy.
9. Policy SP01 of the LP sets out the spatial strategy for the district. It states that the primary focus for new housing is the district's urban area and limited development is allocated within Monkton. The supporting text to the policy explains that the strategy has been determined by the size and geography of the district, with the largest settlements following the coastline forming the urban area. It also reflects constraints such as national and international wildlife designations and the presence of predominantly grade 1 agricultural land beyond the urban area.
10. LP Policy SP24 supports the spatial strategy. It states that development on non-allocated sites in the countryside will only be permitted for certain types of development, or if it falls within one of the exceptions for isolated homes in the countryside, as identified by the National Planning Policy Framework (the Framework). The site is not isolated as a result of its location near to existing development. In addition, it is not an allocated site and the proposal is not for one of the types of development permitted by LP Policy SP24.
11. LP Policy SP26 seeks to conserve and enhance Thanet's landscape character and local distinctiveness. The site is in the Stour Marshes Landscape Character Area. The policy says that development should be generally directed away from the Stour Marshes as this is one of the district's areas which is largely undeveloped and key to retaining the island character of Thanet. A Landscape and Visual Baseline Appraisal of the potential landscape and visual effects of the proposal was submitted in support of the application.
12. The site is enclosed by buildings and vegetation on most of its sides, but partial views across it are gained from the recreation ground to the properties in Monkton Street and from the vehicular access. It has an undeveloped and rural feel that contributes to the setting of Monkton and the landscape character of the countryside. While the development could be screened by planting at its boundaries, it would nonetheless affect the site's contribution to the undeveloped and rural character of the area. However, compelling evidence has not been provided which indicates that the site forms part of a valued landscape in the terms of the Framework. Given the site's degree of containment and close relationship to the settlement, the landscape and visual impacts would be highly localised and the resulting harm would be minor.

13. The appellant has referred to permitted schemes outside settlement boundaries<sup>1</sup>. However, the circumstances that were relevant in those cases are not directly comparable with this appeal, especially as the decisions pre-date the LP and thus the development plan has changed since then. Consequently, they do not lead me to alter my findings in respect of this main issue.
14. The proposed development would not be an appropriate location as it would be at odds with and harmfully undermine the integrity of the spatial strategy. There would also be minor harm to the landscape. It is contrary to LP Policies SP01 and SP24, which seek to locate housing predominantly within settlements and restrict development in the countryside.
15. LP Policy SP26 explains that where proposals conflict with its principles, permission will only be granted where it can be demonstrated that the development is essential for the economic or social wellbeing of the area. I return to this matter in the planning balance.

#### *Agricultural land*

16. It is common ground between the main parties that the site constitutes BMVL consisting of 2.6 hectares of land within grades 1 and 2. LP Policy E16 says that permission will not be granted for significant development which would result in the irreversible loss of BMVL unless it is clearly demonstrated that all its criteria are satisfied. The supporting text to the policy, albeit incorrectly referring to Policy E18, explains that significant development means major development<sup>2</sup> and as such the proposal is significant development.
17. The Council does not dispute the appellant's view that there are limitations to farming the site. However, it nonetheless considers that the site is usable for farming as that was the case up to 2016. In addition, interested parties state that farming could resume on the site. Detailed evidence has not been provided which clearly demonstrates that circumstances have changed since 2016 to the extent that there is no longer a realistic prospect of the land being farmed.
18. The Council contends that substantial amounts of BMVL have been allocated to meet its housing requirement and this places a premium on the remaining land. It says that in this context, and in the presence of a 5 year supply of deliverable housing sites, the proposal would lead to accumulated and significant losses of BMVL. The site is a discrete parcel of land and thus it is unlikely that its loss would directly lead to further losses of BMVL. Additionally, compelling evidence has not been provided which indicates that this proposal would result in the further loss of agricultural land or set any precedent. However, it is a matter of fact that the proposal would result in the loss of BMVL and there would nonetheless be harm arising from its loss.
19. The appellant has provided an appeal decision<sup>3</sup> wherein limitations to farming BMVL were identified and a small amount of weight was attached to the loss of the land. However, it relates to a different district and I cannot be certain that the circumstances which resulted in those findings are directly comparable. It does not lead me to reach a different conclusion in respect of this main issue.

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<sup>1</sup> Council references: F/TH/19/1026; OL/TH/19/0126

<sup>2</sup> As defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015

<sup>3</sup> Appeal reference: APP/C3810/W/19/3227374

20. The proposal would result in the loss of BMVL. LP Policy E16 requires that the benefits of the proposal outweigh the harm resulting from the loss of the agricultural land. I return to consider this matter later.

### **Planning Obligations**

21. The legal agreement secures the provision of 30% of the dwellings as affordable housing in accordance with LP Policy SP23. This is a moderate benefit to be weighed in the planning balance. Whilst the contributions towards education, healthcare and library facilities are intended to cater for the needs of the development, the facilities would benefit others and thus they would also provide some public benefits.
22. Having regard to the evidence presented, the above planning obligations are necessary, directly related to the development and fairly and reasonably related in scale and kind. They would thus accord with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests for planning obligations set out in the Framework.
23. Public open space and a local area for play are proposed within the site. In this context and based on the limited evidence provided, I am not satisfied that the contribution towards improvements to the recreation ground is necessary. This obligation would not satisfy the requirements of the CIL Regulations 2010 or the tests in the Framework. I cannot therefore take it into account. Nonetheless, there would be some benefits to local residents from the open space and play facilities proposed on site.
24. If I were minded to grant planning permission, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the European site. In doing so, I would need to consider whether the obligation related to the European site would secure any required mitigation. However, even if the effects were not adverse, this would constitute a neutral consideration rather than a benefit weighing in favour of the proposal.

### **Other Matters**

25. The Council has not disputed that the site is well related to the settlement and accessible to services, facilities and public transport options within it and Minster, despite interested parties raising concerns in these respects. Whilst it is nonetheless likely that the occupiers would make journeys by private motor vehicles, paragraph 103 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In addition, charging points are proposed which may encourage ownership of electric vehicles and temper the impacts of motor vehicle use.
26. The proposal includes the provision of highway works including traffic calming and the creation of a footpath and pedestrian crossing in Monkton Street. Although interested parties have significant concerns regarding the works, neither the Council nor the Highway Authority have objected to the proposal due to highway safety issues. Based on the evidence before me there would be a moderate benefit to highway safety in Monkton, albeit it has not been clearly demonstrated that the current highway arrangement is dangerous.
27. The appellant puts forward that the proposal would result in biodiversity net gain. I note that since the application was determined the purported net gain

has been revised down from 25.44% to 8.37%. Nevertheless, there would be some benefit if the latter percentage was achieved.

28. The future occupiers of the development would spend money in the local area and contribute to the vitality of rural communities as per paragraph 78 of the Framework. There would also be slight economic benefits from the construction process and fitting out the dwellings. It is also put forward that the proposal would trigger the need for faster broadband to be delivered in Monkton. However, I cannot be certain as to whether or when this potential indirect benefit might occur and thus attach limited weight to this specific matter.
29. The appellant contends that the refusal reasons do not reflect the focus of the discussions of the Council's Planning Committee when it was considering the application and the official committee minutes are vague. However, the appellant's summary of the meeting indicates that a range of matters were discussed. I do not have compelling evidence before me which indicates that the refusal reasons are unfounded.
30. I have taken into consideration the other matters raised by interested parties. However, the evidence provided is such that no other matter is so compelling that it leads me to a different conclusion on the main issues.

### **Planning Balance and Conclusion**

31. The main parties agree that the presumption in favour of sustainable development as set out by paragraph 11d of the Framework is not engaged. It is not disputed that the Council can demonstrate a 5 year supply of deliverable housing sites following the adoption of the LP.
32. Evidence has been provided which indicates that housing delivery in the district has been limited in previous years and I note that the LP relies on a stepped housing trajectory. Additionally, the Covid-19 pandemic is likely to have adversely affected build out rates, which is recognised in an appeal decision<sup>4</sup> that the appellant has provided. However, I cannot be certain of the implications for the district of future Housing Delivery Test results. I also cannot be sure of the implications of any potentially forthcoming planning reforms by Government. Although the so-called 'tilted balance' may be engaged in the future, it does not apply to this decision.
33. The appellant has provided part of an appeal decision<sup>5</sup> in support of its view that significant weight should be afforded to the benefits to the delivery of the affordable and market housing. The decision relates to a proposal in a different district and thus the circumstances that applied in that case are not directly comparable with those that apply for this appeal. Notwithstanding this, I have no reason to doubt that the development would not be built out quickly and the proposal would nevertheless make a moderate contribution to housing supply and delivery.
34. There would be a range of notable benefits arising from the proposal as identified. Having regard to these and paragraph 170 of the Framework, the benefits outweigh the loss of the BMVL taken as a consideration on its own. The proposal therefore complies with LP Policy E16. Nonetheless, it has not been demonstrated that the development is essential for the economic or social

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<sup>4</sup> Appeal reference: APP/X0360/W/19/3238048

<sup>5</sup> Appeal reference: APP/X0360/W/15/3097721

wellbeing of the area and thus the proposal conflicts with LP Policy SP26, notwithstanding the minor harm to the landscape.

35. The development plan and thus the spatial strategy are up to date. The conflict with the strategy and the policies supporting it is a matter of considerable weight indicating against the proposal. There is nothing compelling before me which demonstrates that this matter should attract reduced weight. Moreover, the strategy has been determined in part on the basis that land beyond the urban area is predominantly BMVL. Although the proposal does not conflict with LP Policy E16, this does not outweigh the conflict with policy in other respects.
36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission is determined in accordance with the development plan, unless material considerations indicate otherwise. Furthermore, paragraph 12 of the Framework says that where a planning application conflicts with an up to date development plan, permission should not usually be granted.
37. I conclude that the proposal is contrary to the development plan taken as a whole. Whilst there are benefits indicating in favour of the development, material considerations do not outweigh the conflict with the development plan. I have not therefore considered the effect of the proposal on the European site, as this would not have any bearing on my decision.
38. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

*Mark Philpott*

INSPECTOR