



## Appeal Decision

Hearing Held on 23 and 24 June 2021

Site visit made on 22 June 2021

**by David Wallis BSc (HONS) PG DipEP MRTPI**

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

**Decision date: 09/07/2021**

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**Appeal Ref: APP/J2210/W/20/3259181**

**Land to the rear of 51 Rough Common Road, Rough Common, Canterbury CT2 9DL**

- 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 Quinn Estates Ltd against the decision of Canterbury City Council.
  - The application Ref CA/19/02047, dated 14 October 2019, was refused by notice dated 31 March 2020.
  - The development proposed is residential development of land for up to 34 dwellings, including 7 plots for self-build and custom build dwellings, with all matters reserved other than the point of vehicular and pedestrian access from Rough Common Road and external alterations to existing property at 51 Rough Common Road.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline form with all matters reserved except for access, being the point of vehicular and pedestrian access off Rough Common Road. A number of appeal documents referred to the description of development as being 'for 34 dwellings.' It was however confirmed during the Hearing that the description as per the application form was correct in being for 'up to' 34 dwellings. In addition, it was stated in the Hearing that the drawings entitled 'density diagram' reference 22574A-40 Revision A and 'heights diagram' reference 22574A-41 Revision A were submitted for approval. I have determined the appeal on the basis of all these matters.
3. Concerns were raised that the appeal development had changed during the appeal process without recourse to the public. However, I note the only change related to a revised illustrative landscape plan that demonstrated a potential means of landscaping the appeal site. The plan does not, in my view, substantially change the nature of the proposed development, with the areas for residential development and green infrastructure remaining generally consistent. Also, the plan is marked illustrative and in the context of the outline application neither the Council nor Applicant is bound by the details in a reserved matters submission. Having regard to the Wheatcroft Principles<sup>1</sup>, I do

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<sup>1</sup> Bernard Wheatcroft Ltd v SEE [JPL 1982 P37]

not consider any party would be prejudiced by me taking this plan into consideration.

4. Concerns had been raised about the availability of information on the Council's website, although I am aware that all documents relevant to the appeal were on public deposit and available for inspection. In the Hearing, I was able to receive cogent arguments from all parties on the main issues for the appeal including landscape evidence. I do not consider the case of any party to have been prejudiced in this instance.
5. The appellant submitted a planning agreement and a unilateral undertaking pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) were submitted to the Hearing, with final signed versions of these documents being received on 2 July 2021 in accordance with my request. I deal with these later in my decision.
6. Although not explicitly referred to in the Statement of Common Ground, neither the main parties nor interested parties raised concern during the Hearing in respect of physical alterations to No.51 Rough Common Road, forming part of the appeal development. I shall return to this matter later in my decision. The Statement of Common Ground also confirmed that the main parties agreed that matters relating to housing mix, and the integration of affordable housing into any potential layout could be resolved through conditions were I to allow the appeal. On this basis, with the agreement in place, I have no detailed comments to make on the mix and layout of housing, albeit such was subject to a reserved matters submission in any event.
7. The appellant's ecology report<sup>2</sup> and Kent County Council's consultation response dated 7 November 2019 stated that the appeal site is within the 6km Zone of Influence (ZoI) for the Swale Special Protection Area and Ramsar site, and thus was required to make contributions towards the adopted Strategic Access Management and Monitoring Strategy (SAMM). In the Hearing however, it was clarified by the main parties that the appeal site fell outside of the ZoI for these designated sites and there is no requirement for SAMM payments. A bespoke Statement of Common Ground confirmed this in writing, and also confirmed that other assets including the Blean Complex Special Area of Conservation were not implicated by the appeal proposal. I have accepted its findings and return to remaining ecology issues later in this decision.
8. I undertook an unaccompanied site visit following a prescribed route agreed upon by the main parties in advance of the Hearing. Following the hearing of oral evidence, I determined that no further site visit was required.

### **Main Issues**

9. The main issues for the appeal are:
  - whether or not the proposal is in a suitable location for housing development;
  - the effect of the development upon the character and appearance of the area, including landscape character;
  - whether the proposal would make adequate provision for affordable housing and social infrastructure; and

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<sup>2</sup> Ecological Appraisal by Aspect Ecology, October 2019

- the effect of the development upon the Stodmarsh Special Protection Area, Special Area of Conservation and Ramsar site (Stodmarsh).

## Reasons

### *Whether or not the proposal is in a suitable location for housing*

10. The settlement of Rough Common is defined as a village in policy SP4 of the Canterbury District Local Plan 2017 (the Local Plan), capable of accommodating growth appropriate to its size and form. It is to the northwest of Canterbury and has been accepted by the Council as an accessible location with good access to transport links and local services.
11. The appeal site is situated to the northeast part of Rough Common and a large proportion of it, between the ends of Ravenscourt Road and Highfield Close, is a designated housing allocation for up to 28 dwellings under policy HD1 of the Local Plan. A further 7 residential plots are shown on the illustrative layout plan for the appeal site, outside of the allocation and outside of the settlement.
12. The Council's position is that the additional 7 plots, extending onto rural undeveloped land beyond the settlement, would fail the environmental limb of sustainability by sporadically urbanising the countryside. The Council, whilst acknowledging that there are no strategic spatial designations seeking to keep the land open, identified that the open and spacious quality of the land provided a rural enclosure to Rough Common.
13. The appellant did not put forward a case for the housing to be considered as appropriate for a countryside location under the categories listed in policy HD4 of the Local Plan, instead arguing the location was not rural in nature and was an edge-of-settlement location.
14. The additional 7 plots would be located on sloping grassland that, despite being overlooked in part by both dwellings and buildings at Kent College, is clearly open in nature and has characteristics more akin to the rural countryside than to a townscape setting. A definitive green edge to the settlement of Rough Common is presented towards the unallocated part of the appeal site, clearly denoting that the land is outside of the settlement. Whilst the appeal site adjoins the existing settlement and cannot therefore constitute sporadic development by definition, it would urbanise an area that is undeveloped and rural in nature.
15. Therefore, the additional 7 plots would encroach into an area that is distinctly countryside and would consequently result in a loss of this local environmental resource. I therefore conclude that the appeal development would be contrary to the spatial planning objectives of policies SP4 and HD4 of the Local Plan, that together promote residential development in appropriate locations unless for a specific exempted purpose.

### *Character and appearance of the area*

16. Rough Common is a predominantly linear settlement with the principal thoroughfare of Rough Common Road extending between the A2050 in the south to Whitstable Road in the north. The settlement is residential in character, with both bungalows and two storey houses organised along cul de sacs spurring off the principal thoroughfare of Rough Common Road. The boundaries of properties on the eastern side of Rough Common Road facing

towards the appeal site, are denoted by mature hedgerows and some specimen trees that soften or obscure the presence of existing development.

17. The appeal site partly constitutes relatively level terrain that is enclosed by housing development on three sides, which is the area forming the Council's allocated housing site. The proposed 7 dwellings that sit beyond the allocation fall within an Area of High Landscape Value, as defined under policy LB2 of the Local Plan, with that designation's principal purpose being to protect key views towards Canterbury and its cathedral. Whilst the Council conceded that the appeal development would not impinge on any such views, it maintained that the proposal would continue to conflict with policy LB2 by adversely affecting local landscape character.
18. The proposed 7 plots outside the allocation would be on steeply sloping land, with the dwellings on an effective ridge overlooking a local land formation resembling a valley. Land levels drop significantly in an easterly direction to the bottom of the valley, before rising up again to the buildings at Kent College.
19. The appellant's illustrative layout demonstrates that a pattern of development could be achieved within the housing allocation that is not dissimilar to the existing built-up area of Rough Common. I consider it would be possible, on the southeast boundary of the housing allocation, to replicate the existing landscape structure and soften the appearance of any dwellings.
20. However, whereas the existing residences that face onto the valley benefit from hedgerow and tree cover, the proposed additional 7 plots would be exposed upon the ridge. The illustrative layout denotes that the dwellings would be separated from the proposed landscaping areas by front gardens and the proposed internal roadway, thus placing the landscaping at a much lower land level than the dwellings. At 2.5 storeys in height, the dwellings would be substantial features rising above any planted landscaping within the appeal site and would therefore have an unmitigated prominence in, and dominance over, the local landscape. This would starkly contrast with the comparable recessive nature of the existing built development.
21. Footpath CB505 is on the eastern side of the valley landscape, running alongside the boundary with Kent College. From my visit, I noted footpath CB505 is heavily enclosed by trees, hedgerows and fences, making for a dark and less inviting walking route. Visual relief is provided by a small number of gaps within the hedgerow that allow views across the valley to the rear of properties in Rough Common. Those views, though limited, would be imposed upon by the appeal development, detracting from the open and verdant qualities of the landscape when viewed from CB505.
22. Meanwhile footpath CB504 runs directly along the appeal site's southern boundary and users of it have the benefit of viewing the full extent of the valley landscape. Whilst these views are through a chain-link fence, this does not significantly reduce the experience of the countryside setting or detract from its appreciation as being open land. The appellant's intention to plant hedgerows directly alongside footpath CB504 would result in an experience similar to that for users on CB505, and I consider this extent of enclosure would have an adverse effect on the quality of the footpath and the enjoyment of the rural approach into Rough Common from Canterbury.

23. I acknowledge that the land is not accessible to the general public as formal open space. However, the views from CB505 and CB504 over the open nature of the land are important and part of their rural character, providing a rural reprieve from the built-up areas of Rough Common and Canterbury. Given the irregular shape and topography of the appeal site, I do not foresee it possible to design a scheme where the 7 plots would be less prominent or where landscaping could be more effective, particularly with the constraints of accommodating drainage features and open space within the appeal site.
24. I therefore conclude that the proposed 7 plots outside of the housing allocation would cause demonstrable harm to local landscape character that could not be feasibly mitigated. This would harmfully detract from the qualities of the Area of High Landscape Value, abruptly erode the open countryside setting and negatively impact upon the approach into Rough Common, contrary to policies DBE3 and LB2 of the Local Plan, which seek protection and enhancement of landscape character.
- Whether the proposal makes adequate provision for affordable housing and social infrastructure*
25. Kent County Council identified the proposal would have an impact on elements of social infrastructure such as libraries, waste services and education, and thus requested contributions.
26. The final Statement of Common Ground submitted to the appeal confirms that the mechanism for securing payments towards social infrastructure would be via Community Infrastructure Levy (CIL) tariffs, not via legal obligation. The Council confirmed in the Hearing that CIL had been adopted in April 2020 and as such the funding for Kent County Council's identified infrastructure would be collected through CIL.
27. There was discussion at the Hearing of potential upgrades to the condition and surfacing of footpath CB504 under policy T2 of the Local Plan, which the Council raised following oral evidence provided by residents. The main parties agreed that such financial contributions would fall within the remit of CIL by virtue of CB504 featuring as part of a wider project within the Canterbury District Transport Strategy and in Part 2 of the Infrastructure Delivery Plan<sup>3</sup>.
28. Since CIL is a standard tariff per dwelling and the expenditure of CIL receipts on infrastructure is governed separately by the Council, I have no need to investigate or conclude upon any social infrastructure contributions with regards to Regulation 122 of the CIL Regulations 2010 (as amended).
29. The planning obligation, dated 1 July 2021, therefore seeks to secure the affordable housing and the self-build housing provision. The appeal development yielded a requirement for 30% affordable housing under policy HD2 of the Local Plan. The Council confirmed that the obligation would deliver the necessary housing in an appropriate manner and timescale. I have no reason or evidence before me to disagree with this position.
30. The Council raise no objection to the legal agreement in any respect and I have no concerns regarding either the content or construct of the signed and executed legal agreement dated 1 July 2021. I consider that the development, subject to the obligation and the normal functioning of the CIL regime, would

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<sup>3</sup> Canterbury City Council Infrastructure Delivery Plan January 2019

meet the necessary tests for obligations set out in Regulation 122 of the CIL Regs and would therefore secure the necessary infrastructure requirements of Local Plan policies HD2, QL5 and EMP9, which taken together seek appropriate support and provision for community services and facilities.

*Effect on Stodmarsh*

31. The effect upon the National Site Network, specifically Stodmarsh, did not feature as a reason for refusal on the Council's decision notice. However, the issue became prominent in correspondence prior to the Hearing from both the main parties, so subsequently became a main issue for the appeal. The Council confirmed in the Hearing that this matter only arose during the course of the appeal.
32. Stodmarsh is designated on the basis of overwintering birds, a notable plant and invertebrate species mix and for presence of Desmoulins' whorl snail. Stodmarsh is currently under investigation through the Water Industry National Environment Programme due to concerns regarding levels of phosphorous and nitrogen.
33. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the National Sites Network. The proposal would result in 34 new dwellings in the hydrological catchment of Stodmarsh. The increase in both surface water and domestic water flows from the appeal site would be likely to have a significant effect, either alone or in-combination, upon the designated site by way of suspended pollutant matter degrading water quality.
34. The appellant provided environmental information to the appeal detailing measures to achieve 'nutrient neutrality' in the appeal development, during construction and occupation phases, with a management company to oversee the operation of physical infrastructure on site. These measures would be secured by way of the unilateral undertaking.
35. Only illustrative proposals for the layout of the appeal site and thus the means for achieving nutrient neutrality, involving the location of a biological reactor, reedbed and wetland area, have been submitted. Natural England raised objection to the appeal proposal on the basis that the information did not robustly demonstrate nutrient neutrality.
36. Whilst I acknowledge the verbal reassurances given by the appellant, together with the bespoke unilateral undertaking in relation to Stodmarsh, the gravity of the issue demonstrates to me that certainty (or as much certainty as can reasonably be predicted) on the effectiveness of the appellant's strategy is required to prove beyond scientific doubt that the appeal development would not adversely affect the integrity of Stodmarsh.
37. However, given that I am dismissing the appeal on other grounds, I have not had need to undertake the full task of Appropriate Assessment.

**Other Matters**

Self-build Housing

38. The Self Build and Custom Housebuilding Act 2015 came into place on 1 April 2016 and puts a duty on Councils to keep a register of individuals and



organisations who want to acquire land for self-build homes, and to have regard to this register in carrying out its planning, housing, land disposal and regeneration functions.

39. In the preamble to policy HD2 of the Local Plan, paragraph 2.33 states the Council will support self-build plots and custom build housing. However, there are no relevant development plan policies for determining applications for this type of housing development. In such circumstances, I am directed to paragraph 11(d)(ii) of the National Planning Policy Framework (the Framework) and the so-called tilted balance. I shall refer later to this in my decision.
40. The Council stated in the Hearing that it did not carry out any consultation when it decided to impose a local connections test and an annual registration fee upon its self-build register in July 2019<sup>4</sup>. Persons on the register were said to have been notified, but anyone who failed to pay the fee had been withdrawn from the register regardless of when they registered. The Council's reasoning for imposing these restrictions was to enable the register to accurately reflect the needs of the area.
41. I consider the Council's approach to be only partially compliant with the advice in the National Planning Practice Guidance (NPPG). This is because the lack of consultation on imposing the local connections test undermines any rationale for its imposition<sup>5</sup>, particularly when the Council has determined 'local' to be confined to its own administrative boundaries when the Strategic Housing Marketing Assessment 2009 defines Canterbury as being in the East Kent marketing area. Furthermore, I am not presented with any circumstances or information by the Council that demonstrate a strong justification for the imposition of the local connection test, or why the register was unmanageable without such a test in place.
42. In addition, whilst the NPPG states that planning permissions with CIL self-build exemption certificates can be taken into account to record suitable permissions, a number of those relied upon by the Council were demonstrated to be for replacement dwellings. This approach raises doubt as to the accurate recording of self-build permissions, particularly where it is likely the self-build register has been bypassed altogether, and therefore does not reduce the need or demand for new serviced plots.
43. I am therefore of the view that there is sufficient ambiguity in the Council's case as to the level of self-build need or provision in the area that leads me to conclude that there is an unmet need for self-build plots. Therefore the appeal development positively contributes to fulfilling that need and I am further reassured by the appellant's commitment via legal agreement to market the self-build housing for a minimum of 12 months and provide evidence of the marketing to the Council for written approval.

#### Five Year Housing Land Supply

44. The most up-to-date evidence on the 5-year land supply position is that contained in the Council's 'Housing Land Supply Statement 2019/20' (the HLSS), which has a base date of 1 April 2020, and includes supporting

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<sup>4</sup> Coming into effect in September 2019

<sup>5</sup> NPPG Ref ID: 57-019-20210208

information up to 5 January 2021. The HLSS addresses the period 2020-25, and claims a surplus of 1,605 units, equating to a supply of 6.62 years. Appended to the HLSS are statements of common ground between the Council and the developers of strategic sites, forecasting application submission timescales and housing build-out rates.

45. The appellant argues only 4.7 years can be demonstrated because of, amongst other things, a lack of progress on the strategic sites and delays in submission of applications, making some schemes undeliverable by definition<sup>6</sup>. The appellant suggests a reduction of 1,859 units from the Council's claimed supply figure, amounting to a total shortfall of 257 units compared to the HLSS surplus of 1,605.
46. A number of the sites relied on by the Council do not appear to have yet reached detailed planning permission and, under questioning, the Council acknowledged there are no planning performance agreements in place to underpin the Council's assumptions regarding application submission timetables. These include the strategic allocations at South Canterbury, Land at Sturry, Hillborough, Strode Farm, Land North of Hersden, and land at Cocking Farm. Other sites, such as Howe Barracks and Land at Greenhill are predicted by the appellant not to fully deliver on their respective 5-year land supply projections due to delays and constraints affecting live or future applications.
47. I acknowledge that the strategic sites are established within an adopted Local Plan and the statements of common ground within the HLSS are in the region of 6 months old only. However, the Council's position at the Hearing was one of anticipation, rather than expectation, that applications would come forward in a short timeframe, let alone any indication as to whether the details in those applications would be acceptable. The outcome of the Hearing is that I am unconvinced on the evidence submitted that the forecast number of completions would begin on the strategic sites within the relevant 5-year period so as to form a robust 5-year land supply.
48. It follows that I consider the Council is not currently able to demonstrate a robust deliverable 5-year housing land supply. The provision of dwellings therefore counts as a benefit in the final planning balance.

#### The Planning Balance

49. In the absence of a 5-year housing land supply and a policy regarding self-build housing, which are the most important policies for determining this application and appeal, I am directed to paragraph 11(d) of the Framework. I do however find that policy LB2 is also important policy to take into account.
50. Paragraph 11(d)(i) of the Framework states that where there are no relevant development plan policies or the policies which are most important are out-of-date, then permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal.
51. Since I have not conducted an Appropriate Assessment, I cannot make a determination as to whether the appeal development offends the policies of the Framework. However, even if this part of paragraph 11 were indeed engaged,

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<sup>6</sup> Annex 2 of the Framework



- the lack of certainty over the details of the environmental measures proposed would lead me to determine against the proposal in this instance.
52. Turning to Paragraph 11(d)(ii) of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
53. The market and affordable housing units would generate economic and social benefits from the land in a readily accessible location. Furthermore, there are benefits arising from the provision of self-build housing units, contributing to meeting the demand for this type of housing.
54. However, the location of 27 of the 34 units proposed already falls within a site designated for 28 dwellings in the Local Plan. Although the affordable housing provision in the appeal scheme would be marginally higher than that expected from the housing allocation because of the total number of dwellings being provided, the other benefits would be no greater than what the Local Plan envisages for the land.
55. In addition, the proposed self-build plots would be in an area of high landscape sensitivity with little scope to be assimilated into the local environment, thus weighing against the benefit of their provision. Furthermore, the servicing of these plots would entail connection to a nutrient neutrality system that has yet to be demonstrated robust in mitigating the effect upon Stodmarsh, raising some doubt as to the suitability of these plots from an environmental perspective.
56. Both of the main parties acknowledged that there are transitional arrangements in place as to when the requirement for First Homes provision comes into effect. Nonetheless, the legal obligation as drafted includes clauses to secure delivery of First Homes<sup>7</sup>, being a proportion of the affordable housing provision. The Council have no concerns on these clauses, and I do not see it necessary to remove references to First Homes in this instance.
57. The scheme could be carried out without adverse impacts on neighbours and highway safety. The new dwellings could be designed to high standards of energy and water efficiency, and to minimise waste. These considerations are, however, all essentially neutral in the planning balance.
58. I acknowledge that alterations to No.51 Rough Common Road were not a matter of concern for the Council either before or during the Hearing. It is implicit from the Council officer's report that such alterations are deemed acceptable. However, I have considered the proposed alterations to form part of the appeal development as a whole and therefore the acceptability of the alterations carries limited weight in the context of the overall appeal proposals.
59. Whilst there are benefits to the appeal development, I consider these to be restrained by the appeal site circumstances and the negative effects that would arise. Weighing against the benefits would be the harm to the Area of High Landscape Value, that I consider to be significant. For these reasons, the adverse impacts of permitting the development would significantly and demonstrably outweigh any benefits attached to the proposal.

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<sup>7</sup> Having regard to NPPG Paragraph 001 Reference ID: 70-001-20210524

60. For the reasons set out above, the proposed development would conflict with the of development plan as a whole, due to its location in the countryside, and its adverse impact on the area's rural character and appearance contrary to policy LB2. There are no material planning considerations that would outweigh the identified conflict with the development plan.

**Conclusion**

61. Having taken account of all the matters raised, I find that the appeal should be dismissed.

*David Wallis*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Ben Geering	of Quinn Estates
Peter Keenan	of Q+A Planning Limited
Eleanor Trenfield	of Landscape Architects Limited
Marian Cameron	of Marian Cameron Consultants Limited
Gregg Boyd	of Icen Projects

### FOR THE LOCAL PLANNING AUTHORITY:

Andrew Gambrill	of Canterbury City Council
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### INTERESTED PERSONS:

Barbara Flack	City Council Councillor for Blean Forest Ward
Alex Ricketts	City Council Councillor for Blean Forest Ward
Luke Fassum	Resident
Jeremy Baker	Resident