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## Appeal Decision

Site visit made on 29 June 2020

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 30 July 2020**

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### **Appeal Ref: APP/A2280/W/19/3240339**

### **Land at Orchard Kennels, off Meresborough Road, Rainham, Kent ME8 8QJ**

- 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 Scoop La Rocca Limited against the decision of The Medway Council.
  - The application Ref MC/19/0188, dated 18 January 2019, was refused by notice dated 23 July 2019.
  - The development proposed is up to 130 residential dwellings with associated parking and open space.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary matters**

2. The appeal seeks outline permission for the development described above. As originally submitted, the only detailed elements to be determined were layout and landscaping. Subsequently the application was amended, with the Council's agreement, to also include access. Matters relating to scale and appearance remain reserved for future consideration. In so far as the submitted plans and documents include any details of these reserved matters, I have treated these as illustrative.
3. The appeal is accompanied by a Unilateral Undertaking, which provides for 25% affordable housing, various financial contributions, and air quality measures. In the light of this undertaking, the Council accepts that Refusal Reason No 2, relating to air quality, could now be overcome by condition.

### **Planning background**

4. The development plan for the area includes the saved policies of the Medway Local Plan (MLP), adopted in May 2003. The appeal site lies outside the urban area boundary, within an area defined as countryside. MLP Policy BNE25 indicates that development in such areas should only be permitted where, amongst other things, it maintains the countryside's character, amenity and function, and also offers a realistic chance of access by a range of transport modes. The policy's stated aim is to protect the countryside for its own sake<sup>1</sup>.
5. In addition, the site is included in the Mierscourt/Meresborough Area of Local Landscape Importance (ALLI). MLP Policy BNE34 requires that development in ALLIs is only to be permitted where it does not materially harm the character and function of the landscape, unless the harm is outweighed by economic and

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<sup>1</sup> MLP paragraph 3.4.71

social benefits. Notwithstanding this latter proviso, the policy's main purpose is self-evidently to protect the ALLIs from landscape harm.

6. The Council admits to being able to demonstrate only a 3.27 years supply of land for housing. The Council's figures, based on the period 2019-24, are not disputed. On this basis, it is common ground that paragraph 11(d) of the National Planning Policy Framework (NPPF), is engaged.

### **Main issues**

7. In the light of all the submissions before me, the main issues in the appeal are:
  - i) the proposed development's effect on the character and appearance of the area, including the landscape of the Mierscourt/Meresborough ALLI;
  - ii) and the weight to be given to any conflict with Policies BNE25 and BNE34, having regard to those policies' degree of consistency with the NPPF, and the lack of a 5-year housing supply.

### **Reasoning in relation to main issues**

#### *Issue (i): Effects on the area's character and appearance*

##### *'Valued landscape'*

8. The MLP<sup>2</sup> describes the ALLIs as areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and villages. In this context, the ALLIs are seen as important not only for their landscape itself, but also as green lungs, buffers, wildlife corridors, and recreational links to the wider countryside. The Mierscourt/Meresborough ALLI in particular is described<sup>3</sup> as an area of traditional Kentish farmland with country lanes, acting as a buffer zone, maintaining separation between settlements, and providing continuity with similar policy designations in the adjoining Borough of Swale.
9. To my mind it is clear from these paragraphs of the MLP that the designation of the Mierscourt/Meresborough area as an ALLI is intended to recognise the value of the area's landscape to the locality. Having regard to NPPF paragraph 170, I see no reason to disagree that the ALLI is a 'valued landscape'.

##### *Impact of the appeal proposals*

10. In the present case, the appeal site comprises about 4 hectares of mainly open land, divided into a series of smaller, mainly rectangular parcels, of varying sizes. The northernmost of these, separated from the bulk of the site by Footpath GB12, is a smallish triangular area of cleared scrub. In its current condition, this northern part of the site displays little by way of intrinsic landscape or amenity value.
11. However, the remainder of the appeal site is very different from this. To the south of the footpath, the site becomes a mosaic of apple orchards and pasture fields, together with some smaller grassed enclosures associated with the Orchard Kennels and Orchard Cottage. These are interspersed by well-established trees, hedges and shelter belts, including three groups of mature eucalyptus trees. Together, this juxtaposition of varied rural land uses, within

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<sup>2</sup> MLP paragraphs 3.4.104 - 105

<sup>3</sup> MLP paragraph 3.4.105 (xii)

small, compartmented spaces, and the predominant linear pattern of the vegetation, forms an intricate and visually striking geometrical patchwork. In addition, the gently undulating landform adds to the sense of intimacy, and gives rise to an ever-changing sequence of views and vistas. As a result, the great majority of the appeal site has a distinctive and highly attractive landscape character. As such, this part of the appeal site contributes to the value of the Mierscourt/Meresborough ALLI, and amply justifies its inclusion as part of this valued landscape.

12. The development now proposed would necessarily mean a wholesale change in the site's character. Although some areas of green space, allotments and community orchard are proposed as part of the scheme, these would amount to only a small proportion of the site, and would be seen within the context of a wholly urban development. Most of the site's internal trees and other landscape features are proposed to be removed. The site's openness, its landscape structure, and its rural character, would all be gone, and the site's contribution to the valued landscape of the Mierscourt/ Meresborough ALLI would thus be lost in its entirety.
13. It follows from this that the development would inevitably fail to maintain the character, amenity or function of this part of the countryside, contrary to Policy BNE25, and would cause material harm to the ALLI, contrary to the aims of Policy BNE34.

*Other matters raised relating to landscape impact*

14. In coming to this view, I have had regard to what is said in the Medway Landscape Character Assessment report about the Moor Street Farmland character area, which includes the Mierscourt/Meresborough ALLI. The LCA report assessed the condition of the area's landscape as poor, and noted the presence of detracting features, including conifer belts, some examples of which can be seen at the appeal site. However, the area covered by the Moor Street Farmland LCA covers a larger area than the ALLI, and its analysis is necessarily somewhat generalised. The appeal site does contain some detracting features, including not only the conifer hedges but also some areas of car parking and commercial storage. However, these are minor elements in relation to the site as a whole. In many other respects, the appeal site typifies the types of characteristics that the LCA report identifies as positive features of the area, such as the "*undulating landscape of orchards*", and the "*diverse small to medium scale mixed farmland enclosed with shelter belts and hedges*". For the reasons that I have already identified, these qualities weigh against the proposed development. In any event, nothing in the LCA report overrides the relevant policy requirements of the adopted MLP, which include maintaining and protecting the area's character and landscape.
15. I accept that the appeal site is enclosed by existing housing on its northern, and part of its western, sides. This adjacent development also seems likely to be consolidated further, now that permission appears to have been granted for further housing between Bramling Way and the Moor Park estate. However, the development proposed at the appeal site would be seen primarily from the east, from Meresborough Road. From that direction, little if anything is seen of Bramling Way or Moor Park, both of which are heavily screened by trees and woodland. In this context, the appeal site appears as an integral part of the swathe of open farmland that wraps around the east and southeast of

Rainham. And in addition, this perception is reinforced by the nature of Meresborough Road itself, as a single-track country lane with little other built development along most of its length. Inward views are limited to a degree by the existing hedges and vegetation, but the development would still be clearly visible from some locations, including at the proposed site access, and other gaps along Meresborough Road, and also from Footpath GB12, both as it crosses the site and as it continues to the east. In all these views, the proposed development would appear as a major incursion, outside the existing built-up area, and into otherwise unspoilt countryside.

16. It appears not to be disputed that some parts of the appeal site fall within the definition of previously developed land. However, these can only amount at most to a small proportion of the site area. The removal of the metal fencing alongside footpath GB12 would enhance the path's immediate setting. But this would be offset by the loss of its current rural setting. Neither of these outweighs the harm that would be caused to the local landscape by the development as a whole.
17. I note the argument that the removal and replacement of existing non-native trees and hedges would be a benefit, but to my mind any such benefits would be very limited. In particular, the loss of the tall eucalyptus trees, which are visible over a wide area beyond the site, would in my view only add to the scheme's negative impacts.
18. A considerable effort has clearly been made to design a coherent layout, which would maximise the use of the site, whilst also offering a pleasant residential environment for future occupiers. However, the resulting scheme has a somewhat regimented appearance. I am not persuaded that the scheme's design merits, such as they are, are sufficient to outweigh the harm.

*Conclusion on character and appearance*

19. Consequently, none of these matters leads me to depart from the view arrived at above, that the proposed development would cause substantial harm to the character, amenity and function of the countryside, and to the Mierscourt/ Meresborough ALLI, contrary to the aims of MLP Policies BNE25 and BNE34.

*Issue (ii): Weight to be given to relevant policies*

*Policy BNE25*

20. MLP Policy BNE25, in so far as it seeks to prevent development in the countryside, is in effect a policy of blanket restraint on new housing outside the built-up area. Given the lack of a 5-year housing land supply in the District, rigid adherence to such a policy would make it impossible for local housing needs to be met. To this extent therefore, Policy BNE25 is not up to date or consistent with the aims of the NPPF. In these circumstances, the NPPF provides for adopted policies to be given reduced weight in decision-making. I note that for this reason the Council itself has granted permission for housing developments outside settlement boundaries, contrary to Policy BNE25, on a number of occasions.
21. But nevertheless, Policy BNE25's aim with regard to protecting the countryside remains broadly compatible with the NPPF's approach of recognising the countryside's intrinsic character and beauty. It was on this basis that the

Secretary of State gave the policy moderate weight in an appeal for 225 dwellings at Cliffe Woods<sup>4</sup>, in November 2018.

22. At the same time, Policy BNE25 also has another related purpose, in respect of promoting sustainable transport choices and patterns of growth. This element of the policy is fully consistent with the NPPF.
23. Overall it seems to me that, although there are grounds for giving Policy BNE25 less than full weight, the policy should continue to carry some weight.

#### *Policy BNE34*

24. Policy BNE34 is not a general restraint policy, but one that protects specific areas for their local landscape value. As such, it is consistent with the aims of NPPF paragraph 170, to contribute to and enhance the natural and local environment, including valued landscapes.
25. As a local rather than a national or international designation, ALLIs are at the lower end of the designation hierarchy. However, any such hierarchy must have a lower as well as an upper end, and the purpose of the policy would be entirely negated if reduced weight were given to it for this reason alone. The NPPF requires protection to be commensurate with the area's identified status and quality. Nothing in this advice suggests that locally designated areas should not be protected.
26. In restricting development in some areas, Policy BNE34 is likely to have some effect on housing delivery. But that is an inevitable side effect of protecting valued landscapes. I can see nothing in this aspect of the policy that is inconsistent with the NPPF's approach, in seeking to balance the need for housing with the interests of the environment.
27. My attention has been drawn to the Secretary of State's decision in the appeal at Gibraltar Farm, Hempstead<sup>5</sup>, in which Policy BNE34 was given limited weight. But since that decision, the position has evolved further, through subsequent judgements in the Courts, and through adjustments to national policy. In the present NPPF, when there is not a 5-year supply of housing, Footnote 7 allows for relevant policies to be found out-of-date. But nothing in the NPPF requires this approach to be applied to all such policies.
28. I note that the Council itself has on some occasions granted permission for development in ALLIs, including the Mierscourt/Meresborough ALLI. But matters of landscape and visual impact will often vary between different sites. I must judge this appeal on its own merits.
29. In the light of the evidence before me, I see no reason in this case why the conflict with Policy BNE34 should be given anything less than full weight.

#### **Other matters**

##### *Benefits of the development*

30. The provision of 130 dwellings as proposed would go some way to make up the District's current and future unmet housing needs, as demonstrated by the lack of a 5-year land supply. The 25% that would be affordable would be

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<sup>4</sup> APP/A2280/W/17/3175461: Town Road, Cliffe Woods (November 2018)

<sup>5</sup> APP/A2280/W/16/3143600: Gibraltar Farm, Ham Lane, Hempstead (March 2017)

particularly beneficial, in meeting the special needs of that sector. I appreciate that the Council is making a concerted effort to make good the shortfall in other ways, but the lack of an up-to-date local plan, and the fact that a replacement plan remains some way off, means that added weight attaches to any new housing in the District. Overall, I consider that the appeal scheme's potential benefits to the local housing stock should carry significant weight in favour of the appeal.

31. Like any other housing development, the scheme would also bring economic and social benefits, in the form of both direct and indirect employment, and through increased local expenditure and support for local businesses and services, including public transport. Increased Council Tax revenues would also contribute to the latter. Even allowing for the possible loss of the existing kennels business, which would be deprived of at least some of its existing facilities, the development would produce a significant net benefit to the local economy. These beneficial economic and social impacts carry moderate weight.
32. In addition, the scheme would have the potential for some minor ecological enhancements to benefit wildlife and biodiversity, to which I give modest weight.

#### *Section 106 obligations*

33. In addition to the affordable housing, the Undertaking would provide for financial contributions to nursery, primary and secondary education, waste and recycling, transport, open spaces, community facilities, habitat mitigation schemes, and footpath improvements. It would also provide an agreed cost basis for a package of air quality improvement measures, to be approved subsequently. From the evidence before me, I am satisfied that these obligations comply with the relevant legal tests<sup>6</sup>.
34. However, the financial contributions and air quality measures would all be intended primarily to mitigate the development's own impacts. There is no evidence that any of these would provide any additional benefits to the wider public. In the overall balance therefore, these provisions weigh only as neutral considerations.

#### *Accessibility to local facilities*

35. The appeal site is on the edge of the built up area. The shortest walking route to the town centre and railway station is via Footpath GB12, but the path in its existing condition is not suitable for the less able, or those with young children or shopping, nor for use after dark or in wet weather. Nor does it provide for cyclists. Although a sum for footpath improvements is included in the Undertaking, the section of GB12 that connects to Moor Park Close appears to be outside the appellants' ownership or control, and there is no evidence that any works could be carried out within this section.
36. The submitted plans also seem to suggest that new foot or cycle connections could be made to the north and west, but again these appear to depend on land outside the site boundary, where there is no evidence of any agreement with the relevant landowners. In the absence of any ability to create high-quality pedestrian and cycle links through the adjoining residential areas, the

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<sup>6</sup> In Regulation 122 of the Community Infrastructure Levy Regulations 2010

development now proposed would be wholly reliant on access via Meresborough Road, which skirts the edge of the built-up area. As such, the development would be poorly integrated with the town as a whole.

37. Nevertheless, although the distances to most facilities are on the edge of many people's walking range, they are potentially walkable by the reasonably able. Bus services are available at Moor Street for those who would need them. I also note that there are said to be plans for a new secondary school, which would be closer than some other existing facilities. Other recent developments around the town involve similar distances. Overall, the location weighs as a neutral factor.

#### *Local representations*

38. As well as some objections, I note that many of the letters from local residents express support for the appeal. These include a number from persons looking for housing. I have taken all of these representations into account.

#### **Planning balance and conclusion**

39. The proposed development would be contrary to Policies BNE25 and BNE34 of the adopted MLP, due to its location in the countryside, and the harm that it would cause to an Area of Local Landscape Importance. The scheme therefore conflicts with the development plan as a whole, and permission may only be granted if this conflict is outweighed by other material considerations.
40. Weighing in favour of the appeal are the benefits of providing market and affordable housing, the benefits to the local economy, and the potential for minor ecological enhancements. The weight that I attach to these is as discussed above. It is also a material consideration that I have found grounds for giving Policy BNE25 reduced weight. However, to my mind, even when these considerations are taken together, they do not outweigh the serious and substantial harm that I have identified to the valued landscape of the ALLI.
41. In addition, in view of the lack of a 5-year housing supply, and the fact that I have found Policy BNE25 to be out of date, NPPF paragraph 11(d) is also material. In such cases, that paragraph advocates that permission be granted unless one or other of the two sub-paragraphs that follow applies. However, in relation to sub-paragraph (i), given that the appeal site forms part of a valued landscape, it seems to me that in this case NPPF paragraph 170 provides a clear reason to refuse the development. And even if that were not so, having regard to sub-paragraph (ii), and all the matters set out above, I consider that the development's adverse impact on the area's character and appearance would significantly and demonstrably outweigh the benefits identified. In this case therefore, the presumption in favour of sustainable development does not justify granting permission.
42. I have taken into account all the other matters raised, but none changes the above conclusions. The appeal is therefore dismissed.

*J Felgate*

INSPECTOR