



Appeal Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **D J Board BSc (Hons) MA MRTPI**

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

Decision date: 06 December 2016

Appeal Ref: APP/V2255/W/16/3153537

Land at Church Farm, Sheppey Way, Bobbing, Kent, ME9 8RJ

- 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 Crabtree & Bobbing Ltd against the decision of Swale Borough Council.
 - The application Ref 15/505488/OUT, dated 6 July 2015, was refused by notice dated 10 June 2016.
 - The development proposed is residential development for 98 houses.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Crabtree & Bobbing Ltd against Swale Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with all matters except access reserved for future approval. The application was formally amended from '100' to '98' dwellings. I have therefore considered the appeal on this basis and my description of the development reflects this change. The application was accompanied by 'sketch layout' drawings which I have considered as purely indicative.
4. A legal agreement containing planning obligations pursuant to section 106 of the Act was submitted at the hearing.

Main Issue

5. The main issue in this case is whether the site is suitable for housing.

Reasons

Planning Policy

6. The development plan includes the saved policies from the Swale Borough Local Plan (2008) (LP). The policies referred to in this case are SH1, SP1, SP4, E6, E7 and H2. Policy SH1 refers to the settlement hierarchy whilst E6 refers to the countryside and in particular land falling outside of the defined built up
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area boundaries. E7 refers specifically to the separation of settlements. H2 identifies where permission for new residential development will be granted. SP1 and SP4 require proposals to accord with the principles of sustainable development and ensure that sufficient land is available for the timely provision of new housing. The proposal would be for residential development outside of a built up area in the countryside. It would not meet any of the exceptions identified in the relevant policies. As such it would not be in accordance with the development plan.

7. The National Planning Policy Framework (The Framework) sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
8. The Framework sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
9. According to paragraph 49 of the Framework, 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. Local Plan policies SH1, SP4, and policy H2 would be such policies on the basis of their potential effect in influencing the supply of housing land by restricting the locations where new housing may be developed. Policies E6 and E7 have elements that relate to the supply of housing. There is no dispute that the Borough is unable to demonstrate a five-year housing land supply, so that paragraph 49 is engaged. Having regard to this paragraph, the above policies are not up-to-date. Accordingly in considering these policies in relation to housing supply they attract very little weight in view of the acknowledged shortfall in the borough.
10. The Council argues that progress on the emerging Swale Local Plan (Bearing Fruits 2031) (SLP) is relevant to the weight that should be given to these policies. This was submitted for examination on 20 April 2015, and the examining Inspector has produced Interim Findings, including an increase in the housing requirements to meet the objectively assessed need (OAN) of 776 dwellings per annum. The Council accepts that in its submitted form the plan has in essence been found to be unsound, but relies on the Inspector's indication that the shortcomings can be dealt with by way of the main modifications. It is argued that this process has identified a clear pathway and timetable for the modifications to be achieved, with a realistic adoption date for

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the plan in 2017, as set out in its report regarding the updated Local Development Scheme.

11. In particular, reliance is placed on the Inspector's endorsement in the Interim Findings of the emerging settlement strategy. This strategy is set out in emerging policy ST3. The essence of the strategy is an approach to development based on a hierarchy of settlements, therefore carrying forward that of the currently adopted plan which includes restraint on development in this location. The Council argues that the proposal is not in accordance with the strategy, in the same way as it conflicts with the adopted development plan.
12. The Council explained that this strategy ranks settlements in the district. It is clear that in those below 'Rural Local Service Centres' and outside of the built up area development would not be permitted unless supported by national planning policy and that would protect or enhance the countryside location. This is a matter I consider further under the second main issue.
13. I understand that the Council consider that policy ST3 is at an advanced stage and have drawn my attention to an appeal decision where this factor was taken into account¹ and their revised Local Development Scheme. Nevertheless the plan has not yet been examined and found sound. Further the example provided relates to a nearby authority and I do not have the detailed information informed the inspectors conclusions in that case. As such it is not directly comparable and I afford it very limited weight.
14. Taking this policy position into account the appellants submit that the appeal site should be developed in order to assist in addressing what they identify as a 'severe' shortfall in housing supply. The appeal site is not proposed to be allocated. The appellants point out that the site did rank favourably within the site allocations process but was then removed. The appellants have also drawn my attention to the Councils Annual Monitoring Report (AMR) for 2013-2014. In particular that the rate of delivery is slow. In doing so the assertion is that the 'severity' of the Council's shortfall weighs in favour of the proposal which is deliverable and could make a contribution to boosting the supply of housing in the district.
15. I understand that the Council has shown that it is making progress towards having a five-year supply of deliverable housing sites. However, it remains the case that one does not exist. In addition whilst there is a clear timetable in place for adoption of the SLP its examination remains to be completed. Therefore, overall, having carefully considered all the various elements relating to the Council's housing supply position, I consider that the provision of additional dwellings in this case would weigh in favour of the proposal.

Character and appearance

16. There is no dispute that the site is located in an area that is identified as an 'important local countryside gap' within the LP policy E7 and SLP policy DM25. The aim of the countryside gaps is to prevent settlement coalescence. LP policy E6 also seeks to protect the quality, character and amenity of the countryside. This is consistent with an aim of the Framework which is to the intrinsic character and beauty of the countryside.

¹ APP/J2210/A/14/2227624

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17. Within the Swale Landscape Character and Biodiversity Appraisal (LCA) the site is located within the 'Iwade Arable Farmlands'. The LCA describes the area as a gentle undulating rural landscape. It also identifies that housing is clearly evident in views across the surrounding landscape and that several major transport routes cut through the area. One of these routes is the A249 which is adjacent to the appeal site. Nevertheless it goes on to set out that '...in spite of the intrusive effects of these heavily trafficked routes, many parts of this character area retain a sense of isolation and tranquillity...'
18. The LCA identifies that the landscape is generally in 'poor' condition and that this is in part to residential ribbon development that has taken place in a number of styles thus creating an incoherent character. However, this does not alter the importance of the site as a gap. In addition the LCA is clear that the areas strength and character should be restored.
19. The A249 runs along the south eastern site boundary. It provides a clear physical barrier adjacent to the main area of Sittingbourne, marking a transition to the countryside beyond. The appellant contends that the development would be hugely influenced by its urban neighbour and that there would not be an issue of coalescence.
20. I appreciate that the area known as the 'Bobbing Apple' at the junction with the A249 contains a number of buildings and services. Nevertheless, when travelling toward the appeal site from this location or Quinton Way there is a distinct change in character. The buildings, whether domestic or commercial, become more sporadic and are set amongst large areas of open countryside. Even taking into account some other developments further along Sheppey Way toward Iwade, the predominantly rural feel remains, particularly when entering this part of Bobbing from Sittingbourne.
21. The proposed development either side of the existing dwellings and commercial buildings would completely remove this sense of openness which is currently experienced along this section of Sheppey Way. This would be in direct conflict with LP policies E6, E7 and SH1 which seek to protect the countryside and SLP policy ST3 in so far as it sets out that development proposals outside of built up areas should enhance the intrinsic value, landscape setting, tranquillity and beauty of the countryside.
22. It was confirmed at the Hearing that the site is Grade I agricultural land. I appreciate that it is irregular in shape and split by buildings. In addition the appellant submits that there is no alternative at lower grade and that the Council has proposed allocations that would use best and most versatile agricultural land. Nevertheless, this site is not allocated and I have no detailed evidence before me regarding the impact of developing the land on the wider holding. Taken alone this point would not be decisive but adds weight to the harm to character and appearance. The scheme would conflict with emerging SLP policy DM31 which is consistent with the Framework in so far as it seeks to direct development to areas of poorer quality land in preference to that of higher quality.
23. I note that the appellants submit that the Council's screening opinion offers support in so far as it refers to the proposal being 'well related' to the nearby built up area. Whilst worded in this manner the statement is made under the considerations of 'character of the potential impact' when coming to a view on whether any subsequent application would require an environmental

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statement. The correspondence goes onto suggest that further advice should be sought before an application is made. Therefore I accord this very limited weight in assessing the impact of the proposal on character and appearance. I have in any event judged the scheme before me based on the evidence and its individual merits.

24. I therefore conclude that the development of the site for 98 dwellings would harm the character and appearance of the area. It would be in conflict with LP policies E6, E7, SH1(6) and SLP policies DM24, DM25, DM31 and ST3(6).

Other Matters

25. The appellant referred be to two appeal decisions². I have considered these decisions carefully. However, neither scheme is directly comparable, having different main issues, therefore I attach only limited weight to them.
26. The presence of Brickearth on the site was raised at the hearing. The Council confirmed that the site coverage shown on the indicative map is marginal. The Minerals Authority did not object to the scheme and the Council confirmed, if planning permission were granted, that a condition regarding prior extraction would not be necessary in this case.

Planning Balance

27. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles economic, social and environmental which cannot be undertaken in isolation.
28. As noted above the policies of the LP, in so far as they related to the supply of housing land, cannot be considered up to date. This includes those restricting development in the countryside and those setting the overall strategy for housing development. Therefore in line with paragraph 49 and 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
29. There would be economic benefits of housing and affordable housing both during construction and occupation. There would also be social benefits from the provision of open space and affordable housing as well as other community benefits secured through the planning obligation. These benefits weigh in favour of the scheme.
30. There is no dispute that the development would be reasonably well located in terms of access to services and that there would be no harm to nearby heritage assets. However, there would be a need to travel to higher order facilities beyond Bobbing. As such I attach only limited weight to this.
31. In addition I have found that there would be harm to the character and appearance of the area if the development were to go ahead. LP policies E6 and E7 seek to protect landscape character. In this regard they are not out of date and relevant to the consideration of character and appearance. As such I have attached significant weight to the significant and demonstrable harm that the development of 98 dwellings would cause to the character and appearance of the area and the conflict with the development plan in this regard.

² APP/V2255/A/14/2224509; APP/V2255/W/15/313552

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32. Therefore in this case the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits such that the proposal would not represent sustainable development when assessed against the policies in the Framework as a whole.

Conclusion

33. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Michael Drury BA MRTPI Agent for the appellants

FOR THE LOCAL PLANNING AUTHORITY:

Anna Stonor BA MSc MRTPI Swale Borough Council
Martin Evans MPlan (Hons) Swale Borough Council
MRTPI

INTERESTED PERSONS:

Cllr James Hunt Swale Borough Council
Cllr Mike Baldock Swale Borough Council
Robert Ball Bobbing Parish Council
Gerald Lilley Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Comprehensive list of plans
- 2 Update on Local Development Scheme dated 5 October 2016
- 3 Extract from Annual Monitoring Report 2013-2014
- 4 SBC/PS/109b – Existing and additional allocations – Sittingbourne Area
- 5 Extract from Bearing Fruits 2031
- 6 Letter from Mr Lilley dated 17 October
- 7 Copy of emerging policy CP6
- 8 Council's cost rebuttal supporting information
- 9 Extract from Kent Minerals and Waste Local Plan
- 10 Copy of planning obligation dated 18 October 2016.



The Planning Inspectorate

Costs Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **D J Board BSc (Hons) MA MRTPI**

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

Decision date: 06 December 2016

Costs application in relation to Appeal Ref: APP/V2255/W/16/3153537 Land at Church Farm, Sheppey Way, Bobbing, Kent, ME9 8RJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Crabtree & Bobbing Ltd for a full award of costs against Swale Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development for 98 houses.
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Decision

1. The application for costs is refused.

The submissions for Crabtree & Bobbing Ltd

2. The application was made verbally at the hearing. The applicants submitted the scheme to the Council on 7 July 2015. There was every indication that it would be recommended for approval. Therefore an appeal was not made against non-determination. Once the twelve weeks had passed the applicants hands were tied. The decision was issued on 10 June 2016 after 11 months. The applicants claim is for a return of fee dues to the proposal not being determined in a reasonable time.

The response by Swale Borough Council

3. The Council submitted its rebuttal verbally and provided extracts from the Planning Practice Guidance (PPG) and an email exchange regarding and extension of time. Its submission is that the costs section of the PPG relates to the appeal process. Nevertheless, even if a claim was allowed regarding the application process, the applicants agreed to an extension of time in any event. Therefore there are no grounds for costs.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 5. Paragraph 033 of the PPG is clear that costs cannot be claimed for the period during the determination of the planning application. Behaviour and action at the time of the application can be taken into account when considering whether costs should be awarded.
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6. I understand that the applicants are frustrated at the length of time taken to make a decision and what they consider to be conflicting advice from the officers. However, there is nothing to suggest that the appeal could be avoided altogether. Further, the applicants did agree to the extension to the application deadline to the 10 June 2016. Therefore, this delay in the application process would not in itself amount to unreasonable behaviour as set out in the PPG in this case.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

D J Board

INSPECTOR