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## Appeal Decision

Site visit made on 24 January 2017

by **Lesley Coffey BA Hons BTP MRTPI**

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

**Decision date: 6<sup>th</sup> March 2017**

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**Appeal Ref: APP/V2255/W/16/3157268**

**Land to East of St Marys View, Newington, Kent ME9 7JW**

- 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 Swann Construction (UK) LLP against the decision of Swale Borough Council.
  - The application Ref 15/509664/OUT, dated 20 November 2015, was refused by notice dated 8 July 2016.
  - The development proposed is the erection of up to 26 residential dwellings with all matters reserved for future determination with the exception of access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposal is an outline application with all matters with the exception of access reserved for future determination. The appellant submitted plans showing how the development might be accommodated, but these are for illustrative purposes only. Nevertheless they provide a useful guide when considering the proposal before me.
3. The appellant submitted a Unilateral Obligation under s106 of the Act. This covenants to make a financial contribution towards education, libraries, open space improvements, wheelie bins and mitigation in respect of the Swale Special Protection Area. In addition it covenants to provide 40% of the dwellings as affordable housing, provide a reptile mitigation strategy and to apply for a Traffic Regulation Order in respect of passing places and parking restrictions. I have taken these obligations into account in reaching my decision.

### Main Issues

4. I consider the main issues to be:
    - Whether the road network is adequate for the proposed development;
    - The effect of the proposal on the living conditions of the occupants of the dwellings in Church Lane, with particular regard to traffic noise and disturbance;
    - The effect of the proposal on the character and quality of the landscape and locality; and
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- The effect of the proposal on the supply of the best and most versatile (BMV) land.

### **Reasons**

#### *Adequacy of Road Network*

5. St Marys View connects to Church Lane which links the site to the centre of Newington and the A2. It provides the quickest and most convenient access to surrounding towns and centres, including the Medway towns, Sittingbourne, and the motorway network. Church Lane is subject to a 30mph speed limit, and only subject to parking restrictions for the first 30 metres from the junction with the A2. The road varies in width from 4.5 metres at its narrowest point to 7.5 metres in the vicinity of its junction with School Lane.
6. The Transport Statement identifies a critical area in terms of width to the south of the railway bridge where there is a build-out of some 50 metres. It also noted that roadside parking takes place along Church Lane, primarily due to the lack of off-street parking available to many existing properties. The Council states that due to congestion it is often not possible for vehicles to pass each other within Church Lane. Newington C of E Primary School is located to the east of Church Lane and the Council advise that this adds to congestion during drop off and pick up times.
7. The Council does not dispute any of the technical data within the appellant's Transport Statement. Nevertheless, the Parish Council is critical of the timing of the survey which was conducted about two weeks before the start of the school summer holidays. It considers that it is therefore likely to show fewer vehicle trips compared with other times. There is no evidence to suggest that the date of the survey had a material impact on the number of trips associated with the primary school. I therefore consider that the Transport Statement provides a reliable evidence base against which to assess the proposal. It indicates that existing peak hour traffic movements on Church Lane would increase by 14 movements in the morning peak period and 16 movements during the evening peak period.
8. The Highway Authority consider that the proposal is unlikely to have a material impact on the traffic movements during school traffic peak periods, since residents of the development would be likely to avoid making car based journeys using Church Lane at those times. It also considers that any primary school children residing within the development would probably not generate vehicle movements at these times due to the proximity of the site to the school. I share this view.
9. Notwithstanding this, Church Lane becomes very heavily parked during evenings and weekends when more people are at home. At these times there can be little opportunity for vehicles to pass one another over a considerable length. The Highway Authority advises that this problem has increased over time with increased car ownership associated with the terraced housing along Church Lane and that as a consequence parking has spread into the informal passing place under the railway bridge. There is a further passing place adjacent to the garages nos. 21 and 23, however, the length of the break in parking is fairly short.

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10. The proposed development would add to the traffic passing through this section of Church Lane, and increase the likelihood of congestion or conflict between vehicles. The Highway Authority suggested that some mitigation is necessary in the form of waiting restrictions in order to formalise a usable passing place by the garages, and secure the historic passing place under the bridge. Since the submission of the appeal the Highway Authority advise that waiting restrictions under the bridge have now been approved by the Swale Joint Transportation Board, and these are due to be implemented in the near future.
11. The submitted planning obligation covenants to submit and implement a TRO in relation to the provision of parking spaces by the garages for 21 and 23 Church Lane and extending the existing parking restrictions from the A2 to the entrance of Newington Methodist Church. Subject to these measures, and control over construction traffic movements, the Highway Authority does not object to the proposal.
12. The Traffic Regulation Order would require statutory periods of advertisement and consultation. The Council consider that residents may be minded to object to such restrictions, on the grounds that existing parking would be further diminished. The latter would remove one on-street parking space between the access to the Methodist Church and the garage immediately south of it. Any objections would be a matter for the Highway Authority to consider.
13. The Council is also concerned that even when the passing space under the bridge is implemented, the bend in the road and presence of parked vehicles mean that visibility towards the north would still be restricted. There is no evidence to suggest that the bend in the road restricts visibility to the extent it has implications for highway safety.
14. I appreciate that the proposed measures may not resolve all of the existing issues with parking and the free flow of traffic within Church Lane. However there is no substantive evidence to indicate that, once these measures have been implemented, the appeal proposal would materially worsen the existing situation.
15. The Parish Council also refer to other committed development at Vicarage Gardens, High Oak Hill, School Lane and Vicarage Close. It considers that these schemes would add to additional traffic on Church Lane. I understand that the development at Vicarage Close is complete and therefore any traffic associated was reflected within the Traffic Statement. The appellant states that the traffic generated by the development at School Lane is offset by the previous agricultural use, and that the scheme at High Oak Hill would generate fewer trips than the previous industrial use. No evidence to the contrary has been submitted. The development at Vicarage Gardens relates to 4 dwellings and would be unlikely to have a significant effect on traffic.
16. The Council also refer to the Department for Transport Traffic Advisory leaflet 2/04 which provides advice on considerations when planning a single track with passing places scheme. This advises that passing places for single track roads should have a minimum length of three cars. However, the lack of passing places is an existing situation, and the measures due to be implemented by the Highway Authority, together with the planning obligation submitted by the appellant should ensure that the proposal would not exacerbate the existing situation and may improve it.

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17. I therefore conclude that the road network is adequate for the proposed development and that the proposal would not conflict with policy T1 of the Swale Borough Local Plan (adopted 2008) which resists proposals that would generate a volume of traffic in excess of the capacity of the highway network and policy DM6 of the emerging Local Plan, Bearing Fruits 2031: The Swale Borough Local Plan Part 1 which has a similar intent.

*Living Conditions*

18. Policy SP2 of the Local Plan requires adverse impacts arising from development proposals to be minimised and mitigated, whilst policy E1 requires development to cause no demonstrable harm to residential amenity and other sensitive uses or areas. Policy DM14 of the emerging Local Plan has a similar intent.
19. Traffic from the proposed development would be likely to use Church Lane. The Council considers that the increase in traffic movements would be noticeable within some of the dwellings which are situated close to the carriageway. It also considers that conflict between vehicles travelling in opposite directions on Church Lane is likely to lead to an increase, and would add to the disturbance which local residents currently experience.
20. The Transport Assessment identifies that the proposal would lead to a modest additional increase in trips which would equate to one extra vehicle every four to five minutes during peak hours. These figures are not disputed by the Council. Church Lane is currently used by vehicles, including traffic visiting the school. Having regard to the proposed mitigation I consider that there would be no worsening of the existing traffic congestion and there may well be a slight improvement. Therefore, the proposal would be unlikely to have a significant adverse impact on the living conditions of the occupants of the dwellings in Church Lane.
21. I therefore conclude that the proposal would not harm the living conditions of the occupants of the dwellings in Church Lane and would comply with policies SP2 and E1 of the Local Plan and policy DM14 of the emerging plan.

*Character and Appearance*

22. St Marys View is a cul-de-sac which lies on a north-south alignment and connects via a shorter east-west branch to Church Lane. The appeal site is a broadly rectangular piece of land that runs parallel to St Marys View and forms part of a much wider land holding that extends to the north and the east. The land towards the southern part of the site rises towards the railway embankment. The Newington Church Conservation Area, lies to the north. The tower to the Grade I listed Parish Church of St Mary dominates views looking north from St Marys View. The site adjoins the built up boundary of Newington and comes within the designated countryside as defined by both the adopted and emerging Local Plan. The site is not covered by any national or local designations for landscape quality, although there is a locally designated Area of High Landscape Value on the north side of Church Lane, which includes most of the conservation area and also Wardwell Wood and the area to the north.
23. The site is located on the side of a valley that drops down to the east away from the existing built development of Newington, before rising again to the

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north east and south east. The landscape to the east of Newington is an attractive mix of rising land and valleys, woodlands and open arable fields.

24. The opposite side of St Marys View is residential in character with a mixture of frontage and cul-de-sac development. The appeal site marks the transition from the urban environment of Newington to the countryside. The hedgerows and trees on the site give it a distinctly rural character which contrasts with the tight-knit urban development of Newington.
25. The site is currently overgrown with a dense mix of vegetation including some fruit trees and dense scrub. An arboricultural survey submitted by the appellant found no mature trees on the site. The only individual trees recorded were 4 oaks and 4 ash, together with some smaller hawthorn and hazel. Whilst these trees are of limited merit individually, they combine with the hedgerows and other vegetation to give the site a wooded rural character which forms the backdrop to this part of Newington.
26. Local Plan policies E6 and E9 seek to protect the quality, character and amenity value of the wider countryside. Proposals are expected to be informed by, and sympathetic to, local landscape character and quality and safeguard or enhance landscape elements that contribute to the distinctiveness of the locality. Policy DM24 of the emerging Local Plan has a similar intent.
27. The indicative layout shows a block of flats close to the railway line, adjoined by terraced, semi-detached and detached dwellings fronting St Marys View with associated garages and parking courts accessed directly off St Marys View. There would be a separate parking area for the apartments. It is intended that the dwellings would be 2 storeys in height. Whilst I appreciate the proposal is in outline form, having regard to the size and shape of the site I consider that the general form of development is likely to be similar to that shown on the illustrative plan. It is probable that the majority of the vegetation on the site will be removed. The submitted unilateral undertaking includes provision for a 10 metre deep buffer on the adjoining land to assist with the assimilation of the proposal into the surrounding landscape and mitigation in respect of biodiversity.
28. It is common ground between the parties that the proposal would not harm the setting of the Newington Conservation Area or the listed St Marys Church. Based on the submitted evidence and my observations at the time of my site visit I have no reason to disagree.
29. The site comes within the *Iwade Arable Farmlands as identified by the Swale Landscape Character and Biodiversity Appraisal SPD*. This area is characterised by very gently undulating rural landscapes that may traditionally have supported fruit growing. The SPD refers to the large arable/horticultural fields with regular field patterns and rectangular shapes predominating, and a sparse hedgerow pattern. It concludes that overall the farmlands are generally in poor condition largely as a result of agricultural intensification with many field boundaries lost, with remnant orchards and other fragmented features providing reference to the historic landscape pattern. Guidelines for the Iwade Arable Farmlands focus on restoring the rural environment where possible through planting and restoration initiatives. A priority is seen as the conservation and careful management of the older, traditional orchards particularly where biodiversity can be enhanced. It is assessed as a moderately sensitive area.

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30. The appeal site and the adjoining land display many of the characteristics of this landscape area. It has not been subject to agricultural intensification, and the remnants of the orchard are still apparent.
31. There would be some distant and limited views of the proposed dwellings from the north east. Due to the distance and the topography, I consider that in these views the proposal would blend with the remainder of the settlement and would not give rise to significant harm.
32. From the east there are partial and filtered views towards the site from the public footpath which runs along the bottom of the shallow local valley past Moat Cottage. There are also more elevated and clearer views from the public footpath further to the east, which runs from the railway crossing to the north, and also from the footpath which runs up Keycol Hill, to the south of the railway line. I consider the change in the character of the landscape would be noticeable in these views.
33. The main views would be from St Marys View and the dwellings to the west. The existing countryside would be replaced with a view of a suburban development. Since the site occupies the higher ground and lies adjacent to the settlement boundary, the removal of the vegetation and introduction of the proposed dwellings would change the character and setting of this part of Newington.
34. The site boundary appears to be arbitrary and unrelated to features on the ground or the topography of the site. I appreciate that the scheme includes a landscape buffer, but I consider that this would serve to emphasise the awkward relationship between the appeal scheme and the surrounding countryside. The loss of vegetation would be considerable and in my view the proposal would significantly harm the rural character and setting of Newington. This harm would not be mitigated by the landscape proposals. The proposal would therefore conflict with paragraph 17 of the National Planning Policy Framework, which amongst other matters states that regard should be had to the different roles and character of different areas, and that the intrinsic character and beauty of the countryside should be recognised.
35. In addition, due to the shape of the site the proposal would be likely to be dominated by the proposed parking areas, and on the basis of the submitted evidence I am not persuaded that it would deliver the high quality public realm sought by the Framework.
36. I therefore conclude that the proposal would significantly harm the character and appearance of the surrounding area and would fail to comply with Local Plan policies E6 and E9.

#### *Loss of Agricultural Land*

37. The appellant acknowledges that the proposal would result in the loss of an area of BMV land. Policy DM31 of the emerging local plan sets out that development on BMV land will only be permitted when there is an overriding need that cannot be met on land within the built up area boundaries, unless the site is allocated for development by the Local Plan or, there is no alternative site of lower quality. Notwithstanding this, the Council concedes that it in order to meet its housing requirements within the emerging Local Plan it has been necessary to allocate housing sites on BMV land. It states that the

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allocated sites would result in a significant loss of BMV land, and the appeal site would add to this loss, albeit on a small scale. The Council suggest that policy DM31 should be afforded significant weight given that the interim findings of the examination inspector did not recommend any modification to this policy.

38. Paragraph 112 of the Framework states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. The Framework does not define the meaning of the term 'significant development'. The appellant contends that the 20 hectare threshold for consulting Natural England on proposals for the loss of BMV land supports his view that the proposal cannot be considered to be significant development. However, the Framework does not set such a threshold for the consideration of 'significant development' in the context of paragraph 112.
39. The loss of BMV land is undesirable and unsustainable in that it is a finite resource. I understand that the site forms part of a belt of predominantly high-quality agricultural land stretching all the way from Gillingham to Faversham. The emerging Local Plan indicates that some 70% of the 23,000 ha of agricultural land in the Borough is BMV land. The appeal site is about 0.75 Ha in area. The wider site (4.85 ha) does not form part of the appeal site and would remain as BMV land. The appellant states that the site was previously used as a fruit orchard but has not been cultivated since 1973, however, this does not diminish the agricultural quality of the land. The loss of BMV land would be relatively small and in my view would not be significant in the context of the supply of BMV land within the Borough. Whether the loss of such land is necessary is a matter for the overall planning balance.

#### *Other Matters*

40. The appellant suggests that should the wider site return to active agricultural use, some of the ecological benefits provided by the wider site at the present time would be lost and the proposed ecological enhancements would not be realised. To some extent this would be dependant on the nature of any future agricultural use. Some agricultural uses, including orchards, can deliver significant benefits in terms of biodiversity and ecology. Balanced against this, the development of the appeal site would require mitigation in order to compensate for the loss of habitat. I therefore afford this consideration limited weight.
41. The Council published *Bearing Fruits 2031 - The Swale Borough Local Plan Proposed Main Modifications* in June 2016. The modifications were made in response to the Examination Inspector's Interim Findings. They included additional housing site allocations to meet the identified Objectively Assessed Need for housing. Public consultation on the modifications ran between 24 June – 8 August 2016 and the Council anticipate that the examination will resume in the very near future.
42. No evidence has been submitted to indicate the extent of the existing shortfall in housing land. The Council has recently taken steps to address the shortfall through modification to the emerging plan. The recently published Statement of Housing Land Supply 2015/16 identifies a 5.4 year supply. These additional allocations have not been subject to examination, but they are informed by the

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Examining Inspector's Interim Findings. Nevertheless, the Council acknowledges that at the present time it does not currently have a five year supply of housing land, therefore in accordance with paragraph 49 of the Framework the policies for the protection of the countryside should not be considered to be up to date.

43. At the heart of the Framework is a presumption in favour of sustainable development. There are three dimensions to sustainable development, social, economic and environmental. These roles should not be undertaken in isolation, because they are mutually dependent. In social terms the proposal would provide market and affordable housing, within walking distance of a primary school, shops, services and public transport.
44. Economically the proposal would provide employment during the construction period and would make a modest contribution towards household expenditure in the area. The developer contributions would provide mitigation against the adverse impacts of the proposal on local infrastructure and therefore are not an economic benefit of the proposal. In environmental terms, the proposal would result in the loss of BMV land, and would result in harm to the landscape and character of the area. Whilst the proposal includes mitigation measures these would not outweigh the environmental harm arising from the proposal.

#### *Overall Planning Balance*

45. Paragraph 14 of the Framework states that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted 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.
46. In the absence of a five year supply of housing land policies E6, and E9 are out of date for the purposes of the Framework. However, this does not mean that these policies carry no weight. As set out above, the Framework recognises the intrinsic beauty and character of the countryside as a core planning principle, and it should be given significant weight. However, these policies clearly carry less weight than they would if there were a five year supply of deliverable housing sites.
47. Whilst there is an existing shortfall in the five year housing land supply, it is likely that this will be resolved in the context of the emerging Local Plan and therefore the existing shortfall is likely to be of limited duration. In this context there is insufficient evidence to persuade me that the loss of the BMV land which comprises the appeal site is necessary to meet the housing needs of the Borough.
48. I have concluded above that the proposal would cause significant harm to the rural character and appearance of the site and the surrounding area and would also result in the loss of BMV land.
49. Whilst I have found that the road network could accommodate the proposal, and that it would not harm the living conditions of residents, these matters do not weigh in favour of the proposal, they merely do not add to the harm. The contribution of the proposal to market and affordable housing weighs in favour of the proposal and I afford it moderate weight. None of the other factors considered carry any more than limited weight in favour of the proposal.



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50. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.

51. For these reasons, the appeal should be dismissed.

*Lesley Coffey*

INSPECTOR