



Appeal Decision

Site visit made on 6 June 2017

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 27th June 2017

Appeal Ref: APP/V2255/W/17/3171596

Land adjacent to 1 Fairview Cottages, Frinsted Road, Milstead ME9 0SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Boucher of Champion Court Farm Limited against the decision of Swale Borough Council.
 - The application Ref 16/508463/FULL, dated 14 December 2016, was refused by notice dated 28 February 2017.
 - The development proposed is new three bedroom dwelling with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for a new three bedroom dwelling with associated parking at land adjacent to 1 Fairview Cottages, Frinsted Road, Milstead ME9 0SB in accordance with the terms of the application, Ref 16/508463/FULL, dated 14 December 2016, subject to the conditions set out in the Schedule to this decision.

Main Issues

2. The main issues are:
 - the effect of the development on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty (the AONB) and the Milstead Conservation Area (the CA);
 - the effect of the development on the living conditions of the occupiers of Roslyn, with particular regard to whether the development would be overbearing; and
 - whether the site would be an appropriate location for a dwelling; having regard to local and national planning policies concerning housing in rural areas.

Reasons

Character and Appearance

3. The development would involve the construction of a two storey, three bedroom, detached house. The house would occupy a strip of land to the side of 1 Fairview Cottages (No 1). No 1 is a two storey semi-detached house that it is bounded to the north by Roslyn, a detached house. The house would be an addition to a ribbon of eleven dwellings, comprising a mixture of houses and bungalows, along the western side of Frinsted Road. That ribbon of dwellings forms part of Milstead, a small, primarily residential hamlet.
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Milstead is within the AONB and the landscape in the immediate area is dominated by arable farmland and orchards.

4. The plot for the house would be narrower than the nearby dwellings, however, its flank walls would be off-set from the side elevations of No 1 and Roslyn. In relative terms the house would have a deeper two storey footprint than No 1 and Roslyn. However, the house's extra depth would not be excessive and would not be readily apparent in the streetscene, given the infill nature of the house. I therefore consider that the siting, scale and the uncomplicated design of the house would mean that it would sit comfortably within its plot and that it would not appear out of place within the streetscene. I am also of the opinion that the house would not have a cramped appearance when compared with the eleven properties in the ribbon of development that it would become a part of.
5. The site is in area that is recognised as being of the highest landscape quality and scenic beauty, given the AONB designation. The addition of built development on this site would therefore result in some change to the AONB's appearance. However, the magnitude of that change would be very limited, given that the development would involve the construction of a house amongst others. The limited scale of the development would mean that the wider landscape quality and beauty of the area would be unaffected. I am also of the opinion that the construction of a house amongst others would not be harmful to the AONB's character and appearance within the immediate vicinity of the site, which is strongly influenced by the existing ribbon development.
6. The CA is limited in extent and comprises a small number of dwellings and the Church of St Mary and the Holy Cross, which all immediately adjoin the crossroads formed by Frinsted Road, Rawling Street, Manor Road and Horn Hill. The southern setting to the CA comprises farmland and the ribbon of eleven dwellings I have referred to above. The site, I estimate, is around 150 metres from the southern extremity of the CA and the location of the house amongst others would mean that it would not, to any appreciable degree, become a distinctive element within the CA's setting. I therefore consider that the house would not harm the CA's setting and that this heritage asset's character and appearance would be preserved.
7. For the reasons given above I conclude that the development would not be harmful to the character and appearance of the area, including the AONB and the CA. With respect to this main issue there would therefore be no conflict with saved Policies SP1, E1, E6, E9 and E15 of the Swale Borough Local Plan of 2008 (the Local Plan) or the National Planning Policy Framework (the Framework), most particularly the fifth core planning principle (paragraph 17 – recognising the intrinsic character and beauty of the countryside), paragraphs 109 and 115 and section 12 (Conserving and enhancing the historic environment). That is because the development would be of a scale, design and appearance that would be appropriate to and respectful of the distinctiveness of its surroundings, with there being no harm to the AONB's appearance, while the CA's character and appearance would be preserved.
8. The Local Plan is currently in the process of being replaced and the emerging Local Plan¹ has reached an advanced stage in its examination. While

¹ The Swale Borough Local Plan "Bearing the Fruits 2031"

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emerging Policies ST1, ST7 and DM24 have no statutory status, for the reasons given above, I consider that there would be no inconsistency with them.

Living Conditions

9. It is contended that the occupiers of Roslyn would, because of the house's siting, experience an unacceptable sense of overbearing. However, Roslyn has no flank windows in its principal side elevation. Accordingly from within the interior of Roslyn the new house would only be visible obliquely from the windows in Roslyn's main rear elevation and from its conservatory. However, I consider that there would be sufficient separation between Roslyn's windows and conservatory for the new house not to have an overbearing presence when seen from Roslyn's interior.
10. The house's rearward projection would be appreciable from within Roslyn's rear garden, however, I consider that its extent and the degree of physical separation would mean that the house would not have a domineering presence when seen from the neighbouring garden. For so long as there is a hedge along the boundary between Roslyn and the site that would also serve to provide some screening for the house. I am also of the opinion that the orientation of Roslyn relative to the house would be such that the occupiers of Roslyn would not experience any harmful losses of light to the interior or garden of their property.
11. I therefore conclude that the development would not be harmful to the living conditions of the occupiers of Roslyn. There would therefore be no conflict with Policy E1 of the Local Plan because no demonstrable harm would be caused to the living conditions of the occupiers of Roslyn. There would similarly be no conflict with Policy DM14 of the emerging Local Plan. Although conflict with Policy E19 of the Local Plan has been cited, I find that not to be case because this policy does not specifically address the safeguarding of living conditions.

Location of the development

12. Milstead does not have a defined built up area boundary for the purposes of the Local Plan. The house for the purposes of the Local Plan would be located in the countryside and there would be conflict with various policies of the Local Plan that address the location of new development, most notably saved Policy E6, which discourages new dwellings in settlements without defined built up area boundaries. Policy E6 refers to a number of exceptions when development in a location such as this may be acceptable. Those exceptions, amongst other things, relate to development that is required in association with a use requiring a rural location, the reuse of a building, the rebuilding or extension of a dwelling or the provision of affordable housing. The aforementioned exceptions do not apply to this case.
13. Policy ST3 of the emerging Local Plan identifies a locational strategy similar to that of the adopted Local Plan. The development would therefore not accord with emerging Policy ST3.
14. However, the Council accepts that it cannot currently demonstrate a five year supply of deliverable housing sites (HLS). Accordingly because the adopted Local Plan's policies for the supply of housing are not up to date the fourth

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bullet point under paragraph 14 of the Framework is engaged. Planning permission should therefore be granted unless ‘...any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted’.

15. Paragraph 55 of the Framework promotes sustainable development in rural areas and states that housing should be located where it will enhance or maintain vitality in rural communities, with development within one village in some instances having the potential to support services in others nearby. Paragraph 55 goes on to state that isolated homes in the countryside should be avoided unless there are special circumstances. This development would not come within the exceptions listed in paragraph 55². However, the development would result in infilling in part of the hamlet and would therefore not amount to the provision of an isolated home in the countryside.
16. There is very limited access to public transport in Milstead and it is likely that there would be a high degree of private motor vehicle dependency amongst the occupiers of the dwelling. However, the number of additional vehicle movements generated by an extra dwelling would be quite modest and comparable in number to those generated by each of the other properties in the hamlet. There would therefore be no significant harm to the environment arising from the vehicular activity associated with the dwelling’s occupation. Within the hamlet there are some local services and facilities available and there would therefore be some limited scope for the dwelling’s occupiers to contribute towards the economic and social wellbeing of the hamlet and other settlements in the area.
17. For the reasons given above I conclude that this would be an appropriate location for a dwelling, having regard to the provisions of Paragraph 55 of the Framework. While there would be conflict with Policies SP1, SH1 and E6 of the Local Plan, by reason of the site’s location in the rural area, I consider that the provision of a dwelling in this instance would not demonstrably frustrate the strategy for the location of new housing stated in the Local Plan, nor that emerging as part of the Local Plan’s replacement.

Planning Balance

18. The development would give rise to conflict with the locational strategy for housing stated in the adopted Local Plan. That is because it would involve the provision of a dwelling in a hamlet without a defined built up area boundary. However, as the development would involve the provision of one dwelling the degree of conflict with the locational strategy would be limited and some economic and social benefits would arise from an additional dwelling being built and occupied. A benefit would also arise from granting permission for a dwelling at a time when there is no confirmed HLS. I have also found that the development would not cause harm to the local environment, with the scale, siting and design of the house being sympathetic to the streetscene and there being no harm to character and appearance of the AONB and the CA. The scale of vehicular activity associated with the dwelling’s occupation would also not cause significant harm to the environment.

² Housing for rural workers needing to live in the countryside, the use or reuse of a heritage asset; the reuse of a redundant building; or being of an exceptional quality or innovative design

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19. I therefore consider that on balance planning permission should be granted because: firstly the adverse impact, ie the conflict with the Local Plan's locational strategy, would not significantly and demonstrably outweigh the benefits of this development; and secondly there would be no conflict with the Framework's restrictive policies relating to the AONB and the CA.

Conditions

20. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the national policy and guidance.
21. Apart from the standard time limit condition, I find it necessary that the development should be built to accord with the submitted plans for certainty. In order to safeguard the appearance of the area it is necessary for details of the external materials and landscaping to be submitted for the Council's approval. However, given the limited scale of the development and the modest amount of existing planting on site, I consider it is unnecessary for the materials and landscaping details to have been submitted and approved before the constructions works are above ground level.
22. In the interests of highway efficiency it is necessary that the on-site parking is available prior to the dwelling's occupation and is then retained thereafter. I have therefore imposed a condition to that effect. In the interests of highway safety a condition requiring the provision of 215 metre long sight lines for the access where it joins Frinsted Road has been suggested. However, the geometry of the public highway means that sight lines of such a length would be unattainable and/or would cross land outside the appellant's control, rendering the condition unenforceable. Given the amount of traffic using the access and the likely volume of traffic generated on Frinsted Road I consider it unnecessary to impose a sight line condition.
23. A condition requiring the submission of details for the use of sustainable construction techniques has been suggested. However, no detailed policy justification for that condition has been provided and such a condition could duplicate matters covered by the Building Regulations. I am therefore not persuaded of the need to impose a condition requiring the submission of any such details. I am also of the opinion, given the scale of the development, that it is unnecessary for a condition to be imposed controlling the hours during which the construction works can be undertaken, because noise arising from the works could be controlled via other legislation.
24. A condition withdrawing permitted development (PD) rights for extensions (Class A), roof additions (Class B), other roof alterations (Class C) and porches (Class D) has been suggested in the interests of 'the amenities of the area', which I take to mean safeguarding the appearance of the area. Because the site is in an AONB the more generous Class A rights that might give rise to an addition of a size that would be harmful to the area's appearance are unavailable. I therefore consider that there is no need to withdraw Class A PD rights. Class B rights do not apply in AONBs, so there is no PD right to be withdrawn. Class C rights only allow limited roof alterations to be made and I consider that were any such alterations to be undertaken they would not detract from the area's appearance. I therefore do not consider it necessary to remove the Class C rights. I am also of the view that there is no need to remove the PD rights concerning porches.
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Conclusion

25. For the reasons given above the appeal is allowed.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16_10_01 Revision A – Site Location Plan; 16_10_03 – Site Plan Proposed; 16_10_04 – Proposed Floor Plans; 16_10_05 Proposed Elevations; 16_10_07 Revision A – Street Elevation as Proposed; and 16_10_22 Revision A – Masterplan.
- 3) No development above the foundation level shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development above the foundation level shall be undertaken until details of the hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include: the identification of the existing trees, shrubs and hedging to be retained, planting schedules for new plants, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation and maintenance programme.

The landscaping works shall be carried out in accordance with the approved details, including the approved implementation programme. Thereafter the planting shall be maintained in accordance with the approved maintenance programme.

- 5) The area shown on the application drawings for vehicle parking and manoeuvring shall be provided and made available for such use prior to the first occupation of the development. Thereafter the vehicle parking and manoeuvring area shall be retained and shall not be used for any purposes other than the parking and manoeuvring of vehicles.