



Appeal Decision

Hearing Held on 12 July 2017

Site visit made on 12 July 2017

by **S J Buckingham BA (Hons) DipTP MSc MRTPI FSA**

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

Decision date: **15 September 2017**

Appeal Ref: APP/V2255/W/17/3168745

Warden Road, Eastchurch, Kent ME12 4DE

- 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 Mr Simon Tomlin against the decision of Swale Borough Council.
 - The application Ref 16/501159/OUT, dated 10 February 2016, was refused by notice dated 9 September 2016.
 - The development proposed is a single dwelling and associated residential curtilage (all matters reserved).
-

Decision

1. The appeal is allowed and planning permission is granted for single dwelling and associated residential curtilage at Warden Road, Eastchurch, Kent ME12 4DE in accordance with the terms of the application, Ref 16/501159/OUT, dated 10 February 2016, subject to the conditions set out in Schedule 1 to this decision.

Applications for costs

2. An application for costs was made by Mr Simon Tomlin against Swale District Council. An application for costs was made against Mr Simon Tomlin by Swale District Council. These applications are the subject of a separate Decision.

Preliminary Matters

3. The proposal seeks outline planning permission, with all matters of detail reserved for future consideration.
4. The Council's decision was made with regard to the policies contained in the Swale Borough Local Plan 2008. However, between their decision and the Hearing the Inspector's Report on the Examination of the Swale Borough Local Plan was published, in which the emerging local plan, was found to be sound¹. The plan was adopted on 26 July 2017 and is now the development plan. I have, accordingly, determined the appeal in the light of its policies.
5. A large number of documents were presented to the hearing as late evidence. A list of those documents is attached as Schedule 2 to this decision. As they pertained to matters relating to the housing land supply, and thereby to an

issue of contention between the parties, I decided to accept them as being potentially material to my decision.

Main Issues

6. The Council initially refused the application on two grounds, but has subsequently withdrawn that relating to the effects of the proposal on traffic and highways, leaving a single main issue, which is whether the proposal constitutes sustainable development in regard to the provisions of the Framework and the development plan, with particular regard to its effect on the character and appearance of the area.

Reasons

Sustainable Development

7. The appeal site is located just outside the built up area boundary of Eastchurch, on the west side of Warden Lane. It adjoins Eastchurch Village Hall and its large hard-surfaced car park to its south. The site is a small open and untidy area, surrounded by an overgrown, mixed hedge containing some trees. It is wrapped around on the north and west sides by a separate site including rough ground and an unmade track from Warden Road. This too is surrounded by an overgrown hedgerow. Open countryside, in the form of paddocks, lie beyond this.
8. Facing the site across Warden Lane is the high hedge around the playing field to the Eastchurch primary school, and further to the north are a number of detached houses in large gardens. The built up area boundary of Eastchurch extends around them. The Council's contention is that all but two of these are early extensions of development out from the village, and that they represent the historic edge of the village, with little infill, while the appeal site is a historic end point on the other side of Warden Road. As a result, the built up area boundary of the village has not been altered in the new Local Plan.
9. It was suggested by the appellant, however, that the site had at some point in the past been a tennis court, and had also once been part of the plot of land containing the Village Hall when it was gifted to the village. It was also indicated that a telephone exchange had formerly occupied the adjoining site.
10. It appears to me therefore that the division between the developed part of the village and the countryside is not clear-cut at this point. The appeal site is, furthermore, set apart from and makes no particularly strong contribution to the open countryside. Indeed, due to its size and shape, and domestic-looking boundary hedge, it relates more closely in appearance to the adjacent developed part of the settlement than to the countryside. It would, as a result, be hard to categorise the appeal site as rural or unspoilt in nature or its boundary with the Village Hall the natural end to development on the north side of Warden Road.
11. Consequently, it appears to me that notwithstanding its location immediately outside the built-up boundary, the creation of a dwelling on the site, subject to appropriate appearance and detailing, would not have a harmful effect on the character or appearance of the countryside. It also appears to me that, as every case should be dealt with on its own merits, and given the particular circumstances of the site, its development would not be likely to set a

precedent for the expansion of the village envelope elsewhere or ribbon development along Warden Road.

12. The site is close to the village centre, within easy walking distance of the services and facilities it offers along a made footway. As Eastchurch is a Rural Local Service Centre, the range of services and facilities is a good one. I conclude therefore that the site would not conflict with paragraph 55 of the National Planning Policy Framework (the Framework), which seeks to avoid new isolated homes in the countryside. It would, rather, support its aim to promote sustainable development in rural areas through the location of housing where it will enhance or maintain the vitality of rural communities.
13. The provision of an additional dwelling would also have social and economic benefits, although the contribution would be a small one. I conclude therefore that as the proposal would not give rise to any environmental harm, and would provide some benefits in social and economic terms, it would be consistent with the principles of sustainable development set out in the Framework, which weighs in its favour.
14. Policy ST3 of the Swale Borough Local Plan 2017 (the LP) is clear in setting out the Swale Settlement Strategy that development will not be permitted outside the built-up boundaries unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. For the reasons given above, therefore, I conclude that the development would be in accord with this policy. Nor therefore would it conflict with the requirements of policy ST1 of the LP which, in order to deliver sustainable development in Swale, requires that development which accords with the Local Plan Settlement Strategy.
15. Policy DM14 of the LP requires development proposals to conserve and enhance the natural environment and be appropriate to its location. I can see no conflict with this requirement.

Other Matters

16. Paragraphs 11 and 12 of the Framework remind us that the development plan remains the starting point for decision-making unless material considerations indicate otherwise. At the time of the Council's decision, it was not a matter of dispute between the parties that the Council was not able to demonstrate a five year housing land supply, and that as a consequence, policies in the Swale Borough Local Plan 2008 which restricted development in the countryside were out of date. As a result, the presumption in favour of sustainable development in paragraph 14 of the National Planning Policy Framework (the Framework) is engaged.
17. However, the Council's Statement of Housing Land supply 2015/16 was published in November 2016, as part of the Local Plan Examination. In this it was calculated that a 5.4 year supply was demonstrated. The Inspector in her report on the Examination of the Local Plan concluded (paragraph 73) that she was satisfied that the Council had demonstrated that it could demonstrate a five year deliverable supply of sites to meet the requirements of the National Planning Policy Framework (the Framework). The relevant figures are now

embodied in the housing development targets in policy ST2 of the Swale Borough Local Plan 2017, and in land allocations contained in policy ST4.

18. Nonetheless, it is the appellant's contention that due to the time that has elapsed between the publication of the Statement of Housing Land Supply 2015/16, and due to changing expectations of delivery on identified sites, the Council's housing land supply is no longer up to date, and that policies for the supply of housing, including those seeking to restrict development outside settlement boundaries, are therefore out of date. However, since I have found that the appeal development would not conflict with development plan policy, it is not necessary for me to reach a firm conclusion on the existence or otherwise of a five-year supply, and I have not done so.

Conditions

19. The Council has suggested a list of conditions on which the appellant has had an opportunity to comment and to which I have had regard. I have attached conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with legislative requirements. As information submitted in regard to the reserved matters will be able to address issues of parking and cycle parking provision, visibility splays, external finishes, and landscaping, including hard surfaces and access gate, I have not added any additional conditions in relation to these matters.
20. The use of sustainable construction techniques would not necessarily be secured as part of the reserved matters, and I have therefore imposed a condition requiring submission of details in the interests of minimising the environmental impact of the development. As the site is close to other dwellings, in the interests of the living conditions of neighbouring residents I have imposed conditions in relation to construction vehicles and hours of work. However, as the development is a small one, it does not appear to me to be necessary to apply a condition requiring precautions to be taken to prevent the discharge of mud and surface water onto the highway.

Conclusion

21. For the reasons given above therefore, and taking into account all other matters raised, the proposal would be a form of sustainable development and accordingly the appeal should be allowed.

SCHEDULE 1: CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until details of measures to ensure that the development incorporates sustainable construction techniques are incorporated into the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Demolition or construction works shall take place only between 07.00 and 19.00 on Monday to Friday, 07.30 to 13.00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 6) No development shall take place, including any works of demolition, until details of the parking of vehicles of site operatives and visitors and of the loading and unloading of plant and materials have been submitted to, and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.



Costs Decisions

Hearing Held on 12 July 2017

Site visit made on 12 July 2017

by **S J Buckingham BA (Hons) DipTP MSc MRTPI FSA**

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

Decision date: **15 September 2017**

Costs application A in relation to Appeal Ref: APP/V2255/W/17/3168745 Warden Road, Eastchurch, ME12 4DE

- 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 Mr Simon Tomlin for a full award of costs against Swale Borough Council.
- The hearing was in connection with an appeal against the refusal of outline planning permission for a single dwelling and associated residential curtilage (all matters reserved).

Costs application B in relation to Appeal Ref: APP/V2255/W/17/3168745 Warden Road, Eastchurch, ME12 4DE

- 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 Swale Borough Council for a partial award of costs against Mr Simon Tomlin.
- The hearing was in connection with an appeal against the refusal of outline planning permission for a single dwelling and associated residential curtilage (all matters reserved).

Decision – Costs Application A

1. The application for an award of costs is refused.

The submissions for Mr Simon Tomlin

2. The Planning Practice Guidance advises that irrespective of the outcome of an appeal, costs may only 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. The grounds put forward by the applicant in this case are substantive, and are that the Council unreasonably refused the planning application which should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations, and that it failed to substantiate its reasons for refusing the application.
3. The applicant has pointed out that at the time the application was determined, the Council had no five year housing land supply, and contends that this is still the case. On this basis, the officer's report recommended approval of the development, as Local Plan policies restricting housing outside settlement

Costs Decisions APP/V2255/W/17/3168745

boundaries were therefore out of date, and the appeal proposal would not cause unacceptable harm to character and appearance or to the countryside.

4. These officer recommendations were subsequently overturned by Members. A refusal on highway safety grounds was subsequently withdrawn, leaving the issue of harm to the countryside as the single reason for refusal. It is the applicant's contention that the reasons given were not sufficient to demonstrate that any harm caused by the development would significantly and demonstrably outweigh its benefits. It is also contended that there could be no challenge on the grounds of impact on appearance, as the application was an outline one, with all matters, including appearance, reserved.
5. He also claims that the Council did not properly assess the proposal against emerging policy ST3 of the Swale Borough Local Plan 2017 (the LP), which, in the applicant's view would permit the development and be supported by paragraph 55 of the National Planning Policy Framework (the Framework).
6. It is also his case that the Council made vague and unsubstantiated assertions about noise and appeared unaware of the Village Hall uses adjacent to the site.

The response by Swale Borough Council

7. The Council responded that notwithstanding the original officer's report, once the Local Inspector's Report was released it was the Council's view that it did have a deliverable five year housing land supply, and it was clear about this throughout the appeal.
8. The reason for refusal was fully substantiated and defended, including through arguments put forward at the hearing relating to harm to the countryside. It is also pointed out that the fact that the proposal was in outline did not preclude an in-principle discussion of the potential effect on the appearance of the countryside. The Council also contends that, in any case, the applicant provided no evidence of the potential benefits of the proposal, beyond the provision of a new dwelling.
9. The relevance of Policy ST3 was considered and discussed in full at the hearing, while the statement of common ground agrees that paragraph 55 of the Framework does not apply here.
10. It also notes that as the reason for refusal related to highway safety was withdrawn, it is not relevant to the consideration of costs.

Reasons

11. The appeal was entered on 3 February 2017. By the time statements were due to have been submitted in May 2017, The Council was aware of the likely content of the Local Plan Inspector's Report, which was shared with the appellant prior to its publication on 20 June 2017. The Council, and the appellant could as a result be reasonably certain that the emerging local plan would be likely to be adopted in the near future, and that the Inspector had concluded that the Council had a deliverable five year housing land supply. The emerging local plan was therefore at a point of preparedness where it could be accorded significant weight prior to its adoption, which occurred on 26 July 2017, and the statement of five year deliverable housing land supply close to being signed off by the Inspector. It appears to me that this was made clear

Costs Decisions APP/V2255/W/17/3168745

during the appeal and hearing processes and that it was not therefore unreasonable for the Council to rely on these to support their case.

12. Council Members are not duty bound to follow the advice of their professional officers. However, if a different decision is reached, the Council has to demonstrate clearly, on planning grounds, why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's detailed responsibilities in relation to deliverability of the Local Plan housing allocations, which have been highlighted by the appellant, were clearly set out in the Council's statement. Furthermore, while my Decision makes it clear that I do not agree with the Council Members' decision on the issue of the effects of the development on the countryside, the reasons given for refusal were explained clearly in the Council's appeal statement particularly in relation to the advice in the Swale Landscape Character Assessment 2011 to limit ribbon development in the Central Sheppey Farmlands.
13. Overall, the change of approach from the original officer's report is explained and made clear, and appears reasonable in the light of the emerging, now adopted local plan.
14. Although the applicant contends that the Council has failed to demonstrate that any harm caused by the development would significantly and demonstrably outweigh its benefits, as pointed out by the Council the benefits of the scheme would be the provision of a single house, which would be a minor benefit. As the Council contends that it has a five year demonstrable housing land supply, it was not responding to the "tilted balance" required by paragraph 14 of the Framework, and was attempting to demonstrate harm which simply outweighed the benefits. In any case, the applicant was able to explore this difference of approach fully during the appeal and hearing process.
15. There was also a full discussion of policy ST3 of the emerging LP during the hearing, although the parties failed to agree as to its interpretation.
16. Although the statement of common ground states that the parties agree that Paragraph 55 of the Framework is not applicable to this case, it will be seen from my Decision that I do not agree with this, and conclude that the development would support the aims of this paragraph. The application of Paragraph 55 was discussed at the Hearing, during which the applicant's representative was able to put forward his revised view of the matter.
17. The reason for refusal relating to highway safety was withdrawn, and while no substantive case relating to noise and disturbance was made, this was not given as a reason for refusal. I conclude that these issues are not therefore germane to the appeal itself or to this application for costs.
18. I conclude that the Council has not unreasonably refused a planning application which in the appellant's view should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations, and has not failed to substantiate its reasons for refusing the application. Thus unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated.

Costs Decisions APP/V2255/W/17/3168745

Decision – Costs Application B

19. The application for an award of costs is refused.

The submissions for Swale Borough Council

20. The Planning Practice Guidance 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. The grounds put forward by the Council in this case are procedural, and relate to the introduction of fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen.

21. Notwithstanding the release of the Local Plan Inspector's report shortly before the hearing, which confirmed that the Council's emerging plan was sound, and that it has an agreed five year supply of housing land, the appellant made a late submission of a large volume of information in respect of the appeal, less than a week before the hearing date, challenging the Council's land supply and Objectively Assessed Need (OAN). The Council's contention is that the very late submission of this information was unreasonable, and that its detailed nature incurred additional costs through the engagement by the Council of a specialist witness to consider the submissions and appear at the hearing.

The response by Mr Simon Tomlin

22. The Council itself requested an adjournment of the hearing, and were therefore of the view that the appellant might wish to provide updated evidence. PINS accepted that late evidence might be necessary to take account of developments in the Local Plan.

23. The Local Plan Inspector's report is a material consideration in the case, and the appellant was entitled to raise arguments in respect of this, following on from points raised in his initial evidence regarding the interim findings. The Council should not have been surprised that he continued to do so when the final report was published. There had been material changes since the examination hearings, and these necessitated discussion.

24. The relevant evidence was submitted ahead of the hearing, as soon as possible after receiving the Inspector's Report on 28th June. This therefore avoided an adjournment of the case.

Reasons

25. The Council made the Local Plan Inspector's Report available when formally published, which marked a significant change in the local policy context, and it appears to me fair therefore that the appellant should have been given an opportunity to respond to this.

26. Planning Practice Guidance states that the examination of Local Plans "is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an

Costs Decisions APP/V2255/W/17/3168745

*authority's position*⁷¹. It therefore appears to me that the conclusions of the Local Plan Inspector should only be departed from where there is clear substantive evidence that circumstances have materially changed since the examination.

27. The appellant considered that there had been a material change in circumstances in relation to the detailed deliverability of housing on a number of allocated sites in the time that had elapsed between the Examination Hearings and the publication of the Council's Statement of Housing Land supply 2015/16 in November 2016. The discussion at the hearing raised some questions over the likely delivery from some of these sites. Thus, although I have not needed to reach a finding on the presence or not of a five year housing land supply on the basis of this discussion, it appears to me that the appellant was entitled to put forward evidence on this issue to be tested.
28. The submission of evidence by the appellant on 5 July was a week after receiving the Inspector's Report from the Council, and appears to me to be a response to the late emergence and receipt of this evidence rather than any unreasonable behaviour on his part.
29. As therefore the late evidence was introduced in response to materially changing circumstances in relation to the development plan and the five year housing land supply, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Buckingham

INSPECTOR