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## Appeal Decision

Site visit made on 9 April 2018

by **Zoe Raygen Dip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **Tuesday 1<sup>st</sup> May 2018.**

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**Appeal Ref: APP/V2255/W/17/3183462**

**Milstead Manor Farm, Manor Road, Milstead ME9 0SE**

- 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 The Executors of the Estate of Hugh Comyn Boucher against the decision of Swale Borough Council.
  - The application Ref 17/502135/FULL, dated 13 April 2017, was refused by notice dated 27 July 2017.
  - The development proposed is demolition of the existing buildings and erection of nine residential dwellings (including two low cost/affordable dwellings) and one commercial unit, together with associated access, parking, drainage and landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The Council adopted the Bearing Fruits 2031: The Swale Borough Local Plan on 26 July 2017 (LP). This supersedes the policies from the 2008 Local Plan referred to in its decision notice. I have therefore determined the appeal with reference to the LP.

### Main Issues

3. The main issues are:
  - The effect of the proposal on the character and appearance of the area with particular regard to trees and the Kent Downs Area of Outstanding natural Beauty (AONB)
  - whether or not the appeal site is a suitable location for the proposed development having regard to the Council's settlement strategy

### Reasons

#### *Character and appearance*

4. The appellants Landscape and Visual Impact Assessment (LVIA) states that the appeal site is within Natural England's National Character Area of the North Downs, and within the northern part of the 'Bicknor: Mid Kent Downs' character area as identified by Kent County Council. Furthermore, the Council's Swale Landscape Character and Biodiversity Appraisal' Supplementary Planning

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Document 2012 places the site within the 'Dry Valleys and Downs' landscape type, and in character area 38, the 'Milstead and Kingsdown Mixed Farmlands'. The stated characteristics of these various designations include wide arable fields with traditional small, nucleated villages, scattered farms and large houses with timber framing, flint walls and Wealden brick detailing. Twisting sunken lanes are often aligned along ancient drove roads, cut across the scarp and are a feature of much of the dip slope. I saw most of these characteristics to be evident at my site visit, with the appeal site being located within the open and gently undulating countryside of the AONB. Agricultural fields with hedgerows and some trees make up the landscape, interspersed with small scale settlements accessed by narrow lanes with relatively high hedges.

5. In this instance the appeal site is within the open countryside but is developed, containing buildings which are primarily agricultural in nature. I have noted the comments made by the appellant and third parties, regarding the condition and appearance of the buildings on the site. Nevertheless, while some of the buildings are in need of repair, they do not have a significant height or mass and are set back from the road. Furthermore, most are of a design that would be expected from agricultural buildings. Limited screening of the buildings is present, except for along parts of the north and west boundaries of the site where mature trees and hedges contribute positively to the rural character and appearance of the area. Therefore, despite their condition and visibility, the majority of the buildings on the appeal site would not be unexpected within the open countryside and as a result, do not detract significantly from the natural beauty of the rural landscape of the AONB.
6. The new commercial building would be of a simple design of corrugated metal panelling which would be of a muted colour suitable for its surroundings. The Council, while accepting that the proposed construction materials for the houses are acceptable, allege that their design would not be vernacular, and therefore would be harmful to the AONB. However, it offers no further explanation of the harmful elements of the overall design. The houses would not all be of the same design and hence while limited, there would be variety to the appearance of the buildings.
7. The houses would be laid out in the form of two rows of development along an internal road. Those properties to the north of the site would have their main frontage to the existing road, with a path way from the front door to the road. Such development, set back from and along the road frontage would reflect the similar location of existing houses within Milstead. However, I saw very limited examples of development to the rear of the existing houses, arranged in a cul-de-sac as proposed on the appeal site. Therefore, while the proposal would result in a reduction in the amount of floorspace and hardstanding, it would not reflect the existing pattern of residential development in Milstead.
8. Furthermore, while the houses would be located outside of the root protection areas of the existing trees, particularly those along the front of the site adjacent to Manor Road, they would only do so, in some cases, by a very limited extent. I saw on site that the canopies of trees T1 and T7 extended a considerable distance into the site, and would extend over much of the gardens, and be close to the houses on plots 1 and 8. The garden areas are not shown as the main private garden space, and the future occupiers would be aware of the proximity of the trees when purchasing the property. Nevertheless, it is not unreasonable to assume that due to the proximity of the

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trees to the houses, dissatisfaction with shade, falling leaves and debris could well grow with experience. If the development were to be allowed therefore, there would be a significant risk of that leading to the substantial reduction or complete felling of some of the trees. As a consequence, the site would become more urbanized and the nature of the rural lane would be significantly altered to the detriment of the character and appearance of the AONB.

9. I observed at my site visit that the line of existing conifers to the eastern boundary of the site, although noted for retention, had been considerably reduced in height. Furthermore, the southern boundary of the site contains minimal planting. Although hedge and tree planting is proposed along this boundary, the proximity of the proposed houses, together with the use of the areas as private garden space, means it is unlikely that there would be significant planting of large species of trees.
10. As a result, notwithstanding the comments within the LIVA it is likely that the appeal site would be relatively open, with views of the houses available across the open countryside and within Manor Road. Consequently, the dwellings on the appeal site would create a large group of domestic buildings which would be surrounded on three sides by open countryside. There would be a significant gap between them and the nearest dwelling within the built up area of the village contrary, to the pattern of traditional small, nucleated villages.
11. Therefore, while near to the settlement, the group of houses together with the new commercial building would appear separate to Milstead reading as a discordant, incongruent intrusion into the countryside. This would be reinforced through the introduction of further residential paraphernalia in association with the dwellings such as washing lines, car parking and refuse bins. I am not persuaded therefore, that even if I accepted that the removal of the existing buildings on the site would be of benefit, that their replacement with those proposed would not cause material harm to the rural character and appearance of the area, and the natural beauty of the AONB.
12. For the reasons above I conclude that the proposal would be harmful to the character and appearance of the area with particular regard to trees and the AONB. As a result it would be contrary to Policies DM14, DM24 and DM26 of the LP and paragraphs 7 and 64 of the National Planning Policy Framework (the Framework). Together these require that the development should be of good design that protects and enhances the natural environment. In addition, the scale, design, appearance and detail of development should be sympathetic and appropriate to its location and should conserve and enhance the special qualities and distinctive character of the AONB. Furthermore, development should not significantly harm the character of rural lanes.

#### *Settlement strategy*

13. There is no dispute that the appeal site is located outside of any settlement built up area boundary, and therefore is classed as being in the open countryside. Policy ST3 of the LP outlines the settlement strategy for the Borough with development focused on urban centres and within built up areas of smaller settlements. Development within the open countryside is restricted 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.

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14. The appeal site is located to the east of the built up area of Milstead. There is however, a considerable gap between the appeal site and the edge of the built form of the settlement formed by open countryside. As a result the dwellings would be physically separate and apart from the settlement, which would be reinforced by the lack of any segregated footway from the appeal site to the village.
15. Furthermore, Milstead is not recognised within the LP as being a sustainable location for new development. I saw at my site visit that it has limited facilities that would be unlikely to cater for the day to day needs of the future occupiers of the houses. Instead occupiers would need to travel further afield to settlements which would be, according to the appellant, about 3km and over away, where a wider range of services would be available.
16. I saw that the obvious routes to these settlements would be mostly along narrow unlit country lanes with no or limited footway or cycleway. The distances involved and the specific conditions I have identified means they are unlikely to be attractive or realistic for pedestrians or cyclists. In addition, the Council confirms that no bus services run through Milstead, and this has not been disputed by the appellant.
17. Therefore, I consider it more likely that future occupants would be reliant on the car for most of their journeys. Whilst I recognise that there is generally a greater reliance on the private car in more remote rural areas, and the car journeys may be relatively short, it remains the case that there would be a lack of sustainable transport choices available to enable future residents to conveniently access services and facilities. The appeal proposal would therefore undermine the aims of paragraphs 7 and 17 of the Framework of locating new dwellings in rural areas close to services and facilities as a means of reducing unnecessary travel by car, with its associated carbon emissions, as one measure to cumulatively limit the effects of climate change.
18. The appellant's Transport Statement states that the proposal would lead to an overall reduction in traffic visiting the site, of about 24 trips per 12 hour weekday. Furthermore, the number of larger vehicle and HGV movements would be reduced which would be of benefit on the narrow country roads. However, the total number of existing trips is not significant, and would only be experienced during the peak season rather than all through the year. Furthermore, I have not been advised that there is a considerable problem associated with traffic accessing the site. Moreover, the number of trips generated by the houses at the weekend has not been assessed. I am not persuaded therefore that any reduction in traffic movement would be of significant benefit.
19. In addition the proposed houses would not be for any type defined by paragraph 55 of the Framework, nor, given its location has there been a convincing case presented that any development would enhance or maintain the vitality of the rural community.
20. Although the appeal site is not allocated for housing, the appellant refers to the requirement in the LP to provide 387 windfall dwellings in the wider rural area and the support for small windfall sites within the Government's White Paper 'Fixing our Broken Housing Market' 2017. Policy CP3 of the LP supports the use of windfall sites except where the character of the site, its local context or environmental value determines otherwise. Furthermore, paragraph 5.3.6 of

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the LP supports the provision of new housing on appropriate windfall sites, where the scale and location of proposals are generally in accordance with the role and function of the settlement in question, and that the intrinsic character and beauty of the countryside is taken into account. In this instance, I have already found that the local context of the site would not be acceptable given the lack of facilities and services available in Milstead. In addition, I have found that the proposal would be harmful to the character and appearance of the area. Accordingly, the proposal would be in conflict with Policy CP3.

21. The appeal site contains a number of buildings used for both agricultural and commercial purposes. The latter granted planning permission under reference 92/0769. There is some dispute between the parties as to whether the site therefore would be classified as previously developed land. Even if I were to accept the appellant's argument, supported by caselaw<sup>4</sup>, that the site could constitute previously developed land, Policy ST3 states that the settlement strategy will be delivered through the use of previously developed land within defined built up area boundaries and on allocated sites. The appeal site meets neither of these definitions.
22. I appreciate that paragraph 17 of the Framework encourages the effective use of land by reusing land that has been previously developed. However, this would not in itself be sufficient to overcome the unacceptable harm I have found caused by the location of the site.
23. Paragraph 4.3.23 states that the primary objective of Policy ST3 will be to protect the open countryside from isolated and/or large scales of development. It goes on to say that some minor development may though be essential for the social, economic or environmental health of a community, but are not necessary to meet the Local Plan housing target. In so doing, they will be required to protect and, where required, enhance, the intrinsic value, character, beauty, wildlife value, tranquillity and undeveloped nature of the countryside and its communities and buildings. Even if the proposal was to be considered as minor development, I have already found that it would be harmful to the character and appearance of the area. I therefore conclude that for the reasons above the appeal site is not a suitable location for the proposed development having regard to the Council's settlement strategy. The proposal would therefore be contrary to Policy ST3 and paragraphs 7, 17 and 55 of the Framework.

#### **Other matters**

24. The appellant makes reference to the tests to be applied to development within Green Belts. However, the appeal site is not within a Green Belt and therefore the tests do not apply. Furthermore, the draft revised National Planning Policy Framework is a consultation document and not extant government policy and its content could therefore change. Within that context I give its contents limited weight.

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<sup>4</sup> *Lee Valley Regional Park Authority v Broxbourne Borough Council and Britannia Nurseries* [2015] EWHC 185 (Admin)

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25. The Council, in its application report refer to the presence of the Milstead Conservation Area (CA) to the west of the appeal site. Furthermore, the appellant in the Heritage Statement refers to the presence of several listed buildings and considers the appeal site to be within the setting of both those and the CA.
26. The Council has not though refused the application on grounds relating to the harmful effect of the proposal on the setting of heritage assets. Even if I were to agree with this view, it would not be a benefit of the scheme but is neutral within any planning balance.

#### **Balancing and conclusion**

27. The proposal would deliver social and economic benefits by providing nine new homes. In this respect, the development would make a modest contribution to meeting housing requirements and choice in the Borough whilst supporting local services and businesses. There would also be temporary economic benefits arising from the construction activity required to deliver the development. However, given that the economic benefits related to construction would be temporary and that I have found that it is likely that residents would be largely reliant on the car to access services outwith the village, it is likely that many of the economic benefits would be received outside of Milstead.
28. Although the site is not currently needed in order to ensure an adequate supply of deliverable housing sites, there is nothing in the Framework to suggest that the existence of a five year supply should be regarded as a restraint on further development. I note the appellant's comments regarding the Council's past under delivery of housing, but I have seen no substantive evidence to suggest that the Council cannot evidence a five year supply of housing.
29. The appeal proposal would also deliver a commercial unit, which the appellant suggests will enable a local family run business to remain and expand on-site in more suitable premises, thus safeguarding the long term viability of the business and the rural employment which the business provides. I have not though seen any evidence to suggest that the business would not be viable in the long term should the appeal proposals not go ahead and therefore attach limited weight to these benefits.
30. I note that the appellant is prepared to enter into a planning obligation pursuant to Section 106 of The Town and Country Planning Act 1990, to ensure that two of the properties would be low cost, more affordable dwellings which will allow either first time buyers or local people the potential to remain in the village. However, at the time of writing this decision, a completed and executed unilateral undertaking was not before me as the most recently submitted copy is an undated and uncertified copy.
31. Furthermore, the Planning Policy Guidance makes it clear that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation as such a condition would be unlikely to meet the test of enforceability. It goes on to state that only in exceptional circumstances would a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence be appropriate, such as more complex and

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strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk

32. I am not persuaded, given the scale of the proposal before me that it would be complex or strategically important development. Furthermore, the Framework states that low cost market housing may not be considered as affordable housing for planning purposes. This part of the proposal therefore attracts limited weight. In this context therefore I attach limited to moderate weight to the social and economic benefits identified based on the scale of development proposed and the limitations as outlined above.
33. There would be limited environmental benefits from the ecological enhancement of the site as outlined in the appellant's Ecological Report. The use of sustainable construction measures and provision of adaptable living and flexible working space are a pre-requisite of good design.
34. The proposal would conflict with the approach to the settlement strategy for the location and supply of housing and the protection of the countryside in Policies ST3, DM14, DM24 and DM26 of the LP and would not therefore be in accordance with the development plan.
35. In such circumstances, paragraph 11 of the Framework indicates that planning permission should not be granted unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, the appeal proposal would be contrary to the development plan policies I have referred to, and the considerable resultant harm would not be outweighed by other material considerations.
36. The appellant refers me to appeal decision APP/J1860/W/16/3144810 where the Inspector found that even though the Council was able to demonstrate a five year housing land supply the appeal proposal was found to be sustainable development and the appeal was allowed. However I note in the appeal referred to, the Inspector found that the proposal was not harmful to the character and appearance of the area. Furthermore, 40% of the houses would be affordable, secured by a S106 legal agreement. I am satisfied therefore that the case is not sufficiently comparable to the one before me now in order for me to reach a similar decision. In any case I have determined the appeal based on its own merits.
37. For the reasons set out above, and having regard to all other matters raised, including the support of some local residents, I conclude that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR