



Appeal Decision

Site visit made on 13 June 2018

by **Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th July 2018

Appeal Ref: APP/V2255/W/18/3195507

Land at The Tracies, Callaways Lane, Newington, near Sittingbourne, Kent ME9 7TQ

- 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 Mrs Gillian Murray against the decision of Swale Borough Council.
 - The application Ref 15/508683/OUT, dated 26 January 2016, was refused by notice dated 3 October 2017.
 - The development proposed is for the erection of 4 No. four bedroom detached dwellings with associated access and parking including an attached double garage, two detached double carports and an integral garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 No. four bedroom detached dwellings with associated access and parking including an attached double garage, two detached double carports and an integral garage at Land at The Tracies, Callaways Lane, Newington, near Sittingbourne, Kent ME9 7TQ in accordance with the terms of the application, Ref 15/508683/OUT, dated 26 January 2016, subject to the conditions set out into the Schedule to this decision.

Application for costs

2. An application for costs was made by Mrs Gillian Murray against Swale Borough Council. That application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline form and was originally for five dwellings, with all matters (access, appearance, landscaping, layout and scale) being reserved for future consideration. However, on 20 October 2016 the application was amended to a development for four dwellings with only landscaping being reserved for future consideration. The description of development used by the appellant has been amended by the Council (as per that appearing in the banner heading above) and the appellant has not objected to that change. I have therefore used the amended description of development in the banner heading and formal decision above, albeit I consider it unnecessary for there to be a reference to landscaping being the only reserved matter and I have not included that.

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Appeal Decision APP/V2255/W/18/3195507

Main Issue

4. The main issue is whether the site would be an appropriate location for housing having regard to policies concerning housing in the countryside.

Reasons

5. The site comprises 0.30 hectares of disused orchards, with scrub undergrowth, that is situated directly to the east of The Tracies. The Tracies is a cul-de-sac of seven detached houses of fairly recent construction and those houses lie off Callaways Lane and are behind properties fronting directly onto High Street (the A2). A public right of way (PROW) passes through the site and in effect divides the site into northern and southern parcels. The southern parcel bounds the rear garden of Dromore, a property fronting onto Callaways Lane.
6. For the purposes of the adopted development plan, Bearing Fruits 2031: The Swale Borough Local Plan of July 2017 (the Local Plan), the site is outside, but immediately adjacent to, the defined settlement boundary for Newington and therefore forms part of the countryside. Policy ST3 of the Local Plan (and its supporting text) identify the settlement hierarchy in the Council's area and Newington is a 'rural local service centre'. Rural local service centres are the fourth tier of six tiers in the settlement hierarchy and are settlements with health care, education, organised sport and recreational facilities, food and other shopping, pubs, post offices and place of worship, which are served by hourly bus and/or train services¹. As the site is outside Newington's settlement boundary the development would be contrary to Policy ST3.
7. There is disagreement about whether the site is grade 1 or 2 farmland using the agricultural land classification system (ALC). The appellant's assessment of the site being grade 2 land being based on some soil analysis², while the Council has relied on historic ALC maps based on reconnaissance field surveys undertaken in the 1960s and 1970s³. As the appellant's assessment of the site's ALC is based on a physical analysis of the soil, I consider that to be of more credence than the map based classification relied upon by the Council. That said whether the land is grade 1 or 2 it is still 'best and most versatile agricultural land' (BMV land).
8. Policy DM31 of the Local Plan states that development affecting agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built up area boundaries. Policy DM31 goes on to state that the development of BMV land will not be permitted unless: it has been allocated for development; there is no alternative site on land of lower than grade 3a or the use of lower grade land would significantly and demonstrably affect the sustainability of a development; and the development would not make the rest of a farm holding unviable or lead to likely accumulated and significant losses of high quality agricultural land.
9. Policy DM31 has been formulated having regard to paragraph 112 of the National Planning Policy Framework. Paragraph 112 states that local planning authorities '... should take into account the economic and other benefits of

¹ Table 4.3.1 of the Local Plan

² Section 3 of the Agricultural Land Classification and Soil Resources report of January 2018 prepared by Reading Agricultural Consultants Limited

³ Paragraph 1.1.5 of the Reading Agricultural Consultants Limited report

Appeal Decision APP/V2255/W/18/3195507

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 or poorer quality land in preference to that of a higher quality’.

10. The site has not been in productive agricultural use since at least the 1980s and it is in separate ownership to the adjoining agricultural land. I therefore consider there is a limited prospect of the site being returned to an agricultural use. There would nevertheless be conflict with Policy DM31 of the Local Plan, albeit I consider that conflict is tempered by the fact that there would be a very modest loss of BMV land, which has been unproductive for many years.
11. As the site has not been allocated for housing this proposal would be a ‘windfall development’, which Policy CP3 of the Local Plan indicates may be appropriate ‘... except where the character of the site, its local context or environmental value determines otherwise ...’. I am of the opinion that a development of four houses would be a natural extension to The Tracies, given the character of the houses in The Tracies and the fact that the site is enclosed by that cul-de-sac, the properties to the north in High Street and Dromore. I consider that this development would neither be harmful to the character and appearance of the area nor adversely affect the living conditions of the occupiers of nearby dwellings with respect to the receipt of light, privacy and outlook. I also consider that while the development would form part of the setting of the Newington High Street Conservation Area and Lion House, a grade II listed building on High Street, the setting of those heritages assets would be preserved, given the development’s scale and the presence of other built development in their settings.
12. In terms of accessibility to everyday facilities and services, given the site’s proximity to the centre of Newington, I consider this would be an accessible location for housing. That is a matter re-colonised by the Council’s officers in their report to the planning committee (paragraph 9.05).
13. Overall I consider that there would be no unacceptable environmental harm to the area. There would be some social and economic benefits arising from the provision of four houses. The harm associated with this development therefore comes down to what amounts to an in principle objection to the development because of the conflict with Policies ST3 and DM31 of the Local Plan. In that respect I consider it of note that the Council’s committee report refers to a ‘finely balanced decision’ needing to be taken by the planning committee’s members (paragraph 9.07 of the officer report).
14. I consider the conflict with Policy ST3 to be of greater significance than that with Policy DM31, given the very modest loss of agricultural land there would be. Having regard to the fact that this development would be a natural extension of The Tracies and the absence of harm to the area’s character and appearance and the living conditions of nearby residents, I conclude that, on balance, this would be an appropriate location for housing of the scale proposed.
15. In arriving at my conclusion on this issue I consider it of significance that when the Local Plan was being formulated this site was a prospective housing allocation. However, the Council’s officer report (paragraph 9.20) refers to the Council’s LDF Panel in May 2016 determining not to allocate the site ‘... on

<https://www.gov.uk/planning-inspectorate>

3

Appeal Decision APP/V2255/W/18/3195507

the basis of issues relating to access. Although the minutes do not record specifically what this issue relates to, I presume it relates to Callaways Lane from the A2'. It would appear that it was only a concern relating to the site's relationship with the highway network that resulted in it not being made an allocated site. While the junction between Callaways Lane and High Street has a tight geometry, with the former being a one way street at this point, the highway authority has raised no objection to the development and I see no reason why the traffic generated by the development could not be accommodated by local highway network.

16. In considering whether the site would be an appropriate location for housing, I am mindful of the dismissal of an appeal concerning a proposal for three dwellings to the rear of 148 High Street (No 148). However, based on the Inspector's description of that site and the assessment of the proposal for No 148, I consider that the scheme before me is distinguishable from that proposed for No 148. That is because the development to the rear of No 148 would encroach into the open countryside to the south of High Street and '... would significantly erode, the open, rural character of the area' (paragraph 7 of the decision letter) and would not concern the development of an essentially contained site that would form a natural extension of an established cul-de-sac.
17. While there would be conflict with Policies ST3 and DM31 of the Local Plan, on the evidence available to me, for the reasons given above, I conclude that the conflict, in this instance, would not be of such significance as to warrant the withholding of planning permission.

Conditions

18. Various conditions have been suggested by the Council and I have considered the need for their imposition having regard to the provisions of the national policy and guidance. Apart from the standard outline conditions concerning the reserved matter of landscaping, it is necessary that the development should be built to accord with the submitted plans for certainty. As the definition for landscaping included in the Town and Country Planning (Development Management Procedure) (England) Order 2015 covers both hard and soft landscaping I consider a condition specifying the precise details to be submitted pursuant to condition 1 to be unnecessary. It will be for the Council to decide whether the reserved matters submission is sufficiently detailed when that application is made. It is however, necessary for a condition to be imposed requiring the implementation and retention of the approved landscaping works.
19. To safeguard the operation of the highway and the living conditions of nearby residents it is necessary that a construction method statement (CMS) be submitted for approval prior to the commencement of the development. I, however, consider it unnecessary for the CMS to include details relating to the cleaning of the highway because that is a matter that the highway authority has powers to control. Rather than imposing a condition specifying the actual hours during which construction works may be undertaken, I have included a provision within the CMS condition requiring details for the working hours to be submitted for approval. As there is nothing to be demolished the CMS condition does need to refer to demolition works.

<https://www.gov.uk/planning-inspectorate>

4

Appeal Decision APP/V2255/W/18/3195507

20. As a disused orchard the site has the potential to be of some biodiversity value, which would be lost with the removal of the existing vegetation. It is therefore appropriate that details of an ecological mitigation and enhancement strategy, informed by an updated ecological survey, be submitted for approval. It is necessary that the details for that strategy be submitted and approved prior to the undertaking of any vegetation clearance so that the strategy can be assessed against the prevailing situation. A condition concerning surveys for the presence of bats and the working up of a mitigation strategy for any bat presence has been suggested, with the required details to be submitted prior to any tree works being undertaken. However, the Phase 1 Ecological Survey that accompanied the application refers to none of the trees within the site being suitable for bat roosting, with only foraging bats visiting the site⁴. On the available evidence I am therefore not persuaded of the need to impose the suggested bat condition.
21. To safeguard the appearance of the area it is necessary that prior to the construction works extending beyond the foundation level that details of the external materials be submitted for the Council's approval. To safeguard the water environment it is necessary for surface and foul drainage details to be submitted for the Council's approval before the development is above its foundation level.
22. In the interests of promoting energy efficiency and to accord with Policy DM19 of the Local Plan it is necessary that prior to the construction works extending beyond foundation level that details for the utilisation of sustainable construction methods (water saving, renewable energy use etc) are submitted for the Council's approval. To safeguard the operation of the public highway a condition requiring the provision and retention of the on-site parking and vehicle manoeuvring areas is necessary.
23. A condition withdrawing the permitted development rights for the installation of means of boundary enclosure has been suggested. However, as the initial means of boundary enclosure will form part of the hard landscaping scheme to be approved pursuant to condition 1 and the site is not particularly sensitive from either historic environment or landscape perspectives, I consider the imposition of the suggested condition to be unnecessary.

Conclusion

24. For the reasons given above I conclude that the appeal should be allowed.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the landscaping (hereinafter called "the reserved matter") 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 matter shall be made to the local planning authority not later than 3 years from the date of this permission.

⁴ Section 3.2 of the report of August 2016 prepared by ASW Ecology

Appeal Decision APP/V2255/W/18/3195507

- 3) The development hereby permitted shall take place not later than 2 years from the date of the approval of the reserved matter.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1618/01 Revision A – Location and Block Plan; 1618/02 Revision A – Site Layout; 1618/04 – Plot 1 Floor Plans; 1618/05 – Plot 1 Elevations; 1618/06 – Plot 2 Floor Plans; 1618/07 – Plot 2 Elevations; 1618/08 Revision A – Plot 4 Floor Plans; 1618/09 Revision A – Plot 4 Elevations; 1618/10 – Plot 2 Car Barn; 1618/11 Revision A – Street Scene; 1618/12 – Plot 3 Floor Plans; 1618/13 – Plot 3 Elevations; and 1618/14 – Plot 3 Carport.
- 5) Prior to any vegetation clearance being undertaken details of an ecological mitigation and enhancement strategy shall be submitted to and approved in writing by the local planning authority. The ecological mitigation and enhancement strategy shall be informed by an updated ecological survey or surveys and the development shall be implemented in accordance with the approved ecological mitigation and enhancement strategy.
- 6) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The construction method statement shall provide for:
 - a) the parking of vehicles for site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) measures to control the emission of dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from the construction works; and
 - g) the construction working hours.The approved construction method statement shall be adhered to throughout the construction period for the development.
- 7) No development above foundation level shall be commenced until details for foul and surface water drainage 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 and the drainage scheme shall be retained thereafter.
- 8) No development above foundation level shall be commenced until details of the external facing materials 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.
- 9) No development above foundation level shall be commenced until details of measures relating to the use of sustainable construction techniques, such as water conservation and recycling, renewable energy production and energy efficiency have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme of sustainable construction techniques and thereafter the measures that form part of the approved scheme shall be retained.
- 10) The hard and soft landscaping works shall be implemented in accordance with the details approved pursuant to condition 1 prior to the occupation of the

<https://www.gov.uk/planning-inspectorate>

6

Appeal Decision APP/V2255/W/18/3195507

development or in accordance with a programme to be agreed as part of the submission of details pursuant to Condition 1. Upon completion of the soft landscaping works any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 11) The development hereby permitted shall not be occupied until the parking spaces, garages, car barns/ports and vehicle manoeuvring areas shown on the approved drawings have been provided and made available for use. Thereafter the parking spaces, garages, car barns/ports and vehicle manoeuvring areas shall be retained and shall be used for no purposes other than the parking and manoeuvring of vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), or not shall be undertaken on the land so shown or in such a position as to preclude vehicular access thereto.



The Planning Inspectorate

Costs Decision

Site visit made on 13 June 2018

by **Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th July 2018

Costs application in relation to Appeal Ref: APP/V2255/W/18/3195507 Land at The Tracies, Callaways Lane, Newington, near Sittingbourne, Kent ME9 7TQ

- 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 Mrs Gillian Murray for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 4 No. four detached dwellings with associated access and parking including an attached double garage, two detached double carports and an integral garage.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance's (the PPG) section on appeals advises that, irrespective of the outcome of an appeal, 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.
3. A full award of costs has been sought by the applicant on substantive and procedural grounds. The applicant has submitted that the Council: encouraged the submission of the planning application; provided an indication that it was minded to recommend approval for the development during the early stages of the application's consideration; and then without explanation went on to refuse planning permission. It is further argued that the decision prevented and delayed development which clearly should have been permitted and represents unreasonable behaviour for the purposes of paragraph 049 of the PPG. It is also contended that the reason for refusal was vague and generalised and included an inaccurate assertion that site's agricultural land classification (ALC) was grade 1, when it has subsequently been established as being grade 2. It is argued that the inaccuracy in the ALC relied upon by the Council resulted in unnecessary expense being incurred through the obtaining of specialist advice as part of the making of the appeal.
4. With respect to the matter of the site's ALC, the report submitted with the appeal states that were the site to be brought back into active agricultural use then it should be considered as being grade 2 rather than grade 1. An ALC of grade 2 confirms that the site constitutes best and most versatile agricultural land (BMV) and that gives rise to conflict with Policy DM31 of Bearing Fruits

<https://www.gov.uk/planning-inspectorate>

Costs Decision APP/V2255/W/18/3195507

2031: The Swale Borough Local Plan of 2017 (the Local Plan). The submission of the agricultural land report did not greatly assist my consideration of this aspect of the parties' cases because a downgrading to grade 2 still meant the site is BMV land. Given the modest area of the site I do not consider that the applicant was compelled to submit a land classification report with the appeal. I am therefore not persuaded that the Council's reference to the site having an ALC of grade 1 of itself caused the applicant to incur unnecessary expense in submitting the appeal.

5. It is evident from the email exchange included with the applicant's final comments that firstly the determination of the appealed application was very protracted and secondly that the Council's officers having been supportive of the development changed their view at some time after early August 2017. That change of view culminated in a recommendation for refusal to the planning committee of 14 September. The Council has provided no explanation as to why its officers appeared to change their view about the development. Be that as it may by the time the planning application was reported to the planning committee the Local Plan was the extant development plan for the area, having been adopted by the Council on 26 July 2017 and the Council identified in its committee report that there was clear conflict with Policies ST3 and DM31.
6. The officer report for the appealed application refers to the decision to be made by the planning committee's members as being 'finely balanced'. Given the recent adoption of the Local Plan and the conflict with Policy ST3, in particular, I find it unsurprising that there was a recommendation for refusal and that planning permission was refused. In determining the appeal I have found that in the absence of any harm to matters such as the character and appearance of the area, heritage assets and the living conditions of nearby residents, and having regard to the very specific locational circumstances of the site relative to Newington's built up area, that on balance the appeal should be allowed. In coming to that conclusion I consider that the Council's has been able to substantiate the reason for refusal (second bullet point of paragraph 049 of the PPG). I also consider that this is an instance where the Council's decision did not prevent or delay '... development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations ...' (first bullet point of paragraph 049 of the PPG) because of the conflict with Policy ST3.
7. I therefore consider the applicant has not demonstrated unreasonable behaviour on the Council's part when regard is paid to paragraph 049 of the PPG and that an award of costs on either procedural or substantive grounds is unwarranted.

Conclusion

8. For the reasons given above I find that unreasonable behaviour resulting in wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is therefore refused.

Grahame Gould

INSPECTOR