



Appeal Decision

Site visit made on 31 July 2018

by **Alex Hutson MATP CMLI MArborA**

an Inspector appointed by the Secretary of State

Decision date: 16 August 2018

Appeal Ref: APP/V2255/W/18/3194975
Gleneagles, Maidstone Road, Borden ME9 7QA

- 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 D Gill against the decision of Swale Borough Council.
 - The application Ref 17/501259/OUT, dated 6 March 2017, was refused by notice dated 14 November 2017.
 - The development proposed is "Outline application (with some matters reserved) except for access and layout for the erection of 4no. four-bedroom detached houses, 4no. three-bedroom semi-detached houses and 4no. three-bedroom terraced houses with associated parking, as amended by drawings received 12th September 2017".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application seeks outline planning permission with all matters reserved except for access and layout. I have considered the appeal on this basis.
3. The application originally sought consent for 14 dwellings in total. However, this was subsequently revised to 12 dwellings. I have therefore used the description of the proposed development provided on the Council's decision notice which reflects this and I have determined the appeal on this basis.
4. The Government published the revised National Planning Policy Framework (revised Framework) on 24 July 2018. I have considered the appeal on this basis and I am satisfied that the main parties have been given the opportunity to comment on this matter.

Main issues

5. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the countryside location of the proposal is justified having regard to relevant planning policy; and
 - Whether the proposal would provide an appropriate method of surface water drainage, having regard to potential ground contamination and proximity to water supply sources.

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Reasons

Character and appearance

6. The appeal site, a broadly rectangular shaped plot of land, comprises a redundant petrol station building, its associated forecourts and some protected trees and woodland¹. It is located at the end of a short line of ribbon development on the north-western side of Maidstone Road where detached dwellings, some of which appear two storeys in height, are set back a considerable degree from the road frontage. The setback of these dwellings affords the locality a strong sense of space and openness and is a defining characteristic of residential development along this part of the road. The protected trees and woodland are visible from along Maidstone Road and afford the area a strong verdant and sylvan quality. These factors contribute positively to the character and appearance of the area.
7. The proposal seeks to redevelop the appeal site to provide 12 new dwellings. Four of these would be detached and would be sited along the frontage with Maidstone Road. The other eight, a combination of semi-detached and terraced dwellings, would be sited centrally across the appeal site and accessed via a double-headed cul-de-sac.
8. I acknowledge that the appeal site has been neglected for a number of years and that the petrol station building, which is in a poor state of repair, detracts somewhat from the character and appearance of the area. I also accept that innovation or change should not be prevented or discouraged. In addition, I note that the appellant envisages that the proposed dwellings would be two storeys in height and would utilise materials sympathetic to the rural character of the area.
9. However, the layout of the proposal, given that it would create two rows of dwellings, would appear inherently at odds with the prevailing pattern of ribbon development along this part of Maidstone Road. Furthermore, the siting of some of these dwellings in such close proximity to the road frontage would fail to reflect the defining sense of space and openness of the locality afforded by the considerable setback of nearby dwellings from Maidstone Road. In addition, the proposal would require the removal of some large and mature protected trees. This would have an adverse and noticeable impact on the verdant and sylvan qualities of the appeal site and area. Any new tree planting would be likely to take many years to mature to mitigate their loss and it is not clear, in any event, whether the proposed layout could adequately accommodate large growing tree species. On the basis of these factors, I conclude that the proposal would give rise to significant harm to the character and appearance of the area.
10. This would be contrary to Policies CP4, DM14 and DM29 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (Local Plan). These policies require, amongst other things, development to reinforce local distinctiveness and strengthen sense of place, to retain and enhance features which contribute to local character and distinctiveness, to retain trees that make an important contribution to the amenity of the site or surrounding area, to reflect the positive characteristics and features of the site and locality and to protect trees in general. They are consistent with the aims and objectives of the revised

¹ Subject to Swale Borough Council Tree Preservation Order No.7 1999

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Framework which seek to ensure developments add to the overall quality of the area, are sympathetic to local character including the surrounding built environment and landscape setting and to establish or maintain a strong sense of place.

Location

11. Policy ST3 of the Local Plan sets out the settlement strategy for the Borough. It seeks to direct development to within defined settlement boundaries, these providing a greater range of service, employment and transport choices than other areas. The appeal site lies outside of any defined settlement boundary and therefore lies within the countryside for planning policy purposes. Policy ST3 of the Local Plan sets out that in the countryside, development will not be permitted, 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.
12. Paragraph 78 of the revised Framework sets out that to promote sustainable development in rural areas, housing should be located where it will maintain or enhance the vitality of rural communities. Furthermore, that opportunities should be identified for villages to grow and thrive, especially where this will support local services and, where there are groups of smaller settlements, development in one village may support services in a village nearby. Paragraph 170 of the revised Framework sets out that development should contribute to and enhance the local environment by recognising the intrinsic character and beauty of the countryside.
13. I am not aware of any local services or facilities within the vicinity of the appeal site or in any nearby villages. Nor has the appellant provided any compelling evidence to demonstrate how the proposal would support any services in surrounding villages or whether the vitality of any are under any particular threat. I recognise that there is a regular bus service to Sittingbourne and its associated services and facilities. This would provide some alternative to the use of a private motor vehicle to access them. Nevertheless, the distance involved is not insignificant and thus it is likely that any future occupiers would find the use of a private motor vehicle more convenient to carry out daily tasks such as travelling to work or shopping. In addition, the distance would discourage walking to Sittingbourne. Furthermore, there did not appear to me to be any dedicated cycleways along Maidstone Road and this, combined with the relatively high speed of the road, would do little to encourage cycling. Moreover, given my findings in respect of the character and appearance of the area, the proposal would fail to protect or enhance the intrinsic value and beauty of the countryside.
14. The appellant highlights two other developments in the area, one at Oak Close² and one at Woodgate Lane³. However, these are located some distance from the appeal site and on the opposite side of the road and therefore, in character and appearance terms, are not helpfully comparable to the context of the appeal site. In addition, they would have been granted planning permission prior to the adoption of the Local Plan. Furthermore, I note that the Woodgate Lane development was granted planning permission at a time when the Council

² Council planning Ref not given

³ Approved under Council planning Ref 15/507804/FULL

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could not demonstrate a five year housing land supply, whereas there is no dispute between the parties that it currently can. Thus, these developments would have been considered under a different planning policy context to the appeal at hand. These developments do not, therefore, justify a grant of planning permission for the proposal I am to consider.

15. I note the appellant's argument that the appeal site should be considered as a windfall site and that the development of such sites would contribute towards the Council meeting its five year housing land supply. Nonetheless, there is no substantive evidence to demonstrate that there is an insufficient number of more suitable windfall sites within the Borough to accommodate any development required in this regard.
16. I therefore conclude that the proposal would fail to comply with the requirements of Policy ST3 of the Local Plan and would be at odds with the settlement strategy for the Borough. It would also conflict with Policy ST1 of the Local Plan which requires, amongst other things, development to accord with the Local Plan settlement strategy and to reflect the best of an area's defining characteristics. It would also fail to comply with the aims and objectives of Paragraphs 78 and 170 of the revised Framework. Thus, there is no compelling justification for the countryside location of the development.
17. The Council cites conflict with Policies ST7 and DM24 of the Local Plan in respect of this main issue. Policy ST7 appears to relate specifically to the Faversham area and the Kent Downs Area of Outstanding Natural Beauty (AONB). However, it is my understanding that the appeal site does not fall within the AONB. In addition, it is unclear to me whether it lies within the Faversham area or how this area is defined. Policy DM24 relates to the conservation and enhancement of valued landscapes. However, the Council has not fully explained why it considers the site or immediate vicinity to be within a valued landscape in the context of this policy. Therefore, on the basis of the evidence, I cannot be certain that these policies have any particular relevance to the appeal.

Surface water drainage and contamination

18. The previous use of the appeal site as a petrol station is likely to increase the risk of ground contamination. The Environment Agency (EA) identifies that the appeal site is located upon a Principal Aquifer and within Source Protection Zone 1 for a public water supply. There is the potential for the development of the appeal site to mobilise contamination and to pollute controlled waters. It is my understanding that this could also occur if surface water from the proposal was managed by way of infiltration.
19. Nonetheless, the EA considers that it would place an unreasonable burden on the appellant to provide a detailed assessment of any underground tanks and ground contamination at this stage, and that this matter and that of surface water drainage could reasonably be dealt with and mitigated through the use of appropriately worded planning conditions. I note that the Council's Environmental Protection department suggest a similar approach. On the basis of the evidence before me, I have no substantive reasons to consider otherwise.
20. The Council raises a concern that swales, ponds and ditches are not shown to be utilised. However, it is unclear to me why the Council would seek these if it

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has a fundamental concern regarding infiltration to deal with surface water, given that these features would be likely to discharge surface water in this way. Nonetheless, the proposed layout indicates some areas of greenspace which could possibly be used to accommodate some of these features.

21. The proposal would therefore appear to comply with Policy DM21 of the Local Plan where it relates to drainage and safeguarding groundwater protection zones from pollution to the satisfaction of the EA. In addition, though the Council cites conflict with Policy DM14 of the Local Plan in respect of this main issue, this policy does not appear to relate to drainage or contamination and it is unclear to me where any conflict with it lies in this regard.

Other matters

22. Notwithstanding the above, Policy DM21 also requires that when considering flooding, development proposals should accord with national planning policy. The appeal site lies partly within Flood Zone 3, an area at high risk of flooding, as identified on the Environment Agency (EA) Flood Zone Map. Residential use is classified as a More Vulnerable Use by the EA. In relation to decision making, the revised Framework indicates that this translates into an approach whereby local planning authorities should only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test (ST), it can be demonstrated that the development is appropriately flood resilient and resistant. The aim of the ST is to steer new development to areas with the lowest probability of flooding. I note that the EA considers the appellant's Flood Risk Assessment acceptable. However, there is no compelling evidence before me that would lead me to conclude that the ST should not be applied in this case. No robust ST appears to have been provided. In the absence of one, the proposal would appear to fail to accord with the requirements of the revised Framework and Policy DM21 of the Local Plan in relation to development in areas at risk of flooding. However, on the basis that I am dismissing the appeal on other substantive matters anyway, I have not sought any clarification or further comments on this matter from the main parties.
23. It appears, on the basis of comments from Natural England (NE) and Kent County Council (KCC), that the appeal site lies within the zone of influence of some Special Protection Areas (SPAs). NE and KCC mention a responsibility to ensure that proposals within this zone adhere to an agreed approach within certain SPA Strategic Access Management and Monitoring Strategies to mitigate for additional recreational impacts on the SPAs and to ensure that adequate means are in place to secure any mitigation required. This is to prevent significant effects on these sites. Neither the Council nor the appellant seem to have addressed the implications of this and I am not aware of any proposed mitigation measures. However, on the basis that I am to dismiss the appeal for other reasons anyway, I have not considered it necessary to seek any clarification on this matter from the main parties.
24. The Council makes reference to a number of planning obligations it considers necessary were I minded to allow the appeal. The appellant does not appear to have addressed this issue. Nonetheless, as I am to dismiss the appeal for other reasons, it is not necessary for me to consider this matter in any further detail, as it would not lead me to a different decision.

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25. There is some dispute as to whether the appeal site constitutes previously developed land (PDL). The Glossary of the revised Framework defines PDL as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. Land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape is excluded from this definition. The petrol station building is a permanent structure and it and its forecourt areas are clearly present and visible and have not blended into the landscape. The appeal site can therefore reasonably be described as PDL. The revised Framework promotes the use of PDL and this weighs in favour of the proposal.
26. The proposal would make a contribution, albeit in the wider scheme of things a modest one, to housing supply within the Borough. It would create some short term construction jobs. These factors weigh in favour of the development.

Planning balance and conclusion

27. The proposal would give rise to harm to the character and appearance of the area and would conflict with the Council's settlement strategy for the Borough. Any benefits, in my judgement, would not be sufficient to outweigh such harm and conflict. Consequently, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR