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## Appeal Decision

Site visit made on 3 December 2018

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> December 2018

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**Appeal Ref: APP/V2255/W/18/3195461**

**Tranquillity, Otterham Quay Lane, Upchurch, Sittingbourne, Kent ME8 7UT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr C Agley against the decision of Swale Borough Council.
  - The application Ref 16/508521/FULL, dated 8 December 2016, was refused by notice dated 17 November 2017.
  - The development proposed is conversion of existing redundant agricultural building to form one two bedroom & one three bedroom dwellings with associated amenities.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the appellant's name from the planning application form, although I note that a Christian name has been provided on the planning appeal form. I have also taken the site address and the description of the proposed development from the planning application form but note these are expressed differently on other documents.
3. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

### Main Issues

4. The main issues raised in respect of the appeal are: -
  - (a) the effects of the proposed development on the vitality of the rural economy; and
  - (b) whether or not the site would be suitable for a residential development given its location outside the built-up area.

### Reasons

#### *Rural economy*

5. Policy DM3 of the Bearing Fruits 2031: the Swale Borough Local Plan 2017 (the Local Plan) relates to the rural economy and resists residential development

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- where it would reduce the potential for rural employment and/or community facilities unless the site/building(s) is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable.
6. The supporting text of Policy DM3 advises that to retain the availability of rural buildings for employment the Council will only grant planning permission for their residential use where evidence is provided that shows that there is no demand for them to be used for employment, or where they are wholly unsuitable for any employment use. It further advises that *“Even if the site or building is currently vacant, evidence will need to show that it is neither viable nor likely to become viable and that alternative employment uses have been robustly tested. This will also include the applicant having marketed the enterprise or the property for its commercial/community use for a reasonable period in a manner and at a price that reflects that use”*.
  7. The appellant has indicated that the building has been advertised by estate agents. The appellant has provided a letter from Buckey & Ward Estate Agents, dated 4 August 2015 that advises the agents will be withdrawing the premises from their register as the property has created no enquiries over the prior six months. I note the estate agent particulars offered a B1 light industrial use of the building. The estate agent said that the location has hindered its uptake. However, I have not been provided with details that would illustrate how widely the marketing was distributed and whether this estate agent specialises in residential or commercial lettings/sales. I also cannot be certain whether its marketed rate was realistic. Furthermore, advertising the building specifically for B1 purposes could potentially have discouraged expressions of interest by other possible occupiers for other uses/purposes.
  8. The appellant advises that an advisement had been posted on the website ‘Gumtree’ between July 2016 and November 2017. Whilst the day 12 screenshot provided by the appellant shows that it received 320 views only two replies had been received and these have not been provided. The appellant indicates that there have been few serious callers and no offers as a result of this post. Whilst Gumtree might facilitate access to a wide audience I cannot be certain that the advertisement has focused on or would have reached a potentially interested business clientele or that the advertised rental was competitive for its location. I note the appellants point that the Council utilise the internet to advertise social housing but that is a different matter to what is being considered here.
  9. I have also been provided with six letters from local businesses that have declined to operate their businesses at the building. Reasons range from access impracticalities for large lorries, poor access and drainage, low ceiling height, the building is either overly large or too small for requirements, close proximity of nearby residential occupiers and location. These letters date from early 2014 and appear to mainly relate to businesses that have relatively large scale delivery and/or storage requirements. Whilst this gives some indication that the building may not be suitable for some business types, I do not consider this evidence robustly demonstrates whether there is a more up to date potential interest by other businesses that could have different operational requirements.

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10. I have also been provided a list of existing community facilities in the area that are said to offer better facilities than the appeal site. It is contended that a community use would create unneighbourly noise and parking problems for neighbours and that such a use would not be viable. Nonetheless, I have not been presented with any substantive evidence that would persuade me that there is no demand for a community use or that the building or site is unsuitable or undesirable.
11. I note that consideration has also been given to the building's potential use as a holiday let but it is considered that this use would not be viable and the view is expressed that the location would be poor. Given the limited information provided I am unable to corroborate this opinion.
12. An Inspector's decision at Chesley Oast has been referred to but I have not been provided with the full details of that case. I have also been directed to the Old Crescent Shipping Offices at Gills Terrace that is not far from the appeal site. That building has been converted to residential flats having been vacant offices for many years. The appellant has also highlighted that other agricultural/industrial buildings and offices in the immediate area have been either not used or advertised with no takers and subsequently planning permission has been given to change to residential use. Again I have not been provided with the full details of the Old Crescent Shipping Offices site or that of the other agricultural/industrial buildings and offices referred to. I therefore am unable to determine what similarities, if any, the circumstances of those cases would have to that of the proposal before me. In any event, the appeal before me relates to a different site and can and should be considered in its own right.
13. The appellant's submission indicates that quotes received to convert the building into an office/workshop would cost between £93,600 and £231,000. It is also said that the rental required to bring the building back to a safe use is not achievable even for agricultural use. It is unclear whether the works costed are wholly necessary for the re-use of the building. I have not been provided with a full structural survey carried out by an appropriately qualified person that would clearly set out what works would be necessary. One quote includes new windows and openings, along with internal partitions. I have no substantive evidence that these would be required. Based upon the evidence before me I have no clear indication that the costs provided to convert the building are necessary and that the costs put forward can be substantiated. I have not been provided with details of potential rental income either that might enable me to establish whether this could cover the cost of works either in the short or long term.
14. Based upon the evidence before me I cannot be certain that the property has been advertised to an appropriate clientele base or at a competitive market rate. Furthermore, the evidence provided by the appellant is somewhat dated and I cannot be certain either that the evidence would reflect a more up to date potential uptake demand or desirable. I have not been presented with any substantive evidence that the building has been marketed for community uses. I therefore do not consider that a reasonable and sustained effort has been made to robustly market the building for employment or community purposes and this, therefore, does not satisfactorily demonstrate evidence of demand, or lack of it, for such uses. Furthermore, I have not been persuaded

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that the building would be unsuitable for alternative uses. I therefore cannot conclude that Policy DM3 has been satisfied.

#### *Location*

15. The Local Plan has defined the built-up area and the proposal falls within the countryside. Policy ST3 of the Local Plan resists development outside of the built-up area boundaries. Any residential development beyond the boundary established by the Local Plan would therefore conflict with the aim of providing homes in accordance with the Borough's identified and agreed settlement hierarchy.
16. I conclude that the appeal site would not be a suitable location for new housing, given its location outside the built-up area boundary. The proposal would be contrary to Policies ST1, ST3, CP3 and DM3 of the Local Plan that seek to provide new homes in accordance with the settlement hierarchy. The proposal would result in unjustified residential development in the countryside that would be harmful to its character and appearance by virtue of it being an urbanising development in the countryside which planning policy seeks to resist.

#### **Other Matters**

17. I note that the site has been subject to a previous refused planning application and the appeal has sought to overcome other matters that have been of concern to the Council. I also note that no objection has been raised to the proposal by neighbouring occupiers or the Parish Council. The site is located where there would be access to services and facilities. Although these are merits of the proposed scheme they do not overcome my concerns above or justify the proposed development.

#### **Planning Balance and Conclusion**

18. I do not consider there is substantive evidence before me that would clearly demonstrate that the building would not be suitable for employment or community uses or that would indicate that the building is only suitable for residential purposes. I conclude that the proposal is contrary to the existing settlement policy for the area. I have also found that the residential use of the site would be harmful to the character and appearance of the countryside. The adverse impact of the scheme would significantly and demonstrably outweigh the benefits.
19. Having regard to the above findings, the appeal should be dismissed.

*Nicola Davies*

INSPECTOR