



The Planning Inspectorate

Appeal Decision

Site visit made on 19 March 2019

by **Rajeevan Satheesan BSc PGCert MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th April 2019

Appeal Ref: APP/V2255/W/18/3215448

Land adjacent to St Giles Church, Church Road, Tonge ME9 9AR

- 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 Gerald Lilley against the decision of Swale Borough Council.
 - The application Ref 18/501032/FULL, dated 22 February 2018, was refused by notice dated 17 April 2018.
 - The development proposed is described as: resubmission of application 17/501249 for the proposed development of two pairs of semi-detached houses with associated parking.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as the appellant was not present when I arrived at the appeal site during the pre-arranged period and I was able to see all I needed to from the site entrance, church yard and the road.
3. The appellant states that their intention is that these houses would be available as open market affordable homes. Whilst I note that the appellant states that they have held discussions with a local housing association, who have advised that there is a need for housing in this location, no substantive evidence of this has been provided, nor have any specific details of the proposed affordable housing been submitted as part of this appeal. Additionally, no s106 agreement or unilateral undertaking has been provided as part of this appeal, and as such there is no adequate means before me that would secure the affordable housing. Therefore, based on the limited information before me regarding this, I have determined the appeal on the basis of open market housing.

Main Issues

4. The main issues are:
 - a) Whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities and the character and appearance of the area; and
 - b) The effect of the proposed development on the setting of the Grade I listed church known as the Church of St Giles.

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Reasons

Suitability of the location

5. The site relates to a plot of land, surrounded by vegetation on all sides to the south of the Norman Church of St Giles', a C12 and C14 Grade I listed building. Immediately north of the Church are two pairs of C20 semi-detached houses. With the exception of these buildings the site is surrounded by open countryside, which together with the undeveloped nature of the site affords a rural character. The site lies outside of the established built up area of Tonge, and therefore is within the countryside, and has a remote and tranquil setting.
6. This proposal is for the erection of two pairs of semi-detached three bedroom houses with associated parking. The appellant advises that the dwellings would be constructed of stock brickwork with flint to the ground floor, white UPVC casements with a horizontal glazing bar in a cottage style, plain tiles roofs with traditional dormers to the rear, and that the dwellings would be 9m in height. Access to the site would be via the existing access which would be widened to create a new access driveway with eight off-street parking spaces and a 'turning space' to allow vehicles to enter and exit in forward gear.
7. There is a little in the way of day to day services and facilities within Tonge. The appellant states that there is a bus service available in to Sittingbourne from the recent Great East Hall development approximately 1km away. However, this would involve a walk along an unlit road with no footway. I consider that a regular walk along this route would not be convenient or pleasant for future occupiers. As such, future occupiers of the development would be largely reliant on the private motor car to access shops, services, facilities and employment.
8. Having had regard to the recent Court of Appeal decision¹ regarding paragraph 55 of the superseded National Planning Policy Framework (Framework), now paragraph 79 of the new Framework, this physical location would not result in new isolated homes in the countryside that the Framework seeks to avoid. Thus, there would be no conflict with paragraph 79 of the Framework. However, as stated above the site would be located outside of a settlement boundary and there would still be a negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services and facilities.
9. Turning to the effect of development on the character and appearance of the area, the appeal site, along with the surrounding open countryside acts as a break in built development next to the church. The undeveloped nature of the site, and existing vegetation provides a tranquil and rural character and maintains the openness of the countryside. The proposed dwellings, vehicular access point and front driveway for eight off-street car parking spaces would introduce a large proportion of hard surfacing. Despite the use of matching materials and the retention of existing vegetation and the proposed landscaping, the proposed houses would be highly visible above the existing vegetation and would harm the rural landscape character and appearance of the countryside. Therefore, the principle of residential development in this location would constitute an unjustified dwelling in the countryside.

¹ Braintree District Council v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

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10. Concluding on the first main issue, the proposed development would not provide a suitable location for housing having regard to the accessibility of services and facilities and the character and appearance of the area. Therefore, it would not accord with the Framework, and Policies ST3, DM14, DM24 and DM26 of the Bearing Fruits 2031: The Swale Borough Local Plan, 2017 (LP). Amongst other things, taken together these policies seek to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside, and ensure that new development make use of previously developed land within defined built up area boundaries and on sites allocated by the LP.

Setting of the listed building

11. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
12. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. The Framework defines the setting of a heritage asset in terms of the surroundings in which it is experienced.
13. Paragraph 196 of the Framework confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
14. Planning Practice Guidance (PPG) confirms that what matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset, and that, in general terms, substantial harm is a high test and may not arise in many cases. Works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all.
15. The heritage asset relates to the Grade I listed Norman Church of St Giles' situated immediately adjacent to the appeal site with the main entrance of the Church directly facing the appeal site. The significance of the Church in heritage terms mainly stems from its architectural interest. The C12 and C14 Church, made of Flint with red brick buttresses and chancel and plain tiled roofs, is flanked by a small group of C20 houses to the north, but is predominantly situated in a rural setting characterised largely by several isolated farmsteads, agricultural fields and orchards, grassy banks, hedgerows and winding country lanes bounded by informal soft verges. Consequently, open countryside forms part of the setting of church and makes an important contribution to its significance. Similarly, given its proximity to the Church, the undeveloped nature of the appeal site in its current form makes an important contribution to the setting and significance of the listed building.

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16. Despite the retention of existing and the proposed landscaping, the proposals would erode the openness of the countryside, altering the church's immediate rural and tranquil setting when viewed from the road, the Church yard and surrounding fields. Therefore, there would be a negative effect on the setting of the church and harm to its significance.
17. The harm to the significance of Church of St Giles' would be less than substantial but still significant given the attractive views across the countryside towards the church which form part of the listed building's setting. Paragraph 196 of the Framework requires such harm to be weighed against the public benefits of the proposal.
18. The proposed development would provide social benefits in terms of four new houses where the Council accepts it cannot demonstrate a five year housing land supply. It would also help to support local services and facilities and provide investment in terms of its construction, notwithstanding the reliance on the private motor car. However, given the limited number of houses proposed, these public benefits only carry modest weight overall. I also acknowledge that the appellant states that the properties would incorporate the highest levels of insulation and energy efficiency, and include waste recycling, and other sustainable techniques in the design of the dwellings (although no specific details of these have been submitted as part of the appeal). As such, overall, these benefits would not be sufficient to outweigh the harm to the significance of Grade I listed building.
19. Therefore, I conclude that the proposed development would not preserve the setting of the Church of St Giles' and would result in harm to the significance of this listed building. Therefore, it would not accord with LP Policy DM32 which amongst other things, seeks to protect the special architectural or historic interest and setting of listed buildings. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve the setting of the listed building as required by Section 66(1) of the Act, but instead would be harmful. This carries considerable weight and importance to my decision.

Planning balance

20. There is no dispute that the Council cannot currently demonstrate that it has a five year housing land supply (HLS). The Council state that following the outcome of the Housing Delivery Test (HDT) they have a 4.6 years supply which equates to a shortfall of approximately 400 dwellings per year. Irrespective of the extent of any shortfall the proposed development would provide a net gain of four additional dwellings. As such, its contribution to the HLS would be modest and therefore I consider that it would only be of small benefit in this regard. There would be modest economic benefit to the area, in terms of construction jobs, and an equally modest increase in investment in the area following the occupation of the development. As mentioned above, the appellant states that the scheme would deliver energy efficiency and other sustainable techniques in the design of the dwellings.
21. However, the proposed development would harm the character and appearance of the area and would cause harm to the settings of the adjacent Grade I listed building, contrary to several LP policies as referenced above. This is a matter which must attract considerable importance and weight against the proposal. In terms of the Framework, the proposal would cause less than substantial

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harm to the significance of the designated heritage asset affected. I must attach considerable importance and weight to that harm which I find would not be outweighed by public benefits and would not result in sustainable development in the meaning set out in the Framework.

Other matters

22. The appellant states that historic maps and aerial photographs shows that there was a building adjacent to the appeal site, and that the appeal site was used as a garden with evidence of remains of concrete structures and a timber pergola. However, any such development on this site has long since been removed and therefore provides little support for the current proposals before me. In any case I have determined the appeal on its own merits.
23. The site is within 6km of the Swale Special Protection Area (SPA). Natural England advise that new dwellings within 6km of the SPA can have a detrimental impact on it, due to increased recreational use, and therefore mitigation should be secured if permission is granted. However, as the appeal is dismissed for reasons relating to the main issues, I do not need to consider this issue at this time.

Conclusion

24. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Rajeevan Satheesan

INSPECTOR