



Appeal Decision

Site visit made on 7 May 2019

by **P Wookey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/V2255/W/19/3220316

Black Cottages, Mutton Lane, Ospringe, ME13 8UH

- 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 Ed Jacobs against the decision of Swale Borough Council.
 - The application Ref 18/502098/FULL, dated 18 April 2018, was refused by notice dated 11 July 2018.
 - The development proposed is described as proposed replacement of Black Cottages with erection of 2 No. dwellings and car port.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. There is a dispute between the parties as to whether the appeal site is adjacent to or partly within the Ospringe Conservation Area (CA). On the basis of the CA plan submitted by the Council and the site plan submitted by the appellant¹, part of the site is shown to be located within the CA and the appeal is determined on that basis.

Main Issues

3. During the course of the appeal, the Council brought to my attention that the appeal site is located in the Medway Estuary and Marshes Special Protection Area (SPA). As a result, and on the basis that the Council has concerns that the development would have potential harmful effects on the SPA, it has to be considered on a precautionary basis and I have dealt with it as a main issue.
4. Therefore, the main issues are the effect of the development on:
 - the integrity of the Medway Estuary and Marshes Special Protection Area; and,
 - character and appearance, with particular regard to the CA.

¹ Proposed Redevelopment of Black Cottages, Mutton Lane, Faversham, Kent ME13 8UH: Existing Site Plan 1970.01

Reasons*Special Protection Area*

5. The appeal site is within 6 km of The Swale Special Protection Area (SPA) which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPA's are protected sites classified in accordance with Article 4 of the EC Birds Directive and are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting birds, in so far as these would be significant having regard to the objectives of this article.
6. Whilst the site is not directly connected or necessary to the management of the SPA, the Council considers that this development, combined with the effect of other projects could have an adverse effect on the integrity of the SPA by virtue that any residential development within 6km of any access point to the SPA would have the potential to increase the level of public access with harmful effects. As a result, any significant effects of the development proposed has to be considered on a precautionary basis.
7. The development proposed comprises two dwellings 6 km from the SPA and has access to a number and wide range of public open spaces in the surrounding area which are not associated with the SPA, including access to adjacent countryside footpaths. However, given the distance of the site from the SPA there is a reasonable likelihood that it would be accessed for recreational purposes by the future occupants of the development, and whilst minimal in itself, when combined with other residential developments in the area a significant effect would occur.
8. The view that there is a likelihood of a significant effect is reflected in the position of Natural England and the Council. In these circumstances the Conservation and Habitats Regulations 2017 requires that an Appropriate Assessment is carried out and as a result, I have consulted Natural England and the parties during the course of this appeal.
9. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European designated site, but consideration can be given to any conditions or restrictions which secure mitigation and consequently determine that the development proposed would not adversely impact on the integrity of the SPA.
10. Whilst Natural England consider that mitigation could be secured by a financial contribution to the Thames, Medway and Swale Strategic, Access, Management Strategy (SAMMS), through an appropriate mechanism, no evidence is before me which would demonstrate that a mechanism is in place to secure such a contribution, such as a unilateral undertaking (UU) provided by the appellant. As such, the lack of an acceptable mitigation measure would result in the development proposed having a likely significant adverse effect on the integrity of the SPA.

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11. Whilst I acknowledge that the appellant is willing to enter into such an arrangement, no such solution has been submitted for my consideration. Furthermore, this cannot be dealt with as a condition if the appeal was allowed, as planning obligations imposed on future development would be subject to the test set out in paragraph 56 of the National Planning Policy Framework (2019) (the Framework) that they are directly related to the development in question. An obligation imposed on future development that seeks to retrospectively address the impact of development previously approved, would not meet this test.
12. I must also consider whether there are imperative reasons of overriding public interest. In this case the development proposed involves two dwellings, which would make a limited contribution to the housing demand and would make effective use of previously developed land. For the reasons set out in the second main issue, the development proposed would not harm the setting of the adjacent Conservation Area. Whilst this adds weight to the support for the development proposed, this would not amount to an imperative reason of overriding public interest.
13. I therefore conclude that the development proposed would result in harm to the integrity of the Medway Estuary and Marshes Special Protection Area and would have an adverse effect without mitigation. It would therefore conflict with policy CP7 and DM28 of the Swale Borough Local Plan – Bearing Fruits (2017) (LP) and the Framework, which when read together seek to protect natural assets and restrict development that has an adverse effect on the integrity of a European site. Furthermore, in these circumstances the presumption in favour of sustainable development, set out in a paragraph 11 of the Framework, does not apply and the tilted balance is not engaged.

Character and Appearance

14. The CA is characterised by development of varying ages and architectural styles, predominantly in residential use which is occasionally interspersed by the more attractive historic terraces. There is a prevailing pattern of linear residential development along Water Lane, in the area where it meets London Road, though development further towards Mutton Lane and the edge of the village boundary has a more scattered pattern of development and mix of uses, including a school on Water Lane and a commercial use adjacent to Laurel Cottage, which is located directly opposite the appeal site.
15. The development proposed would clear the site and construct two three-bedroom houses with associated parking and outdoor living space, accessed directly from Mutton Lane. The appearance of the new two storey dwellings would partially reflect the simple form of architectural style and the materials used by other dwellings in the CA, with black weatherboarding on the front elevations and brickwork to the other elevations. The fenestration design and roof treatment would be sympathetic with the architectural styles prevalent in the immediate vicinity and overall the design would not appear to be incongruous or result in a harmful effect on the setting of the CA.
16. Whilst the Council is concerned that the development proposed would not adopt the traditional linear pattern of other development in the area, the proposed layout and design of the two new detached dwellings being set side by side, would not be out of keeping with other scattered development along Water Lane and Mutton Road and further would make good use of the site's

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configuration. Though the proposed dwellings would be set back a short distance from Mutton Lane, given that other residential development along Water Lane has a similar layout and given the appeal site's location this would not appear to be out of place with its surroundings and would not result in any significant visual harm to the character and appearance of the area or to the CA. Moreover, it is proposed to retain much of the mature vegetation which borders the site which would help the site blend in with its surroundings.

17. I note the comments of the Town Council regards the layout of the proposed new dwellings, but altering the arrangements for the car parking, cycle and refuse storage would result in an appearance which is less sympathetic to its surroundings and would not make efficient use of the site's configuration.
18. With regards the design aspects of the development proposed, the simple design and sympathetic use of materials would ensure that the proposed dwellings would not result in any significant visual harm to the CA and would not appear as an incongruous addition to the streetscape. Further, the development proposed would make a significant contribution to the setting of the CA and the surrounding countryside by improving the existing appearance of a site which is unkempt and overgrown and makes little contribution to the intrinsic value of the landscape setting or beauty of the countryside in this area.
19. I conclude that the development proposed would not result in a harmful effect on the character and appearance of the surrounding area and would not be contrary to Policies CP4, CP8, DM14 and DM33 of the LP, which when read together seeks to ensure development achieves good quality design, protects the historic environment and responds positively to the character of the area. Furthermore, in carrying out my duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the development proposed would have no significant harmful effects on the desirability of preserving and enhancing the character and appearance of the CA.

Other Matters

20. The Council has acknowledged that it is not able to demonstrate a 5-year supply of housing land and has failed to deliver on its past three-year housing target. It states that it is undertaking measures to address that shortfall and that there are more sustainable, suitable sites which should be considered ahead of the appeal site. Whilst the certainty of the sites proposed by the Council are disputed by the appellant, as the appeal is dismissed on the main issue of its effect on the SPA, I have not pursued this matter further.
21. The parties contest whether the development proposed represents the replacement of existing dwellings or is new development. The Council states that its location would not represent sustainable development as described by the Framework and would be contrary to its rural restraint policy ST3 of the LP, which seeks to avoid development outside of established built up boundaries as identified in the settlement strategy. It is undisputed that the site is outside of the Ospringe village boundary. However, the Council acknowledges that the appeal site has previously been occupied by two cottages and an array of outbuildings. Based on my site visit observations, whilst the site is in an overgrown state, the foundations of buildings were still visible, and the evidence submitted by the appellant further supports the fact that the site was

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previously used for residential purposes. Further, whilst the site may have an appearance of being overgrown and abandoned, there is evidence of its previous use and therefore it would represent the re-use of previously developed land and would be consistent with the advice provided in para 79 c) of the Framework and with policy ST3 of the LP.

22. Whilst the council states that its location is some distance from Faversham, the appeal site is well positioned to make full use of the local facilities in Ospringe which are within a reasonable distance and it is within walking distance of the public transport network and other facilities associated with the local residential use. It is also located in reasonably close proximity to dwellings and commercial uses located on Mutton Lane which fall within the village boundary. Given this context, the development proposed would not, in my view, represent an isolated form of development.
23. The planning history of the site has been brought to my attention, which includes a previously dismissed appeal. Whilst I have had regard to the previous Inspector's decision, as each case must be judged on its own merits, it has not altered my decision.

Conclusion

24. I conclude that the development proposed would have no harmful effects to the character and amenity value of the surrounding countryside and would be consistent with paragraph 200 of the Framework which encourages a local planning authority to take a favourable approach to new development within CA's that helps preserve a heritage asset. However, it would result in unacceptable harm to the SPA, which would be in conflict with the development plan policies in this regard. The benefits of the development proposed would not outweigh the harm to the SPA, and therefore for the reasons set out above, the appeal is dismissed.

Paul Wookey

INSPECTOR