



Appeal Decision

Site visit made on 29 June 2020

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

an Inspector appointed by the Secretary of State

Decision date: 31st July 2020

Appeal Ref: W/4000612

**Land adjoining Westfield House, Breach Lane, Lower Halstow,
Sittingbourne, Kent, ME9 7AA**

- 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 & Mrs Keith Tress against the decision of Swale Borough Council.
 - The application Ref 19/500764/OUT, dated 13 February 2019, was refused by notice dated 19 August 2019.
 - The development proposed is described as 'Outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10no. two, three and four bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description in the banner above is taken from the Council's decision notice which more accurately reflects the development proposed.
3. The application was in outline for the erection of ten dwellings. An illustrative layout plan Drawing No TR/16/140.02D was submitted.

Main Issues

4. The main issues are:
 - Whether the development is in an appropriate location, having regard to the settlement strategy and its accessibility to local services and facilities; and,
 - The effect of the development on the character and appearance of the surrounding area.

Reasons

Location

5. The appeal site comprises two parcels of land (Parcel A would accommodate 6 dwellings and Parcel B would accommodate 4 dwellings), either side of a detached dwelling Westfield House. Parcel A is relatively flat and extends to an area of approximately 0.28 hectares. Parcel B which extends to an area of

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- approximately 0.25 hectares, was partly used as allotments and the remaining area (approximately 75%) was associated with the former use of brickearth excavation. Opposite the appeal site are two blocks of two storey dwellings known as Westfield Cottages and a further terrace known as Club Cottages. There is a car parking area located close to the dog leg in Breach lane, in close proximity to Parcel A.
6. Policy ST1 of Bearing Fruits 2031: The Swale Local Plan (2017) (LP) seeks to deliver sustainable development that accords with the settlement strategy for the Borough. Policy ST3 of the LP sets out the settlement hierarchy and directs development towards defined settlements and allocated sites. Development in the countryside is restricted unless it is supported by national planning policy and is able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside and the vitality of rural communities.
 7. Based on my site visit, the appeal site is located approximately 150 metres outside of the defined settlement boundary of Lower Halstow and the appellant acknowledges that it is located within the open countryside. I acknowledge that part of Parcel B is previously developed land and due to the rows of dwellings opposite, the appeal site cannot be considered isolated in the true sense of its meaning. However, Policy ST3 does not make provision for an exception to the restrictive approach to development in the countryside for such sites.
 8. With regards access to local services and facilities, the appellant has submitted as evidence details of those available in Lower Halstow and the surrounding area. Based on my site visit, the routes from the appeal site to facilities in Lower Halstow which includes a primary school, would be either along Breach Lane or the footpath ZR43 which is accessed at a point close to Club Cottages and then cuts across open fields.
 9. However, for some distance along Breach Lane the footpath alongside the highway is unlit, as demonstrated in the evidence¹ submitted by the appellant and footpath ZR43 is also unlit and has an uneven surface for most of its length. Whilst I acknowledge that the facilities in Lower Halstow would be within a reasonable distance based on the evidence submitted², the lack of lighting on the footpath routes would discourage regular use by pedestrians and cycling may not be the preferred option in inclement weather.
 10. I also note from the evidence before me that there are services and facilities in the neighbouring villages of Upchurch and in Newington, which would also provide some employment opportunities. Both villages were visited during my site visit. Whilst the development proposed would provide some support to the local services and facilities in the neighbouring villages, the network of unlit footpaths and narrow rural roads that would be used to access them would not provide a realistic option for pedestrians and cyclists on an everyday basis and would not be the preferred option in wet weather. Whilst the appellant states that Lower Halstow is served by bus services, the Council states that only two operate Monday to Saturday and have provided details of the varying range of infrequent services to other settlements, with no services provided on Bank Holidays. Further, there was no indication of a bus stop at the corner of Parcel

¹ Appendix D Aerial Photograph showing the location of street lighting on Breach Lane: January 2020

² Penshurst Planning Appeal Statement January 2020: reference to Institute of Highways and Transport 'Guidelines for providing Journeys on Foot 2000' and 'WVG 'How Far Do People Walk 2015' page 20.

B which the appellant refers to in evidence submitted, though other bus stops, some distance away along Breach Lane and The Street were visible. I therefore conclude that the future occupiers of the proposed dwellings would be reliant on the use of a private motor car to access local services and facilities in Lower Halstow, the neighbouring settlements of Upchurch and Newington and the larger settlements of Rainham and Sittingbourne.

11. I conclude that the appeal site would not be a suitable location for the proposed development having regard to the settlement strategy and its poor access to local services and facilities and would conflict with policies ST1, ST3 and DM9 of the LP and paragraphs 8,11,79, and 170 of the National Planning Policy Framework (2019) (the Framework), which when read together seek to deliver sustainable development consistent with the settlement strategy by restricting development in the open countryside.

Character and Appearance

12. Parcel A is clearly visible from the dog leg in the highway on Breach Lane and had been cleared prior to my visit, whilst Parcel B had been only partially cleared, with most of the site appearing to be overgrown with vegetation. Both Parcel A and Parcel B currently have an undeveloped appearance and make a significant contribution to the open, rural landscape of the area which extends beyond the appeal site in the direction of Upchurch
13. Whilst the layout of the development proposed is illustrative, the number of dwellings proposed on Parcel A and B, would significantly alter the current undeveloped appearance of the appeal site and would introduce an urbanising and domestication effect which would have a significant detrimental impact on the character of the surrounding area. Whilst the appellant states that the layout may be subject to change and could be adapted to be similar to the development opposite the appeal site, this would not overcome the harm that would result from the loss of the currently undeveloped appearance of the appeal site and the contribution it makes to the surrounding countryside.
14. As a result, the development proposed would have a significant harmful effect on the open landscape appearance of the appeal site and would not enhance its immediate setting. It would be contrary to the aims of the Swale Landscape Character and Biodiversity Appraisal 2011 Supplementary Planning Document which seeks to restore the rural environment, whilst creating a landscape structure that would improve the areas strength of character. Overall, the development proposed, would have a significant adverse impact on the contribution the appeal sites undeveloped appearance makes to the open landscape character of the surrounding area.
15. I conclude that the development proposed would have a significant detrimental impact on the setting of the open countryside and would be contrary to policies CP3, CP4, DM9, DM14 and DM24 of the LP and would be contrary to paragraphs 8,11,127, 130 and 170 of the Framework. When read together these policies seek to deliver sustainable development which directs new development to be within the defined settlement hierarchy, contributes to the move towards a low carbon future and protects and enhances the intrinsic character of the rural landscape in the area.

Other Matters

16. I have had regard to the proximity of the appeal site to the Swale Special Protection Area which is afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended. The Council has undertaken an Appropriate Assessment and has identified that the development proposed could cause disturbance to the SPA from recreational use by the future occupiers of the proposed dwellings, given its proximity. The appellant has submitted as evidence a Unilateral Undertaking (UU) which would provide a financial contribution to mitigation measures within the SPA. Whilst I note that the Council has confirmed that the UU is acceptable with regards the range of developer contributions towards the NHS Contribution and its standard bin contribution, as the appeal is dismissed on the main issues, it is not necessary to consider this matter further as part of this decision.
17. I note that the Highways Authority has raised no objections to the proposed access arrangements to the development proposed and state that whilst the proposed highway widening works on Breach Lane would not be required to be undertaken if the scheme was permitted they would provide some local highway benefits. Whilst the highway improvements would provide a benefit to the users of the highway, in this case the benefits would not overcome the harm identified in consideration of the main issues and would not on its own justify allowing the appeal.
18. I have had regard to the wide range of views expressed by interested parties including, amongst other things, the support for the provision of a wider range of housing in the village, the benefits that would be provided by the proposed highway improvements and the increase demand for local school places. I have also had regard to those interested parties that oppose the proposals due to increased traffic movements, loss of undeveloped land and impact on the countryside and the precedent that would be set for allowing development outside of settlement boundaries. I have taken these into account in reaching my decision, with most points covered in my reasoning on each of the main issues. Reference has been made by both parties to other appeals in the Borough, but as each case must be judged on its own merits and whilst I have regard to the other appeal decisions, they have not altered my decision.

Planning Balance

19. The Council accepts that it is unable to demonstrate that it has a five year supply of housing land and states that its supply position published in February 2019 was 4.6 years and has provided evidence which indicates that it has commenced a Housing Action Plan to address the identified shortfall. Whilst the Council states that the shortfall is due to the method of measurement used in the Housing Delivery Test, the amount of shortfall is disputed by the appellant who states that the shortfall is between 4.1- and 4.6-years supply of housing land.
20. On the basis of the identified shortfall in the Council's housing land supply, the appellant states that there should be a presumption in favour of development and in accordance with Paragraph 11 of the Framework the most relevant policies for determining the application should be considered to be out of date. Paragraph 11d) states that planning permission should be granted unless any adverse impacts of doing so would demonstrably and significantly outweigh the

benefits when assessed against the policies in this Framework taken as a whole.

21. In the context of the development plan the development proposed would conflict with the previously identified policies in the LP on both of the main issues and which are generally consistent with the aims of the Framework and paragraph 170 which broadly states the need for development to contribute and enhance the natural and local environment and recognise the intrinsic character and beauty of the countryside. Further, the development proposed would result in significant harm to the character and appearance of the surrounding area and the future occupiers of the proposed dwellings would be reliant on the use of a private motor vehicle to access everyday needs and employment opportunities. It would therefore conflict with the Frameworks aims to recognise the intrinsic character and beauty of the countryside, the need to reduce travel and the move towards a low carbon future.
22. The proposal would result in short term benefits with regards the construction phase and the future occupiers would contribute some spend in the local economy which would support local services and facilities in Lower Halstow and the neighbouring villages. I therefore attach only limited weight to these benefits. With regards social benefits, the addition of ten dwellings would make a modest contribution towards the Council's housing shortfall and to the range of housing available in the area, improvements to the highways and increase demand for the local school. I attach moderate weight to these benefits. The proposal would produce some environmental benefits including the remediation of previously developed land on part of Parcel B; would reduce the pressure on agricultural land for development and would make a financial contribution towards mitigation of any impacts arising from the development on the SPA. I attach moderate weight to these benefits.
23. However, even if I were to conclude that the Council was not able to demonstrate a five year supply of housing land and therefore its policies were out of date, the adverse effects identified would not be significantly and demonstrably outweighed by the benefits when assessed against the Framework as a whole. Consequently, the appeal proposals would not amount to sustainable development for which there is a presumption in favour of and the so-called tilted balance would not be engaged in this case.

Conclusions

24. For the reasons set out above, the appeal is dismissed.

Paul Wookey

INSPECTOR