



The Planning Inspectorate

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: 15th July 2020

Appeal Ref: W/4000640

Elliotts Farm, Harty Ferry Road, Leysdown, ME12 4BG

- 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 Stephen Attwood against the decision of Swale Borough Council.
 - The application Ref 19/502812/FULL, dated 30 May 2019, was refused by notice dated 6 August 2019.
 - The development proposed is described as 'The Elliotts Farm project involves the relocation of an existing building that has already been granted consent for use as a single dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for The Elliotts Farm project involves the relocation of an existing building that has already been granted consent for use as a single dwelling at Elliotts Farm, Harty Ferry Road, Leysdown, ME12 4BG in accordance with application Ref 19/502812/FULL, dated 30 May 2019, subject to the conditions in the attached schedule.

Procedural Matter

2. The previous planning history of the site has been drawn to my attention and the prior approval¹ granted for the conversion of an existing agricultural building to a dwellinghouse, which the appellant states provides a fallback position (referred to as the existing building). The proposed dwelling would be located approximately 22 metres away from the existing building and the Council assessed the proposal as a new dwelling outside of the built-up boundary and for that reason, my decision has been made on the same basis.
3. The Council has confirmed that it is not able to demonstrate that it has a 5-year supply of housing land and that the proposal should be determined in accordance with the National Planning Policy Framework (2019) (the Framework).
4. The Council's reason for refusal (2) relates to the likely impact of the development proposed on the Medway Estuary and Marshes Special Protection Area (SPA) and the lack of a financial contribution by the appellant towards the mitigation measures identified in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). The Council has confirmed that the appellant has now made the necessary financial contribution and chosen to complete the SAMMS mitigation pro-forma rather

¹ Application reference 18/504993/PNQCLA

than complete a unilateral undertaking (UU) as an expeditious alternative to relying upon a UU. A copy of the completed SAMMS mitigation pro-forma has been submitted as evidence and the Council has confirmed that it no longer wishes to pursue reason for refusal (2) relating to the SPA payment.

5. However, the site is located within 6km of the SPA which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Whilst the Council no longer wishes to pursue the effect of the development as a reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore necessary to consider this as a main issue.

Main Issues

6. The main issues are the effect of the development on
 - Whether the development is in an appropriate location with regards local and national policies; and,
 - Its effect on the character and appearance of the surrounding area; and,
 - Its effect on the integrity of the SPA.

Reasons

Location

7. The appeal site comprises an area of land within the complex of residential dwellings and farm buildings known as at Elliotts Farm. The appeal site itself is an area of land adjacent to one of two large agricultural buildings used for grain storage and processing located around the farmyard. The Elliotts Farm House is approximately 65 metres away close to Harty Ferry Road and access to the appeal site is via the farmyard, which also serves two other residential dwellings, Pheasants Cottage and Partridge Cottage and the two agricultural buildings. Beyond the farmyard is a hard-surfaced track which runs to Forge Cottage, located approximately 250 metres away. The appeal site is some distance away from the defined settlement boundary of Leysdown which is approximately 2.9km and from Bayview which is approximately 3.2km away.
8. Paragraph 79 of the Framework states that development of isolated homes in the countryside should be avoided unless certain circumstances apply. Given the proximity of the existing buildings the proposed dwelling would not be isolated in the true sense of the meaning of isolated. In this case the proposed dwelling would not meet the essential need for a rural worker to live close to their place of work; would not represent the optimal viable use or enable future use of a heritage asset; would not involve the sub division of an existing dwelling and would not have a design of exceptional quality.
9. The proposed dwelling would be located approximately 22 metres away from the site of the existing building which it would replace and which at the time of my site visit had a run-down appearance with a detrimental impact on the surrounding area. The proposed dwelling would have the same design and footprint of the proposed conversion of the existing building and would re-use as much of the materials of the existing building as possible, replacing the

unsightly corrugated roof with more traditional Kent peg tiles and would incorporate a landscaping scheme.

10. The Council has acknowledged that the development proposed would arguably represent the re-use of a redundant building. The proposed dwelling would have the same footprint and design as the approved conversion scheme and would re-use as much of the materials as is practicable. Given the derelict appearance of the existing building, I am satisfied that overall the development proposed would represent the re-use of a redundant building, which would be relocated a short distance away and would make a significant enhancement to its immediate setting. As a result, the development proposed would not conflict with Paragraph 79 of the Framework.

Character and Appearance

11. The existing building is located approximately 2 metres from the adjacent agricultural building and is visible from the bridleway which runs through the farmyard. The development proposed would be approximately 22 metres closer towards a tree belt which runs alongside open countryside and would form part of the curtilage of the proposed dwelling. The design of the proposed dwelling would retain the same height and scale as the existing building, which the Council states would not be particularly harmful.
12. Based on the evidence submitted, the development proposed would retain most of the original features of the existing building, with the exception of the replacement of the corrugated roof with more sympathetic Kent peg tiles. Further, due to the proposed re-use of the materials of the existing building, the appearance of the proposed dwelling would not appear to be out of place in the location proposed and there would be no significant adverse visual effect on the surrounding area.
13. Based on my site visit, views of the proposed dwelling would be limited and only available from the track leading to Forge Cottage, and those views would be partially obscured by the existing earth bunding that skirts the farmyard's concrete apron. The large agricultural building would screen views of the proposed dwelling from the farmyard area and the existing tree belt on the edge of the appeal site would obscure views from the open countryside beyond.
14. Further, the landscaping proposals, which have been submitted as evidence, would ensure that the development proposed would blend in with the existing tree belt and would provide additional screening, obscuring any distant views of the proposed dwelling from the open countryside beyond. Given that the proposed dwelling would be sited further away from the large agricultural building and closer to the tree belt, it would be less visible than the existing building from the bridleway and the track leading to Forge Cottage and as a result would have a more beneficial and much reduced visual impact on the surrounding area.
15. I have had regard to the appellant's stated fallback position, which would provide a realistic opportunity of development, given that the conversion of the existing building to a dwelling house has approval. The close proximity of the large agricultural building, approximately 2 metres away, to the existing building would have an overbearing effect which would have an adverse effect on the living conditions of the future occupiers.

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16. In comparison, the siting and orientation and greater separation distance of the proposed dwelling would mitigate any overbearing effect of the agricultural building and the landscaping proposed would further reduce the visual impact of the agricultural building. There would be further benefits, including overcoming safety concerns with regards fumigation of the adjacent agricultural building, which requires a minimum of a 5 metre exclusion zone and the associated risk of fire. These add weight in favour of the development proposed when compared to the realistic fallback position.
17. I have considered the Council's concern with regards the area occupied by the proposed dwelling, which would be greater than the area occupied by the conversion of the existing building. However, I can see no harm as a result of the slightly larger area that would be occupied by the proposed dwelling, given that it would result in additional landscaping and screening benefits.
18. I conclude that the development proposed would be in an appropriate location and would have no adverse effect on the character and appearance of the surrounding area and would not conflict with policies ST1, ST3, CP3, DM3, DM14 and DM24 of the Bearing Fruits 2031: The Swale Local Plan or with the Framework, which together seek to deliver sustainable development, deliver a wide choice of housing and design and layout which is sympathetic to the rural location and is appropriate in its context.

Effect on the SPA

19. The appeal site lies within 6km of the North Kent Marshes Special Protection Area (SPA). Natural England have previously advised that new dwellings within 6km of the SPA can have significant effects on the features of interest of the SPA due to the increase in recreational activity generated by the proposed development, in combination with other development. Under the precautionary principle, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment (AA) is carried out. I have as a result, consulted Natural England during the course of the appeal.
20. Although the Council has withdrawn its second reason for refusal with regards the effect of the development proposed on the SPA, it has stated that mitigation would be required as the SPA is an important recreational and economic resource and it is likely that the future occupants would visit it.
21. The recent judgement² handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.
22. In this case the development proposed would not be directly connected to or would be necessary for the management of the SPA and whilst any significant effects on the interest features of the SPA emanating from a single dwelling

² People Over Wind v Coillte Teoranta, ref. C-323/17

may be limited, combined with other developments the cumulative effect may be far greater.

23. The Council states that it is in the process of developing strategic measures which are likely to be in line with the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). Whilst it develops such measures, it is requesting an interim tariff for developments concerning new dwellings within the influence of European Sites. These contributions would be used to ensure that the agreed SAMM mitigation measures are implemented. NE do not object to this interim approach.
24. A copy of a completed SAMMS Mitigation Contribution Agreement has been submitted as evidence. This has secured a contribution of £245.56 to fund strategic measures across the Thames, Medway and Swale Estuaries. I have no evidence to indicate that this fee is not proportionate to this appeal proposal and NE is content that the secured financial contribution would be effective in terms of avoiding adverse impacts to the integrity of this European Site. There is no evidence before me to suggest I should reach a contrary conclusion.
25. As such, I am satisfied, on the basis of the specific evidence before me, that the SAMMS Mitigation Contribution Agreement is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect this SPA. I therefore find within my Appropriate Assessment that, with the provided mitigation, the proposal would not harm the integrity of the SPA. It would therefore accord with the provisions of the Conservation of Habitats and Species Regulations 2017 as amended and the Framework insofar as they seek to secure the long-term protection of Special Protection Areas and mitigate any harmful impacts to them.

Other Matters

26. The appellant has referred to a number of other appeal decisions with regards the Council's shortfall of housing land, but in each case the circumstances were different and in some cases in a different part of the country. I have had regard to the other appeal decisions, but each application has to be judged on its own merits.

Planning Balance

27. The Council does not dispute that it is not able to demonstrate that it has a five-year supply of housing land and states that the Housing Delivery Test has identified that it has a 4.6 years supply. Whilst the shortfall is limited and the Council has commenced preparation of a Housing Action Plan, Paragraph 11 of the Framework states that the most important policies for determining the application are out of date and therefore I am required to consider whether the development proposed would amount to sustainable development as set out in paragraph 7 of the Framework, with particular reference to its economic, social and environmental credentials.
28. With respect to the economic benefits of the development proposed, there would be benefits during the construction phase and the additional spending by the future occupiers in the local services and facilities. I attach limited weight to the economic benefits of one dwelling. The development proposed would make a contribution, albeit modest, to the Councils housing shortfall, which the

Council states is 4.6 years. It is acknowledged that small sites can play an important role in boosting housing provision, due to the small-scale nature of the development proposed in this case and therefore I attach moderate weight to this benefit. With regards the environmental benefits, the development proposed would not affect any surrounding land or involve the loss of any agricultural land and would re-use materials of an existing redundant building. I therefore attach moderate weight to these benefits.

29. For the above reasons, I conclude that the adverse impacts of the development proposed would not significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the presumption in favour of sustainable development weighs in favour of the proposal.

Conditions

30. The Council has proposed a number of conditions which I have assessed against the advice of the Planning Practice Guidance (PPG) and where necessary have been amended for the sake of brevity or clarity. Condition 1 Planning permission is granted subject to the standard three-year time limit condition and Condition 2 is necessary so that the development should be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of certainty. Condition 3 is to protect the character and appearance of the area and Condition 4 is in the interests of promoting energy efficiency and sustainable development. Condition 5 is in the interest of water conservation and Condition 6, 7 and 8 are in the interests of visual amenities of the area and encouraging wildlife and biodiversity. Condition 9 is to ensure land contamination is adequately dealt with. Condition 10 is in the interest of ensuring that a new building replaces one that is existing and lawful and that a single dwelling only is developed on the appeal site. Condition 11 is in the interest of protecting any archaeological interests on the site.
31. The appellant proposed a number of conditions, which I would have had considered. This included the removal of permitted development rights. However, the PPG advises that a condition restricting the future exercise of PD rights may not pass the test of reasonableness and necessity and in this case such a condition is not necessary. The proposed condition with regards the reduction of the residential curtilage has been considered previously and would not have met the test of being reasonable or necessary.

Conclusion

32. For the reasons set out above, the appeal is allowed.

Paul Wookey

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed: Drawing No. 18.18.52; Drawing No. 18.18.51; Drawing No. 18.18.60; Drawing No. 18.18.08A; Drawing No. 18.18.09A
3. No development beyond the construction of foundations shall take place until details of the materials to be used in the construction of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority and works shall be implemented in accordance with the approved details.
4. No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the possible inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of the dwelling.
5. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).
6. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be species and of a type that will enhance wildlife and biodiversity, where possible), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
7. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing in the Local Planning Authority.
8. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.
9. The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

a) A site investigation, based on the recommendations contained in the Phase 1 Environmental Assessment (compiled by Soiltec dated 4.7.18) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

b) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (1). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

c) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 2. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

10. The development hereby approved shall not be commenced until such time that the existing building on site has been disassembled and the resultant materials not to be recycled and used in the proposed development have been removed from the site.
11. No demolition/development shall take place within the curtilage of the proposed dwelling [Drawing no. 18.18.60] until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and [if indicated by the Desk Top Study submitted with the application]:
 - i) The programme and methodology of site investigation and recording;
 - ii) The Programme for post investigation assessment;
 - iii) The provision to be made for analysis of the site investigation and recording;
 - iv) The provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) The provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) The nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

End of Schedule