



Appeal Decision

Site visit made on 11 August 2020

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

an Inspector appointed by the Secretary of State

Decision date: 9th October 2020

Appeal Ref: W/4001086

Land on the south east side of Bartletts Close, Halfway, Sheerness, Kent, ME12 3EG

- 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 Stephen Potter against the decision of Swale Borough Council.
 - The application Ref 19/503810/OUT, dated 24 July 2019, was refused by notice dated 13 March 2020.
 - The development proposed is described as 'erection of 17 dwellings, new access road, associated parking and landscaping'.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 17 dwellings, new access road, associated parking and landscaping at Land on the south east side of Bartletts Close, Halfway, Sheerness, Kent, ME12 3EG, in accordance with the terms of the application Ref 19/503810/OUT, dated 24 July 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Stephen Potter against Swale Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline form with all matters reserved except access. The plans submitted are for illustrative purposes only and my decision has been made on that basis.

Main Issues

4. The main issues are the effect of the development on:
 - Whether the site would be an appropriate location for housing having regard to local and national policies concerning housing in the countryside; and,
 - The character and appearance of the open countryside; and,
 - Highways safety with regards the site access road; and,
 - The integrity of the Swale and Medway Special Protection Areas (SPA)

Reasons*Location*

5. The appeal site is located on open land which is adjacent to and slightly higher than the existing residential development on the cul de sac of Bartletts Close. The site is rectangular in shape and rises gently away from the boundary of the residential development on Bartletts Close. There is existing mature hedge planting along the boundaries with adjacent open fields and a mix of hedgerow and close board fencing on the boundaries with the adjacent residential dwellings on Bartletts Close.
6. For the purposes of the adopted development plan, Bearing Fruits 2031: The Swale Borough Local Plan (2017) (LP), the appeal site is on the edge of, but outside the built-up boundary of Halfway. As the appeal site is located outside the settlement boundary it would represent development in the open countryside.
7. Paragraph 79 of The National Planning Policy Framework (2019) (the Framework) seeks to avoid the development of isolated homes in the countryside. Given the close proximity of the adjacent residential development on Bartletts Close and the surrounding area, the development proposed would not constitute isolated development, in the truest meaning of the term.
8. Based on my site visit, the future occupiers of the development proposed would have good accessibility to the local facilities and services at Halfway, which the Council states forms part of the West Sheppey Triangle and which is identified as a Tier 3 'other Urban Centre' settlement in Swale's settlement hierarchy. These facilities, which include shops, services, education and healthcare facilities, would be within reasonable walking distance of the proposed new housing and would also be accessible by cycling or the use of public transport, given the close proximity of nearby bus stops on Queenborough Road. In addition, the future occupiers of the proposed housing would be within reasonable walking or cycling distance of the nearest train station and bus services, which would provide access to the employment centres locally on the Isle of Sheppey or further afield in Sittingbourne and beyond.
9. Overall, given the close proximity of Halfway and the availability of nearby public transport links, the future occupiers would have good access to local services, facilities and employment opportunities. I am satisfied, based on my site visit and on the evidence before me that these could be reached by sustainable transport means and the future occupiers of the development proposed would not be reliant on the use of a private vehicle.
10. I therefore conclude that when assessed against the development plan as a whole, the development proposed would be in a suitable location and would not be contrary to policies ST1, ST3, ST6 and CP3 of the LP or Paragraphs 8 and 11 of the Framework, which when read together seek to ensure that development takes place in suitable locations which have good access to local services and facilities and public transport links and future occupiers would not be reliant on the use of a private vehicle.

Character and Appearance of the countryside

11. Part 3 of Policy DM25 of the LP identifies the appeal site as being within an area defined as an Important Local Countryside Gap, which seeks to maintain the separation of settlements.
12. Based on my site visit, the appeal site which has an area of approximately 0.55 hectares, is visibly contained from the surrounding area and given the residential development close to its boundaries, the development proposed would appear as a natural extension to the existing settlement boundary. The topography of the appeal site is such that any visibility of the development proposed would be limited from distant views and it would not appear as a prominent addition to the landscape.
13. Whilst the Council is concerned that the development proposed would erode the intrinsic character of the area, it has not submitted any substantive evidence which would indicate that it would result in the coalescence of settlements or have any negative impact on the limited views of the site from further afield. Based on my site visit, and having regard to paragraph 7.7.30 of the LP, the modest scale of the development proposed would have a reasonably cohesive relationship with the adjacent urban area and would maintain the separation of settlements. There would be no significant reduction to the value, landscape setting and beauty of the countryside, such that it would result in significant erosion of the countryside gap.
14. I note that reference has been made to the planning history of the neighbouring site at Belgrade Road. Whilst limited details of the scheme at Belgrade Road were submitted as evidence, when combined with the development proposed there would be a clearly self-contained contiguous edge to the settlement boundary of Halfway, mitigating a hard, prominent edge being formed by the Belgrade Road scheme.
15. I conclude that there would be no significant harmful effect on the countryside gap and the development proposed would not be contrary to policies ST3, ST6, DM24 and DM25 of the LP, which when taken together seek to ensure that the individual character and setting of settlements is maintained and there is no erosion of the identified countryside gaps.

Highways

16. Access to the development proposed would be via Bartletts Close, which is a private unmade road. The appellant does not propose to upgrade the linkages through Bartletts Close to adoptable standards and the new estate road is not being offered for adoption by the Highways Authority. The Council and interested parties have concerns that this would prejudice the safety and suitability of the access for all users and would deter pedestrian, cyclists and those in wheelchairs and would fail to promote sustainable transport modes.
17. Based on my site visit, the private road of Bartletts Close was not in a condition that would deter its use by pedestrians, cyclists or wheelchair users. Whilst I have had regard to photographic evidence submitted by interested parties showing the condition of the road in bad weather, there is no technical evidence submitted to demonstrate that in such circumstances the private road of Bartletts Close would be unsafe or would not be suitable for use by any mode of transport other than a private vehicle.

18. I have had regard to the technical evidence submitted by the appellants transport consultant and the details of right of access over Bartletts Close available to the appellant. I have also noted that the Council does not have a policy in its LP which requires existing unmade roads to be made up to adoptable standards.
19. Further, I note that the Highways Authority, whilst not commenting on the condition of the private road, do not consider work to upgrade the unadopted access route would be necessary to support the development proposed. Also, there would be no significant traffic impacts on the local highway network as a result of the development proposed, when combined with other development planned for the surrounding area. Therefore, the development proposed would not conflict with Paragraphs 108 and 109 of the Framework which states that development should only be prevented if there would be an unacceptable impact on highway safety or the combined impact on the highway would be severe when combined with other development.
20. Whilst I have regard to the concerns of the Council and interested parties, a condition requiring the upgrading of the unmade private road would fail to meet the tests set out in Paragraph 55 of the Framework and as the link through Bartletts Close would not be upgraded to an adoptable standard it would not be possible for the Highways Authority to enter a Section 38 of the Highways Act 1980.
21. The matter of upgrading the private unmade road would therefore remain a civil matter and would not, based on the evidence before me, provide justification for dismissing the appeal on its own. I also note that the proposed access arrangements would provide some limited benefit to the occupiers of Bartletts Close, as service vehicles would be able to turn within the development proposed and would be able to enter and leave in forward gear, thus improving highway safety.
22. I conclude that the proposed access road to the development proposed would comply with policies DM6 and CP2 of the LP, which amongst other things seek to promote the use of sustainable transport and a safe route is provided for all future users.

SPA

23. The Council has brought to my attention that the appeal site is within the 6km buffer zone of the Swale and Medway Special Protection Areas (SPA) which is a European designated site, afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended. Following the recent judgement¹, handed down by the Court of Justice of the European Union, it was ruled that when determining the impacts of development on a protected area it cannot be screened out of the need to undertake an Appropriate Assessment (AA) solely on the basis of agreed mitigation measures.
24. As a result, as the competent authority, I am required to undertake an Appropriate Assessment, to assess on a precautionary basis, the effect of the development proposed on the integrity of the SPA. Whilst the development proposed is not directly connected with or is necessary to the management of the protected site, the future occupiers of the proposed dwellings have the

¹ People over Wind v Coillte Teoranta ref C-323/17

potential, in combination with other developments in the area to cause negative impacts on the SPA by reason of increased public access and recreational use.

25. The Council states that the effects resulting from 17 dwellings and the proposed mitigation measures to be implemented within the SPA could be managed by the collection of a Strategic Access Management and Monitoring System (SAMMS) tariff. During the appeal process, I have re-consulted Natural England (NE) to ensure that the proposed mitigation measures via a tariff payment would be appropriate and proportionate given the scale of the development proposed. NE has confirmed that the effects identified in the AA could be appropriately mitigated via the proposed SAMMS tariff payment. Further, a copy of the completed Unilateral Undertaking confirming the appellants agreement to pay the SAMMS tariff has been submitted as evidence.
26. On the basis of the Appropriate Assessment undertaken, I am satisfied that the completed UU would secure adequate mitigation measures for any negative impact on the SPA and as a result, there would be no conflict with Paragraph 11 d) i) of the Framework in this case.

Other Matters

27. I have had regard to all of the concerns raised by interested parties, which have in part been considered under the main issues, but also include amongst other things: harm to the living conditions of occupiers of neighbouring residents due to loss of light, and privacy due to overlooking; lack of green space; air quality; disturbance and damage to the unmade road during the construction phase; poor drainage in the area and effect on property values on Bartletts Close.
28. Matters which relate to detailed design and layout of the development are reserved matters and will be considered at a later stage. I have no substantive evidence before me to indicate that there would be any adverse effects on air quality as a result of the development and whilst there would be some disturbance during the construction phase a condition would be imposed to minimise the short term effects on neighbouring residents. In addition, a condition would be imposed to require a sustainable surface water drainage scheme to mitigate any effects on the surrounding drainage system. As planning primarily relates to land use, the effect on property values is outside the scope of this appeal.
29. The appellant has submitted a completed Section 106 Agreement with regards financial contributions towards the additional demand on local infrastructure of primary and secondary education; community learning; youth service; library services; social care; Swale CCG (NHS); refuse bins; formal sports; play contribution and administration and monitoring fee. I am satisfied, based on the evidence submitted, the financial contributions meet the relevant tests set out in Paragraph 56 of the Framework.

Planning Balance

30. The Council accepts that it is not able to demonstrate that it has a five-year supply of housing and states that it has only a 4.6 years supply. In such situations Paragraph 11 d) of the Framework states that decision makers should apply a presumption in favour of development as the most relevant

development plan policies for determining the applications are out of date and the tilted balance would be engaged.

31. The development proposed would deliver 17 housing units of various sizes and types which would contribute to the choice and needs of different groups of the community and would be a social benefit making an important contribution to the Councils' housing shortfall, to which I attach moderate weight. Further, with regards the economic benefits, the development would provide jobs during the construction phase and the additional expenditure of the future occupiers would support local shops and services. I attach moderate weight to these benefits.
32. With regards the environmental benefits, the development would be in a location which has good access to local services, facilities, employment opportunities and public transport links, and would therefore promote sustainable transport methods. I attach moderate weight to these benefits. The development would be on undeveloped land which would be an adverse impact to which I attach limited weight.
33. Therefore, any adverse impacts would not significantly and demonstrably outweigh the benefits in this case and Paragraph 11 d) of the Framework makes it clear that the presumption in favour of sustainable development will weigh in favour of the proposal.

Conditions

34. The Council has proposed a number of conditions, which I have considered against the advice given in the Planning Practice Guidance and where necessary have amended.
35. Condition 1, 2 and 3 are in pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004. Condition 4 is to ensure that there is adequate provision for the parking or garaging of cars. Condition 5 and 6 is in the interests of the visual amenities of the area and encouraging biodiversity.
36. Condition 7 is to ensure that the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. Condition 8 is to ensure that flood risks from development to the future users of the land and neighbouring land are minimised. Condition 9 is to ensure that foul and surface water are adequately disposed of.
37. Condition 10 is to protect habitats and species identified in the ecological surveys from adverse impacts during the construction phase and Condition 11 is to enhance biodiversity.
38. Conditions 12 and 13 are in the interest of the amenities of the area and highways safety. Condition 14 is in the interest of promoting energy efficiency and sustainable development and Condition 15 is in the interest of promoting the use of electric vehicles and climate change and reducing pollution. Condition 16 is in the interests of water conservation.
39. Condition 17 is in the interests of minimising opportunities for crime and anti-social behaviour. Condition 18 is in the interests of complementing the character and appearance of the surrounding area. Condition 19 is in the

Appeal Decision W/4001086

interest of the visual amenities of the area and encouraging wildlife and Conditions 20 and 21 are in the interests of residential amenity. Condition 22 is to ensure that features of archaeological interest are properly examined and recorded.

40. Condition 23 is to ensure that a satisfactory means of access is provided to the site.

Conclusions

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

Paul Wookey

INSPECTOR

Schedule of Conditions

1. Details relating to the appearance, landscaping, layout and scale and appearance of the proposed the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.
2. Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.
3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking or garaging of cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not shall be carried out on such land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.
5. All hard and soft landscape works submitted and approved pursuant to condition (1) above 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 with the Local Planning Authority.
6. 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.
7. Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):
 - that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
 - appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including

any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

8. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

9. Construction of the development shall not commence until details of the proposed means of foul sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.

10. No development shall take place (including any ground works, site or vegetation clearance), until a method statement for the safeguarding of badger, reptiles, great crested newt, breeding birds and hedgehog has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include the:

- a) Purpose and objectives for the proposed works;
- b) Detailed design and/or working methods necessary to achieve stated objectives including any required updated surveys;
- c) Extent and location of proposed works, including the identification of a suitable receptor site (where appropriate), shown on appropriate scale maps and plans;
- d) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- f) Use of protective fences, exclusion barriers and warning signs;
- g) Initial aftercare and long-term maintenance (where relevant);
- h) Disposal of any wastes for implementing work.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

11. Prior to the commencement of any above ground works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of native planting where possible. The approved details will be implemented and thereafter retained. The provision and installation of enhancements should take place within 6 months of the commencement of works, where appropriate.

12. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a) Routing of construction and delivery vehicles to / from site
- b) Parking and turning areas for construction and delivery vehicles and site personnel
- c) Timing of deliveries
- d) Provision of wheel washing facilities
- e) Temporary traffic management / signage

13. The commencement of the development shall not take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

14. 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 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 any dwelling.

15. No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority setting out and quantifying what measures, or offsetting schemes, are to be included in the development which will reduce the transport related air pollution of the development during construction and when in occupation. The details shall include 1 electric vehicle charging point for each dwelling and no dwelling shall be occupied until the charging point for that dwelling has been installed.

16. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings 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).

17. The details submitted pursuant to condition (1) above shall demonstrate how principles relating to minimising the opportunities for crime and anti-social behaviour have been incorporated in the layout, landscaping and building design.

18. The details submitted pursuant to condition (1) above shall show dwellings extending to no more than two storeys in height.

19. The details submitted pursuant to condition (1) above shall include details of a landscape buffer which is a minimum of five meters along the south-western and south-eastern boundaries of the site.

Appeal Decision W/4001086

20. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

21. No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1700hours unless in association with an emergency or with the written approval of the Local Planning Authority.

22. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

23. The access hereby approved (as shown on drawing no. 1140 SKO2 Rev A) shall be constructed and completed prior to the occupation of the first dwelling.