



Appeal Decision

Site visit made on 1 February 2021

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/V2255/W/20/3249359

Land adjoining "The Sherries", Church Road, Eastchurch, Sheerness, Kent

- 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 B Holmes against the decision of Swale Borough Council.
 - The application Ref 19/503253/FULL, dated 21 June 2019, was refused by notice dated 20 January 2020.
 - The development proposed is residential development of 2 no 4 bedroom dwellings with integral garages and associated parking spaces.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:-
 - a) Whether the proposal is an appropriate location for new dwellings having regard to the spatial strategy of the development plan and the effect of the proposed development upon the character and appearance of the countryside; and
 - b) The effect of the proposal upon the Swale Special Protection Area (SPA).

Reasons

Location, character and appearance

3. Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the Local Plan) has defined its built-up area boundary and Policy ST3 of the Local Plan seeks to provide new homes in accordance with the settlement hierarchy for the Borough. Part 5 of Policy ST3 states "*At locations in the countryside, outside the built-up area boundaries as shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities*".
4. The site lies outside and some distance from the built-up area boundary of Eastchurch. As such, the appeal site would not be an appropriate location for residential development.

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5. The appeal site is bordered to its south, east and west sides by existing established residential development that forms part of a small settlement north of the Sheppey Prison cluster. Notwithstanding this, the land to the north of the appeal site is open agricultural land.
6. The appellant seeks to establish the definition of 'countryside' and leans upon both planning and the Cambridge Dictionary to assist this. Having regard to those definitions cited, the appeal site relates to 'land outside any settlement boundary', which reflects the planning definition cited. The site is sandwiched between the settlement and rural landscape. I saw that the site is vegetated by trees and shrubs and that it is an undeveloped site. I consider the site exhibits the attributes of the undeveloped countryside. Therefore, it is 'land not in towns, cities or industrial that is either used for farming or left in its natural condition', as cited in the dictionary definition.
7. The erection of two dwellings with their associated parking, gardens and manicured landscaping would create a site of domestic appearance. The development would have a significantly urbanising effect upon the site and would substantially change its character. This would result in a diminution of the rural character and appearance of the site.
8. Reinstated vegetation along Church Road and a 3m wide landscape strip separating the northernmost dwelling from the adjoining agricultural land would help to screen the proposed dwellings and reduce the proposal's visual impact. Whilst I acknowledge landscaping would help to mitigate the visual impact of the proposed development, the proposal would nonetheless introduce urban related development that would be out of keeping with the character and appearance of the countryside.
9. It is suggested that the incorporation of a wood grain effect feature panel within the west elevation fronting Church Road of the northerly most dwelling would achieve a development in keeping with the adjoining agricultural land to the north. This would be an extremely small element of the proposed development and would not sufficiently assimilate the urban nature of the development into the wider countryside.
10. I have been referred to an appeal decision relating to residential development at land adjacent to 11 Range Road. However, that site is more closely related to the established existing residential development in its immediate area within the rural settlement. This appeal site, unlike that proposal at Range Road, is located at the northern edge of the settlement where it abuts and hosts those attributes of the open countryside. I, therefore, consider the context of the that development to be very different to that of this appeal site. My attention has been drawn to the Sheppey prison cluster that is some distance south of the appeal site and south of this rural settlement. The development at Range Road and that part of the settlement more closely relates to the prison complex than that of this appeal site at the northern edge of the settlement.
11. I have also been referred to a planning permission for a dwelling at 35 Orchard Way, albeit, from the information provided, I can ascertain that Council officers considered that development related more closely to the residential street than the countryside. From the available evidence before me that appears to be a fair judgement of that site. The appellant has also provided an annotated plan that illustrates locations of sites within the rural settlement where it is said that planning applications and appeals have been permitted or allowed.

12. The Council highlights that all of those proposals referred to by the appellant are somewhat dated. Indeed, those planning permissions and appeals all appear to predate the revised 2019 National Planning Policy Framework (the Framework) and the 2017 Local Plan. The Council also highlights that those decisions were made at a point in time when there was a significant shortfall in 5-year housing land supply. Therefore, those developments would have related to a different development plan context where different considerations will have applied.
13. Moreover, the Council has referred to a recent appeal decision at Ellens Place, Newington, that was proposed post adoption of the 2017 Local Plan and the publication of the revised Framework. In that case, despite being located adjacent to existing residential development, the urbanising impact upon the countryside resulted in that development failing at appeal. I do not consider that those developments referred to by the appellant would justify either setting aside the current applicable development plan policies or support the proposed development at this appeal site.
14. For the above reasons, I conclude that the proposed development would not be an appropriate location for new dwellings having regard to the spatial strategy of the development plan. Furthermore, the proposed development would have a harmful effect upon the character and appearance of the countryside. The proposal would, therefore, conflict with Policies ST1, ST3, ST6, CP2, DM9 and DM14 of the Local Plan. These policies seek, amongst other matters, development to accord with the Local Plan settlement strategy and to resist development in the countryside to conserve and enhance the natural environment.

Swale SPA

15. The Council has identified that the development lies within 6km of the Swale SPA site and advises that a contribution is required to mitigate the potential recreational disturbance impacts of the proposed development upon that protected area. The need for mitigation has been acknowledged by the appellant and a completed Unilateral Obligation has been provided that would ensure that the required mitigation payment would be made to the Council if planning permission were forthcoming. Notwithstanding this, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail or require an appropriate assessment to be undertaken to assess the development's effect upon the integrity of the protected habitat.

Other considerations

16. The Council cannot demonstrate a five-year supply of deliverable housing sites. Following the publication of the 2020 Housing Delivery Test results the Council has identified a 4.7-year supply, although the appellant contends that this is more likely to be a 4.57-year supply, according to the appellant's calculations, which is said to be closer to a four-year supply. The appellant also contends that the Council's calculations have potentially overcounted 961 dwellings in this year's housing supply figures with some overcounting in the three years prior, amongst other supply calculation concerns. Irrespective of the disagreement between parties as to the precise deficit in supply, given there is not a five-year supply of deliverable sites in place, the provisions of footnote 7, paragraph 11d)ii of the Framework should be applied.

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17. Paragraph 213 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The intrinsic character and beauty of the countryside is recognised by the Framework. Development in rural areas is not precluded but the Framework indicates that great weight should be given to the benefits of using suitable sites within settlements for homes and therefore supports the general thrust of the Local Plan in terms of the location of housing.
18. The appeal site lies adjacent to an existing rural settlement but is some distance from the built-up area boundary of Eastchurch. Its location would not be so far that future occupiers would benefit from the services, facilities public transport within walking distance of Eastchurch. There is a bus stop at Eastchurch that would provide public transport links to Sittingbourne and other settlements on the Isle of Sheppey. It is acknowledged that the proposal would be acceptable in respect of its design and impact upon highways and neighbour living conditions. However, whilst potentially representing a small windfall site that could be developed and deliver housing quickly, the site is nevertheless outside the built-up area and where such development would be harmful to the character, appearance, and wider amenity value of the countryside.
19. Set against the harm identified there would be limited social and economic benefits associated with the proposal. Two additional dwellings would make little difference to the overall supply of housing and the support two extra households would provide to the local economy would also be minimal. Consequently, the adverse impacts on the housing strategy and the countryside would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

20. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reason given, the appeal should not succeed.

Nicola Davies
INSPECTOR



Costs Decision

Site visit made on 1 February 2021

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Costs application in relation to Appeal Ref: APP/V2255/W/20/3249359 Land adjoining "The Sherries", Church Road, Eastchurch, Sheerness, Kent

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr B Holmes for a partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for residential development of 2 no 4 bedroom dwellings with integral garages and associated parking spaces.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Following the results of the 2020 Housing Delivery Test (HDT) being published on 19 January 2021 the Inspectorate wrote to the parties inviting comment on the change to the housing land supply buffer. The Council responded advising that it could demonstrate a 5.02 years housing land supply (HLS).
4. Subsequent to this the applicant responded to this claim. An edited version of the Council's 5-year HLS spreadsheet was provided highlighting evidence that suggested the Council had overcounted its housing supply figures. In addition to this Document '14239 SBC 5YHLS' was provided which conclude that the Council would only have a 4.57 years HLS.
5. The applicant's contention is that it was unreasonable for the Council to claim that it had a 5-year supply of sites and that this has put the applicant to a very considerable amount of work to rebut the Council's claim.
6. The publication of the HDT identified the Council to be a 5% buffer authority. The Council accepts that there have been some errors in their original trajectories and acknowledges that it is not yet in a position to be able to demonstrate a 5-year HLS. The Council explains that as soon as it was notified of some potential issues with the calculations it commissioned a full review of the work which has resulted in the Council retracting its claim that it has a 5-year supply of housing sites in place. The Council admits with regret that this

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was an error but until the error was highlighted had acted in good faith and in the belief that it had correctly undertaken the calculations.

7. HLS has been the subject of review and debate over many years as part of the plan-making process to identify the requisite HLS and, when necessary, in the application of paragraph 11 of the National Planning Policy Framework to decision-taking. The Council highlight that the applicant's agent has submitted evidence to support a different and earlier appeal elsewhere within the Borough that the Council advises to be identical to that submitted in relation to this appeal. Although having been given the opportunity to respond, the applicant's agent has not made comment on this matter.
8. On the evidence that is available to me it appears that in responding to my invitation for comment on the change to the housing land supply buffer, the applicant's agent may have relied upon or reproduced work that had previously been carried out. As such, in responding to my request I do not consider that the applicant or his agent has necessarily been clearly put to a very considerable amount of work to rebut the Council's claim.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of cost is not justified.

Nicola Davies

INSPECTOR