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## Appeal Decision

Site visit made on 20 December 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2022

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**Appeal Ref: APP/V2255/W/21/3270807**

**Jays Wood, Canterbury Road, Boughton Under Blean, Kent, ME13 9NY**

- 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 Ms Karen Brigden of Roseina Animal Centre against the decision of Swale Borough Council.
  - The application Ref 20/503031/FULL, dated 7 July 2020, was refused by notice dated 26 October 2020.
  - The development proposed is combined development comprising a single storey dwelling house with animal rescue sanctuary and associated maintenance building and teaching facility.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. Given the revised Framework represents the most relevant and up-to-date national planning policy it holds great weight. The courts have confirmed that Inspectors need to make their decisions on the basis of the development plan and national policy that is in place at the time of making their decision. I have, therefore, had regard to the updated Framework in reaching my decision.

### Main Issues

3. The main issues in the case are: -
  - a. Whether the site is suitable for the proposed development, having regard to the spatial strategy of the development plan, the effect of the proposed development on the character and appearance of the area and access to services and facilities;
  - b. The effect of the proposed development on highway safety;
  - c. The effect of the proposed development on existing trees protected by a Tree Preservation Order (TPO); and
  - d. The effect of the proposed development on ecology.

Appeal Decision APP/V2255/W/21/3270807

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## Reasons

### *Location, character and appearance, and travel*

4. 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"*.
5. Given that the site's location would be outside any established built-up area boundary the appeal site would not be an appropriate location for residential development. However, the Council indicates that it cannot demonstrate a five-year supply of housing sites, and this reduces the weight that can be attributed to settlement boundaries. Nonetheless, Policy ST3 seeks to protect landscape setting, tranquillity and beauty of the countryside. This aim is consistent with the environmental objectives of the Framework to conserve and enhance the natural environment recognising the intrinsic character and beauty of the countryside. I, therefore, attribute significant weight to that part of Policy ST3 that seeks to protect the countryside.
6. A dwelling with associated animal welfare facilities, associated buildings and vehicle parking would create a development of both domestic and urbanised appearance, and this would substantially alter the character and appearance of this countryside location. This would harmfully diminish the landscape setting, tranquillity and beauty of the countryside.
7. Services and facilities, such as secondary schools and larger shops are located in Faversham or Canterbury. There are bus stops located on Canterbury Road providing routes to Canterbury and Faversham where there are railway stations. Buses run hourly during weekdays with a reduced service at weekends and bank holiday. However, I saw that walking to the bus stops would involve traversing an uneven footpath of steep gradient that runs alongside a very busy highway.
8. Whilst some facilities would be within walking and cycling distance, the facilities and services offered at Boughton and Dunkirk are limited to a village shop, post office, medical centre, farm shop, a plant nursery, veterinary services, a small range of restaurants and public houses, a primary school, village hall, amongst some others. However, these would not cater for full day-to-day requirements. Future occupiers of the multi-occupancy family accommodation would need to travel to Faversham, Canterbury or beyond to access services, facilities, education and employment. Cycling or using the bus service would provide access to facilities further away. Nonetheless, carrying shopping, the steep nature of the footpath and/or inclement weather would not be an attractive option and would likely deter occupiers from using these modes of transport.

Appeal Decision APP/V2255/W/21/3270807

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9. Consequently, given the distance to services and facilities I find the future occupiers would be highly reliant on private vehicle, the least sustainable mode of transport, to access services and facilities to cater for their day-to-day lives.
10. Further to the above, the animal sanctuary's aim is for visitors to travel to the site by predominately public transport or by minibuses. However, given my above findings in respect of public transport, I do not consider this would be a realistic travel option for many visitors.
11. The proposal is presented as a design of exceptional quality under paragraph 80(e) (formerly paragraph 79 (e)) of the Framework relating to the provision of isolated homes in the countryside. Paragraph 80 indicates that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of its criteria would apply. Criterion (e) states *"The design is of exceptional quality in that it: Is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and, would significantly enhance its immediate setting, and be sensitive to the defining characteristic of the local area."*
12. The site is not far from the built-up boundary of Boughton or Dunkirk. I do not consider the location of the proposed dwelling to be isolated and as such, it does not meet the objective of paragraph 80 of the Framework. I have had regard to the court judgements referred to me in coming to this view.
13. I have been referred to Policy CP4 of the Local Plan by the appellant that requires good design and the Kent Design Guide adopted as a Supplementary Planning Document by the Council, as well as the Framework. It is pointed out that none of these set out what would constitute exceptional design. It is also contended that the Council has not addressed the question as to what might constitute exceptional design.
14. Notwithstanding the development's location, the building has been designed to meet 'Passive House' standards and local resources, sustainable material and construction techniques would be utilised. Whilst this is a benefit it does not in itself make the building one of exceptional quality design, as sought by paragraph 80(e) of the Framework.
15. The development would be set into the contours of the land to reduce its visual impact. Incorporated into the design are Gabion Basket Blocks foundation, walls constructed of a combination of straw bales and cedar board cladding or glass panels, and the development would host sedum planted roofs. It would also face south to take advantage of light and incorporate roof mounted solar panels.
16. The proposal is different in terms of its design, materials and construction with planted roof, but I do not consider that it passes the high design bar test of paragraph 80(e) to be truly outstanding. I do not consider that the proposal would raise standards of design more generally in this rural area because of its unusual design. Furthermore, I do not consider the development would blend sufficiently to visually become part of the environment and its flora and fauna. Despite incorporating natural materials into the design, the proposal, being of domestic and urban appearance, would not significantly enhance the immediate

Appeal Decision APP/V2255/W/21/3270807

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rural setting. It would not be sensitive to the defining rural characteristics of the area which are that of a treed woodland.

17. Even if being separate or remote from services and facilities would represent an isolated location that might bring with paragraph 80 of the Framework into consideration, taking all these matters collectively, the proposed development would not pass the high design bar test of paragraph 80(e) to be truly outstanding.
18. For the above reasons, I conclude that the site would not be suitable for the proposed development as it would have a harmful effect on the character and appearance of the area and would not provide reasonable access to services and facilities for future occupiers of the development. The proposal would, therefore, conflict with Policies ST1, ST3 and DM14 of the Local Plan. These policies seek, amongst other matters, development to protect the tranquillity and beauty of the countryside and to achieve convenient routes for pedestrians and cyclists.
19. My attention has been drawn to paragraph 85 of the Framework (formerly paragraph 84) which states that "*planning policies and decisions should recognise that sites to meet local business and community needs in rural area may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In such circumstances it will be important to ensure that development is sensitive to its surroundings and does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport).*" For the previously stated reasons the proposed development would not meet the objectives of paragraph 85 and I do not consider that the development would significantly enhance or maintain the vitality of rural or village communities or the local economy.
20. I have been referred to a development at Flimwell Park in East Sussex relating to a community woodland visitor centre with dwellings, tourist accommodation, amongst other developments. That is a much larger development that involved land subject to a blanket TPO. Although consideration may have been given to paragraph 79 of the Framework (now paragraph 80) that proposal related to a different administrative area where different development plan policies and considerations will have applied.

#### *Highway safety*

21. Kent County Council Highways highlight that the access would be required to be widened to allow vehicles to pass each other. Dimensions of the access are sought, and it is commented that the gate would be required to be repositioned 10m from the highway. Also, given the use proposed, details of numbers of vehicle movements relating to residents, staff, visitors and number of animals are required to determine the necessary parking provision, delivery and refuse requirements of vehicles and turning space within the site.
22. The appellant's intention is to strictly control vehicle movements to and from the site to achieve a minimal carbon footprint. The site would only be open to

Appeal Decision APP/V2255/W/21/3270807

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the public by invitation only and this would limit numbers of vehicles. Feed and supplies would be provided by either the appellant or staff. This could control traffic movement to and from the site.

23. Nonetheless, the access would be onto a classified road at a point in the highway where the national speed limit applies and where I saw traffic travels at speed. Without the above information it is difficult to fully understand the impact of the proposed development upon highway safety. The proposal would be extremely likely to intensify the use of the access. Without knowing whether safe access and egress at the access can be achieved the proposal could significantly increase the potential for conflict between road users that could result in crashes and injuries. This would not be acceptable.
24. For these reasons, I conclude that the proposed development has not demonstrated that safe access would be achieved. As such, this brings the proposal into conflict with Policy DM14 of the Local Plan. This policy seeks, amongst other matters, development to achieve safe vehicular access together with appropriate parking and servicing. It also conflicts with the Framework that requires development to provide safe and suitable access to the site for all users. Given the above uncertainties I do not consider that it would be appropriate to rely on the imposition of planning conditions as there is no substantive clear indication that conditions could ameliorate the objections sufficiently to allow permission to be granted.

#### *Trees*

25. The proposed development would remove a number of trees that are protected by a blanket TPO that covers the woodland. Whilst this may be a relatively new woodland, the trees contribute to the sylvan character of the woodland and make a significant contribution to the verdant character and appearance of the area. A woodland management plan has recently been approved by the Forestry Commission which aims to manage the wood for its wildlife and nature conservation values.
26. The Miller Land Management tree report that supports the application is rather generic in content. Although it takes into account the trees in the location of the proposed development, it does not discuss trees that might be impacted by service routes or any upgrades required to the access, noting that Kent Highways seeks the access to be widened. Service runs could follow established pathways. However, on the available evidence I cannot be certain that this would avoid tree roots.
27. Removing even a small part of the TPO trees within the woodland would erode the woodland's sylvan character. The TPO that is in place affords the trees protection, no doubt in recognition of their amenity value collectively as a woodland. This makes it all the more important that the trees are protected from harm to ensure the trees and their longevity as a comprehensive woodland is not undermined. The loss of trees would have a negative and significant visual effect upon the woodland, even if the trees are not part of the identified area of ancient woodland. This would be an erosion of the statutory protection placed by serving the TPO on these trees. As a consequence, the proposed development should be resisted.
28. It has been suggested that some of the healthy trees to be removed could be relocated within the woodland. However, it is also commented that there can

Appeal Decision APP/V2255/W/21/3270807

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be no guarantee that the transplantation of the trees will be successful in all cases. This, therefore, does not overcome my concerns.

29. For these reasons, I conclude that the proposed development would have a harmful effect upon the existing trees protected by TPO. The proposal would, therefore, conflict with Policies DM14 and DM29 of the Local Plan. These policies seek, amongst other matters, development to conserve and enhance the natural environment and ensure the protection, enhancement and sustainable management of woodlands. Although it is suggested that an appropriately worded condition could secure woodland management, such a condition would not prevent the loss of TPO trees at the site. Therefore, such a condition would not ameliorate the objections sufficiently to allow permission to be granted.

#### *Ecology*

30. A number of ecological reports and surveys supported the planning application. The Council is concerned that no clear evidence has been provided that would indicate that sufficient measures would be put in place that would offset the permanent loss of priority habitat if the development were to take place. The Council highlights that the site is a suitable habitat for reptiles, invertebrates, and botany. The Council's Ecologist advises that further survey work and mitigation measures are required in order to assess the extent to which the development may affect protected species. Indeed, the appellant's report by Ambiental June 2018 advises that a reptile survey will be required.
31. The Council's Tree adviser also highlights that the development would create noise and light pollution within the woodland that could give rise to disturbance of wildlife. The appellant's Environmental Assessment by Ambiental recorded a moderate level of bat activity and comments that all species of bats are sensitive to artificial lighting, however no lighting plan is provided that might indicate the extent and impact of any new lights relating to the development on bats.
32. Given the above, a precautionary approach must be taken given the sensitivity of the site to host protected species. The extent that ecology that may be present at the site and potentially impacted by the proposal development needs to be established prior to any permission being forthcoming. Without this in place, this brings the proposal in to conflict with Policies DM14, DM29 and DM30 of the Local Plan and the Framework. These policies and the Framework seek, amongst other matters, to conserve and enhance the natural environment and resist the loss of trees that make an important contribution to the biodiversity value of a site.

#### **Other Matters**

33. It has been highlighted that the planning application was not referred to a design review panel for consideration during the course of the Council's consideration of the planning application and it is suggested that this has resulted in the Council handling the planning application in a prejudicial way. However, this is not a matter that is primarily before me in respect of this appeal but is an issue for the local planning authority in the first instance.

Appeal Decision APP/V2255/W/21/3270807

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### **Planning Balance**

34. The Council indicates that it cannot demonstrate a five-year supply of housing sites. If there is not a five-year supply of deliverable sites in place, the provisions of paragraph 11d) of the Framework should be applied.
35. The adverse impacts arising from the proposal relate to the harmful effect to the character and appearance of the area and the site's location not providing reasonable access to services and facilities for future occupiers of the development. Furthermore, the proposal has not demonstrated that safe access would be achieved or that harm would not result to the existing trees protected by TPO or ecology that may be present at the site.
36. On the other hand, the Government's objective is to significantly boost the supply of homes and recognises that small sites can help meet supply. However, one dwelling would make little difference to the overall supply of housing and the support one extra household would provide to the social and local economy would also be minimal. I have considered the benefits that the proposal would sustain an existing animal rescue enterprise and the opportunity of the development to provide a woodland education facility. However, the harm that I have identified is not outweighed by the contribution to housing land supply or those other social and economic benefits.
37. Consequently, the adverse impacts of the proposal on the character and appearance of the area, access to services and facilities, highway safety, TPO trees and ecology 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**

38. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provision of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

*Nicola Davies*

INSPECTOR