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## Appeal Decision

Site visit made on 2 November 2022

**by David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 November 2022**

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**Appeal Ref: APP/V2255/W/21/3284794**

**Unit A, Howt Green, Sheppey Way, Bobbing, ME9 8QT**

- 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 Brian Nash against the decision of Swale Borough Council.
  - The application Ref 21/501972/FULL, dated 9 April 2021, was refused by notice dated 8 June 2021.
  - The development proposed is change of use from Class B8 (storage and distribution) to Class C3 (residential) – as required for the conversion of extg storage unit to create 1 nos 3 bedroom dwelling with associated access and parking.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. These are:
  - Whether the proposed dwellings would be in a suitable location having regard to relevant development plan policies;
  - The effect on the provision of commercial floorspace within the Borough;
  - Whether future occupiers would have satisfactory living conditions having regard to the proximity of existing commercial uses; and
  - The effect on the integrity of the Medway Estuary and Marshes Special Protection Area (SPA).

### Reasons

#### *Location*

3. The appeal site comprises a commercial unit at the end of a row of 4 similar units. It is served by an access from Sheppey Way. There are also houses and other industrial uses behind the frontage development along the main road. It is proposed to convert the premises to a 3-bedroom dwelling involving significant external alterations and an increase in the roof height.
4. The new dwelling would be outside of any built-up area boundaries. This is where development will not generally be permitted according to Policy ST3 of the Swale Borough Local Plan. Policy CP3 also indicates that homes will be steered towards the locations identified in Policy ST3 which focuses on the main urban centres in the Borough. The proposal involves the re-use of an existing building and there would be no adverse impact on the countryside.

Appeal Decision APP/V2255/W/21/3284794

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However, this is not a location that is favoured for new housing as part of the spatial strategy and this counts against the proposed use.

5. There is a small cluster of development at Howt Green but it is not near day-to-day services and facilities. The Council indicates that schools and supermarkets are a minimum of 1.3km from the appeal site. There is a bus stop along Sheppey Way but services are infrequent. Kemsley railway station is a 15 minute walk away but the route is via an isolated rural footway and cycle path that is unlikely to be attractive in the dark.
6. The map in the Local Plan shows the site to be within an area that is accessible to most or all services. However, this is indicative and is based on distances 'as the crow flies'. The reality is that future occupiers would be separated from Sittingbourne by the A249 and there is no continuous footpath to Iwade to the north. Because of these factors it is likely that future occupiers would be reliant on private vehicles for most trips. As a result the proposal would not fulfil the aim of Policy CP2 of promoting sustainable transport as there would be very limited access to modes other than the car.
7. As noted in the Local Plan, the distinction between built up development and open countryside may sometimes be blurred. However, the appeal site is beyond the defined built up area boundary. It is not well related to destinations that are likely to be visited frequently so they are most likely to be accessed by car. Consequently the proposal would not be in a suitable location having regard to relevant development plan policies. In turn, it would not accord with Policy ST1 which seeks to deliver sustainable development by, amongst other things, expecting that the settlement strategy is adhered to.

#### *Commercial floorspace*

8. Local Plan Policy DM3 stipulates that planning permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities. This is unless the building is demonstrated as having no demand for such purposes. The supporting text indicates that evidence of demand should include the results of efforts made to market the building and that it is neither viable nor likely to become viable.
9. The current use of the building is limited to storage and previous applications for use within Class B1 and retail have been refused due to the proximity to dwellings. Therefore, the scope for alternative commercial uses may be limited. Nevertheless, the policy approach prioritises the retention of employment and community uses over and above residential. There is no evidence of whether there is any demand for the activities supported by the policy so that converting to residential is not obviously a logical outcome.
10. The unit is small and so the overall consequences for commercial floorspace within the Borough would be limited, albeit negative. Nevertheless, accepting the residential use without any indication that Unit A is now surplus to requirements would harmfully dilute the intentions of Policy DM3. The proposal would be contrary to it and is therefore objectionable in this respect.

#### *Living conditions*

11. The proposed dwelling would be immediately adjacent to the remaining three units to the north as well as the other businesses to the south that are also served by the access road. The National Planning Policy Framework refers to

Appeal Decision APP/V2255/W/21/3284794

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the need to prevent new development from being put at unacceptable risk from unacceptable levels of noise pollution. In this location there is potential for noise and disturbance to be caused that would be disruptive to future occupiers of the proposed dwelling, including traffic generated along the access road.

12. However, there is nothing to suggest that the use of the adjoining commercial units is anything other than low-key. Equally there is already a close relationship between the existing businesses and the housing at Layfield Cottages and no indication that this is problematic. The Council maintains that there is insufficient information for it to be satisfied that there would be no harm to amenity. On the other hand, nothing has been provided to indicate that future living conditions would be unacceptably poor. Given the nature of the surrounding area and the likely activities undertaken, it is most likely that the living environment would be reasonable, even if slightly unusual.
13. Therefore, having regard to the proximity of existing commercial uses, living conditions for future occupiers would be satisfactory. There would be no conflict with Policy DM14 which requires that development causes no significant harm to amenity.

#### *Integrity of the SPA*

14. The Medway Estuary and Marshes SPA provides habitats for overwintering birds. Because the appeal site is within 6km of the SPA the proposal has the potential to affect its features of interest. In combination with other development in Swale, an additional dwelling would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPA.
15. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy. The appellant is willing to make a payment but there is no mechanism to achieve this should planning permission be granted. As a result, following an appropriate assessment, the proposal would adversely affect the integrity of the SPA and would be contrary to Local Plan Policy DM28 which protects designated sites. Moreover, the Conservation of Habitats and Species Regulations preclude the proposal from proceeding.

#### **Other Matters**

16. The Council cannot demonstrate a five year housing land supply. The latest information is that supply is equivalent to 4.6 years and the shortfall amounts to 400 dwellings per annum. However, paragraph 182 of the Framework confirms that the presumption in favour of sustainable development, set out in paragraph 11, does not apply in cases such as this, where it has been concluded that the plan or project would adversely affect the integrity of a habitats site.
17. In rural locations the Swale Vehicle Parking Supplementary Planning Document (SPD) expects 3 parking spaces to be provided per dwelling. Policy DM7 refers to the SPD as providing guidelines for residential development. Two spaces would be made available on the opposite side of the access road and Kent Highways raise no objection in this respect. Any short-term overspill parking could be accommodated along the access road if necessary and there is no clear indication that a shortfall of one space would create difficulties along



Appeal Decision APP/V2255/W/21/3284794

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Sheppey Way. As the number of spaces would be adequate there would be no conflict with Policy DM7 or with the general criteria in Policy DM14.

18. There is concern that the premises have previously been operated as industrial works. The Framework indicates that a site should be suitable for its proposed use taking account of any risks arising from contamination. However, there is no detail about past activities or how they might impact on the proposed use. Further information could have been sought at application stage but there is insufficient detail to conclude that this represents an objection to the proposal or that there would be a conflict with Policy DM14.
19. The dwelling would be of sustainable design and construction but that is to be expected. The building would be more attractive to look at than the existing nondescript unit but it would not be prominent in views from surrounding residential properties. The Local Plan envisages that outdated or unsuitable industrial sites will present opportunities for windfall development on previously-developed land. However, not all brownfield land is suitable for development and in this case the site is not well located for new housing.

### **Conclusion**

20. There are no objections in respect of future living conditions, parking or contamination. The proposal would increase the supply of housing in a Borough where existing supply is less than Government expectations but it would not be well located to access services and facilities by means other than the car. New housing here would not accord with the spatial strategy for Swale. There is nothing to indicate that the policy that generally favours the retention of rural employment or community uses should be set aside. These are significant objections. Moreover, the proposal would adversely affect the integrity of the SPA. This is an overriding consideration.
21. Overall the proposed development would be contrary to the development plan and there are no other material considerations which outweigh this finding. Therefore the appeal should not succeed.

*David Smith*

INSPECTOR