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## Appeal Decision

Site visit made on 1 November 2022

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2<sup>ND</sup> December 2022.

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**Appeal Ref: APP/V2255/W/22/3298880**

**Land adjoining The Sherries, Church Road, Eastchurch ME12 4DH**

- 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 Holmes against the decision of Swale Borough Council.
  - The application Ref 21/504825/FULL, dated 8 September 2021, was refused by notice dated 16 November 2021.
  - The development is proposed residential development for a detached 3 bedroom bungalow with living accommodation within the roof structure and a detached garage with associated parking and access driveway.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - Whether the proposal would provide a suitable location for housing, having regard to the spatial strategy of the Development Plan and the effect of the proposal on the character and appearance of the area, and
  - The effect of the proposal on protected species, specifically bats.

### Reasons

#### *Suitable Location*

3. The Council's settlement strategy is set out in Bearing Fruits 2031, the Swale Borough Local Plan, adopted 2017 (SBLP). Its policies ST1 and ST3 seek to steer growth to urban centres and well-connected villages, with their better accessibility to services and facilities. Policy ST3 does not permit development in the open countryside unless it is supported by national planning policy. It also requires that proposals must demonstrably contribute to (amongst other things) protecting the intrinsic value and beauty of the countryside and the vitality of rural communities. Policies ST1 and CP3 make similar requirements.
4. The site consists of a small field adjacent to an existing dwelling, The Sherries. The field is densely overgrown with trees and shrubs and as such is identifiable as undeveloped countryside, having a soft and green character. It is common ground that the site lies outside of a built-up area boundary identified in the SBLP and therefore in the open countryside.
5. The site of the proposal is on the edge of an area of houses and buildings associated with a number of HM Prisons, known as the prison cluster. As such,

Appeal Decision APP/V2255/W/22/3298880

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it is not isolated. The site is connected to the village of Eastchurch by means of Church Road. The route to the village has a lit, continuous footway, and so provides access to the facilities in the village, as does a bus service. I am therefore satisfied that the site and proposal have reasonable access to services and facilities.

6. The proposal would include a substantial retained buffer area of trees and hedges, with supplemental planting to reduce gaps in the boundary. To further soften its appearance and the transition between built-up and rural areas, the dwelling has been designed to appear agricultural. It would have a barn-like form and appearance with timber facades, shutters and few windows, particularly on the side facing the fields. These measures would further reduce its visual impact, including from night-time lighting.
7. The site would be visible from Church Road including from its pavement. The proposed screening would help to mitigate its visual effects. However, the dwelling would be seen from the road through the proposed entrance driveway. Despite the proposal's barn-like features, its domestically sized windows, driveway and car port would make clear when viewed from the road that the proposal is a dwelling. The proposed front lawn and domestic paraphernalia upon it, such as children's play equipment and garden furniture, would also give the proposal a residential appearance.
8. In some views the proposal would be seen against the backdrop of The Sherries and its garage. Nevertheless, a dwelling on the site would have a harmful, urbanising effect, domesticating and encroaching into the countryside between Eastchurch and the prison cluster. As such, the proposal would not protect the intrinsic value or beauty of the countryside.
9. I am mindful that the proposal represents a reduction from the two dwellings proposed during the 2021 application and appeal<sup>1</sup> at the site. As a recent decision at the same site, I give this decision significant weight. However, I have considered the proposal for a single dwelling on its own merits and reached my own conclusion about its effects.
10. Other recent appeals have considered new dwellings within the prison cluster and outside of the built-up area boundary. At Stanbourne House<sup>2</sup> the Inspector found that the site already had a domesticated appearance and was surrounded on three sides by housing. At Land behind 9-10 Range Road<sup>3</sup>, the site also had a developed character. These sites, which I was able to view, therefore had a different, more built-up and domestic character in contrast to the current appeal site. As such, the sites are not comparable meaning that I give these decisions limited weight and they do not alter my conclusions.
11. Assessed against the development plan, the location would have reasonable access to services and so would comply with the requirement of SBLP Policy CP2 to facilitate sustainable transport. SBLP Policies DM9 (rural exception housing) and ST6 (The Isle of Sheppey area strategy) have also been referenced in the Council's first reason for refusal. However, given their particular focus they are not directly relevant to my reasoning, and I find no conflict with them.

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<sup>1</sup> APP/V2255/W/20/3249359

<sup>2</sup> APP/V2255/W/20/3246976

<sup>3</sup> APP/V2255/W/20/3253723

Appeal Decision APP/V2255/W/22/3298880

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12. Nevertheless, due to its countryside location and harmful urbanising effect, the proposal would not accord with SBLP Policies ST1, ST3 or CP3. As such, it would not provide a suitable location for housing, having regard to the spatial strategy of the Development Plan and the effect of the proposal on the character and appearance of the area. For the same reasons, it would conflict with the requirement of SBLP Policy DM14 that development must conserve the natural environment.
13. SBLP Policies ST1, ST3, CP3 and DM14 are broadly consistent with the National Planning Policy Framework (the Framework) including recognising the intrinsic character and beauty of the countryside. As such, I give significant weight to this conflict.

*Protected Species - bats*

14. The application submission included a Preliminary Ecological Appraisal (PEA) which found that trees on the site were potential bat roosting habitats and required further assessment. The PEA was over two years old at the time of submission. It was therefore not sufficiently up-to-date to establish the current suitability of the site for protected species or recommendations for their mitigation.
15. As part of the appeal submission, the appellant has provided an update from their ecologists who confirm that the site and their recommendations remain the same in respect of protected species. I note also the appellant's willingness to install bat boxes, which would result in a small positive benefit. The proposal would therefore comply with SBLP Policy DM28, which requires that proposals conserve and where possible enhance biodiversity. I give this small benefit additional limited positive weight.

*Conclusion – Development Plan*

16. Although I have found that the proposal would comply with SBLP Policies CP2 and DM28, I have found conflict with SBLP Policies ST1, ST3, CP3 and DM14. The proposal therefore conflicts with the Development Plan, when read as a whole.

**Other Considerations**

17. It is common ground that the Council cannot currently demonstrate a five-year housing land supply, although there is dispute between the parties in respect of the degree of the shortfall. I also understand that the Council has a 78% delivery against the Housing Delivery Test. It is therefore necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing an additional dwelling to assist the Council in addressing its undersupply, as set out in paragraph 11 of the Framework.
18. I have found conflict with the Development Plan, read as a whole, which is consistent with the advice of the Framework. Against that, the proposal would make a positive addition to the supply of housing, as a windfall site. The Framework is clear that small sites including those in rural areas can make an important contribution to meeting housing need, often being built out relatively quickly. Furthermore, the proposal and its future occupants would make a small but positive social and economic contribution to the area.

Appeal Decision APP/V2255/W/22/3298880

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19. However, such benefits would be limited because of the size of the proposal, as a single dwelling. As such, these benefits attract only moderate weight. I have also given the biodiversity benefits limited positive weight. The Council has raised no objection in respect of highway safety or residential living conditions, but these matters are essentially neutral in the planning balance.
20. Given the harm that I have identified to the character and appearance of the area, and the weight I attach to this, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
21. The Council's second reason for refusal referred to the effect of the proposal on the Swale Special Protection Area (SPA), protected pursuant to the Conservation of Habitats Regulations 2017 as amended. The appellant has provided a Unilateral Undertaking making a financial contribution towards the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy, to mitigate the effects of the proposal.
22. Had I found the proposal acceptable in other respects, as the competent authority, I would have needed to carry out an Appropriate Assessment in respect of the potential effects of the proposal on the SPA. However, as I have found against the appellant on other substantive grounds, this matter does not need to be considered further in this case.

#### **Conclusion**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
24. The proposal benefits from the presumption of sustainable development as outlined in Paragraph 11(d) (ii) of the Framework. I have found that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. For the above reasons, having regard to the Development Plan as a whole, the approach in the Framework, and all other material considerations, I conclude that the appeal should be dismissed.

*O Marigold*

INSPECTOR