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## Appeal Decision

Site visit made on 5 December 2024

by **S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

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**Appeal Ref: APP/V2255/W/24/3344116**

**Nether Toes, Sheppey Way, Bobbing, Sittingbourne, Kent ME9 8QP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Ross Miller against the decision of Swale Borough Council.
  - The application Ref is 23/502191/FULL.
  - The development proposed is conversion and reinstatement of an agricultural building to a single dwelling house, including alterations, rebuilding works. (Alternative scheme to planning application Ref: 22/505001/FULL).
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of the development on the Council's decision notice and the appeal form differs from that on the original application form in that it includes reference to associated parking. I have determined the appeal accordingly.

### Main Issues

3. The main issues are whether:
  - a) the site is suitable for a residential development having regard to local and national planning policies for the location of housing;
  - b) a residential conversion would be an acceptable use of a heritage asset:
    - a) the proposal would preserve or enhance heritage assets, including the setting of Nether Toes, a Grade II listed building;
    - b) the proposal would adversely affect the integrity of the Thames, Medway and Swale Estuary Special Protection Areas (SPAs) and Ramsar Sites.

### Reasons

#### *Suitability of location*

4. The appeal site lies outside any settlement boundary and is therefore in the countryside for the purposes of planning policy. Policies ST1 and ST3 of the Swale Borough Local Plan 2017 (Local Plan), sets out a settlement strategy which is predicated on strengthening the role of Sittingbourne and directing development to the towns and other settlements that provide residents with reasonable access to the services and facilities that they require. Development beyond settlement boundaries will only be permitted where consistent with the primary objective of protecting the open countryside. In addition, Policy DM10

of the Local Plan, amongst other things requires development to provide convenient routes and facilities for pedestrians, cyclists and public transport services.

5. Although the site is not far from Sittingbourne, as the crow flies, it is separated from it by the A249 dual carriageway. This creates a significant sense of separation from the existing urban area. Other than a public house, there are no facilities within 1km of the site. The primary school is 1.4km away, making it very unlikely that children would walk there unaccompanied, and the return journey would take parents too long to go with them. The nearest supermarket is further away, as are the other services which the town of Sittingbourne can provide. It is therefore almost certain that future occupants of a dwelling on the appeal site would primarily rely on the use of a car to reach the services and facilities that they need.
6. For these reasons, I conclude that the appeal site is not a suitable location for a dwelling due to the lack of accessibility to services and facilities for future residents. It would conflict with the above policies and the Council's spatial strategy which seeks to focus development within the identified settlements set out in its adopted hierarchy.

#### *Acceptability of residential use*

7. The appeal structure is a former agricultural building associated with Nether Toes, a Grade II listed building. It is not curtilage listed but appears to have been associated with agricultural activities on the surrounding land. Historic maps show that there was a single storey building on the site as early as 1870. An undated historic photograph shows that it was the largest of three buildings which, together with a wall which still remains, created an enclosed yard. This type of arrangement is typical of similar farmsteads dating from the middle of the 19<sup>th</sup> century.
8. The structure is no longer a functioning building but is in a state of dereliction and comprises walls, window frames and a concrete floor slab. There is no roof. The significance of the building primarily derives from its former use as part of a working farm. Its remnants, which are of little architectural merit and historic value, have only limited significance as a non-designated heritage asset (NDHA).
9. Policy DM3 of the Local Plan seeks to support the rural economy with a preference for proposals to make use of existing buildings. The policy specifically states that planning permission for residential development will not be permitted unless it has been demonstrated that there is no demand for using the site/building for rural employment or a community facility. The supporting text to the policy indicates that where a building is vacant the viability of alternative employment uses must be robustly tested. This includes requiring the applicant to market the property for commercial/community use for a reasonable period at a price that reflects that use.
10. There is no evidence that there have been any attempts to market the appeal site or the building in its current state for any commercial/community purpose. On the contrary, the appellant contends that such a requirement is unreasonable given the building's state of disrepair. I have no doubt that to renovate and restore the limited remains of this former agricultural building would require significant investment. However, without substantive

information to demonstrate that such an investment would be unviable, there is no justification for setting aside the requirements of Policy DM3. In this respect the appeal scheme is not comparable with the nearby Dancing Dog Saloon where information demonstrated a lack of ongoing commercial viability.

11. I acknowledge that Paragraph 84(b) of the National Planning Policy Framework (the Framework) permits development of isolated homes in the countryside where the development would represent the optimal viable use of a heritage asset. However, in the absence of information about the viability of restoring the building for commercial/community purposes it is not possible to conclude that a residential use would represent the optimal use.
12. For these reasons I conclude that the proposed conversion to residential use would not be acceptable, and the proposal would conflict with the aims of Policy DM3 of the Local Plan to support the rural economy.

#### *Effects on heritage assets*

13. The appeal site is within the setting of a Grade II listed building. I therefore have a statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
14. The proposal would use the building's existing footprint to provide a single storey dwelling. Its bulk and scale would closely reflect the historic proportions of the former agricultural outbuilding shown in the photographic record. At present the derelict state of the structure has a negative effect on the setting of Nether Toes. This adjacent 16<sup>th</sup> century timber framed listed building is part of the surrounding rural area which contributed to the agricultural tradition of farmsteads including their associated outbuildings. The proposal would reinstate the scale of the former outbuilding and enhance the setting of the listed building. These changes would be heritage benefits of moderate weight.
15. However, the proposal would involve substantial rebuilding, including repair to the walls, reinstatement of the roof and the insertion of new windows and doors. It would therefore be beyond what is normally considered to be a conversion, a factor which significantly counts against the scheme. Furthermore, the proposal would result in a fundamental change of use of the site and building from its previous agricultural use to that of a residential one with provision of outdoor amenity space and domestic paraphernalia. The character of the former yard at the front of the building would be changed to provide parking and manoeuvring space for vehicles. Such a change of use would not contribute to an enhancement of the significance of the building's former agricultural use. These factors also count against the scheme.
16. The Framework advises that all heritage assets should be conserved in accordance with their significance. Policy CP8 of the Local plan, which requires development of designated and non-designated heritage assets to enhance their significance, is broadly consistent with Framework's approach. The Council's Supplementary Planning Guidance: *The Conservation of Traditional Farm Buildings* (SPG) goes further and sets out a series of situations where conversion to residential use will be unacceptable. This includes where a building has little intrinsic historic or architectural interest and/or a significant

proportion of it has been lost due to demolition, dereliction, neglect or storm damage. The proposal would be at odds with this guidance.

17. There would be harm arising from the proposal as it would involve significant elements of construction which amount to more than a conversion of an existing building, and the change from agricultural to residential use would result in loss of significance to the NDHA. However, in my view the heritage benefits from a physical reinstatement of the building and the consequential enhancement of the setting of Nether Toes outweigh this harm. In this respect, the scheme would be acceptable and accord with Policy CP8 of the Local Plan and the advice of the Framework.

#### *Integrity of the SPAs/Ramsar Sites*

18. The appeal site is within the zone of influence of the Thames, Medway and Swale Estuary Special Protection Areas (SPAs) and Ramsar sites. These areas are designated for their international importance to a variety of wading birds, waterfowl and terns that overwinter or breed on the SPAs. The habitats and their associated bird populations can be harmed by disturbance arising from additional recreational visitors to the protected areas. In combination with other proposals, the scheme would be likely to have a significantly harmful effect.
19. However, a mitigation strategy, the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS) has been adopted by the local authorities in the affected area, in partnership with Natural England (NE). NE were consulted on the application and raised no objection to the proposal subject to a financial contribution towards the SAMMS. The appellant has made a direct payment to the Council of £328.27 towards the SAMMS which seeks to mitigate the harm from additional recreational disturbance. Based on this the Council is satisfied that its second reason for refusal has been addressed.
20. However, in the context of this appeal the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires me as the competent authority to undertake an Appropriate Assessment (AA) and formally consult with NE to confirm the acceptability of the above approach. If I could not be certain that the mitigation would be effective, the Habitats Regulations would preclude the proposal proceeding. I return to this matter below.

#### **Planning Balance**

21. The Council is unable to demonstrate a five-year housing land supply. The information before me suggests that it stands at 4.72 years, which is a small shortfall. Nevertheless, as I have not found any significant harm to heritage assets which would provide a clear reason to refuse the scheme, the test set out in of paragraph 11 d) ii) of the Framework is triggered.
22. The proposal would be beneficial through the provision of a single dwelling which would provide a family home. It would contribute, albeit in a minor way, to addressing the shortfall in housing supply. There would be limited, short term economic benefits arising from employment at the site and through the supply chain during the construction period. These social and economic benefits attract limited weight in my assessment.

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23. On the other hand, the site's countryside location would conflict with the Council's spatial strategy and leave future residents largely reliant on car travel to reach the facilities and services they require. This would be contrary to the Framework's approach in respect of rural housing which states that housing should be located where it will enhance or maintain the vitality of rural communities (paragraph 83). Neither would it meet any of the exceptions for an isolated home in the countryside set out in paragraph 84 of the Framework. Furthermore, in the absence of evidence to demonstrate that the building could not be used for commercial purposes, it would be at odds with the aims of paragraph 88 of the Framework to support a prosperous rural economy. There would therefore be conflict with the Framework taken as a whole.
24. This leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the limited benefits. The presumption in favour of sustainable development therefore does not apply to this case.
25. If I had come to a different conclusion, it would have been necessary for me to undertake the AA and consult with NE in order to be certain that the integrity of the protected sites would not be adversely affected. However, as I am dismissing the scheme for other reasons this has not been necessary.

#### **Conclusion**

26. The proposal would conflict with the development plan. There are no other considerations, including the shortfall in housing supply, which indicate that a decision should be taken other than in accordance with the development plan.
27. For this reason, the appeal is dismissed.

*S M Holden*

INSPECTOR