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## Appeal Decision

Site visit made on 26 November 2024

by **R Gee BA (Hons) Dip TP PGCert UD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6<sup>th</sup> January 2025

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**Appeal Ref: APP/V2255/W/24/3337194**

**Pear Tree House, Otterham Quay Lane, Upchurch, Kent ME8 8QW**

- 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 R Parmar against the decision of Swale Borough Council.
  - The application Ref is 23/502680/FULL.
  - The development proposed is demolition of 4.no former agricultural buildings, and the erection of 2no. dwellings with other associated works on land.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 13 December 2024. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

### Background and Main Issues

3. The Council confirmed that Prior Approval for the change of use of 2no. agricultural buildings to 2 no. dwellinghouses and associated operational development<sup>1</sup> at the appeal site is not required. I have been provided with a copy of the Council's Decision Notice and the plans submitted. I have had regard to this in my consideration of the appeal.
4. The main issues are:
  - i) whether the site is a suitable location for the proposed development having regard to the Council's development strategy and national policy;
  - ii) the effect on the character and appearance of the area, with particular regard to the Important Local Countryside Gap (ILCG) designation;
  - iii) the effects on the integrity of Habitats sites; and

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<sup>1</sup> 22/502203/PNQCLA issued 20 June 2022

- iv) if there is any harm, whether this is outweighed by other considerations, particularly whether there is a fallback position for an alternative proposed development.

## Reasons

### *Location*

5. The appeal site lies within a disused farm set within open countryside and comprises a range of buildings of varying designs and materials.
6. The spatial strategy is expressed primarily in policy ST3 (Swale settlement strategy) of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (Local Plan). 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"*.
7. Whilst the proposed dwelling would be positioned between two residential properties, known as Pear Tree House and Natal Farm, whether the proposal would represent infill is a question of planning judgement based on an assessment of the site and its surroundings. I am not convinced that the proposal constitutes infill development. Whilst I do not disagree that infill generally refers to development between existing development, buildings are sporadically located along this stretch of the lane. Furthermore, the proposed dwellings would be set back from the highway. Consequently, to my mind, despite the site having built form either side the proposal would not result in the completion of a gap between an otherwise continuous and contiguous frontage.
8. The Framework promotes sustainable development in rural areas, including by requiring housing to be located where it will enhance or maintain the vitality of rural communities. Furthermore, it acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
9. In terms of accessibility to facilities and services to meet the every-day needs of the intended future occupiers of the proposed developments, the evidence indicates that the closest settlements are Upchurch and Rainham. It appears that bus services to Sittingbourne/Rainham are limited. There are some limited facilities within walking distance of the site, including a public house, convenience store and primary school. However, walking, or cycling journeys, from the appeal site to the closest bus stops and settlements, would be along a stretch of Otterham Quay Lane with narrow verges, no footpaths or streetlights, and which is subject to the national speed limit.
10. Based on the traffic conditions and the nature of the route between the appeal site and the destinations identified above, I find that journeys for pedestrians and cyclists, including more vulnerable groups of people with mobility issues or with young children in pushchairs, would be particularly unattractive. This would be especially so during inclement weather or hours of darkness. For

these reasons, the future intended occupiers of the proposed dwellings would be heavily reliant upon private vehicles to meet most, if not all, of their everyday travel needs.

11. Even if the proposed residential use of the site was to reduce the number of vehicle trips in comparison to the existing agricultural use, the pattern of regular vehicle journeys by the intended future residential occupiers would be materially different, and it would not alter my conclusion on this main issue.
12. By any mode of travel there is no evidence that local facilities are not already viable. Nor that two households would make a material contribution to maintaining them or maintain or enhance the wider viability of a local community in a meaningful way.
13. For these reasons, I conclude on this issue that the proposed dwellings would not be in an appropriate location for new housing, with particular regard to the Council's settlement strategy and accessibility to local facilities and services. Consequently, the appeal proposal would be contrary to Policies ST1, ST3, CP3, CP4, DM14 and DM25 of Local Plan. Collectively, these policies seek to direct development to be located in places that enable sustainable journeys to be made to key services and facilities. It would also conflict with the Framework which seeks to promote sustainable development and protect the open countryside.

#### *Character and appearance*

14. The appeal site comprises a number of dilapidated buildings, including agricultural storage buildings with external walls constructed from a mixture of masonry, timber cladding and corrugated sheets. With large openings these buildings have a utilitarian appearance. These buildings are sited around a central courtyard, with a stable building fronting Otterham Quay Lane.
15. The appeal site is experienced as part of a small group of properties set within a wider green and spacious rural landscape, with open fields and a scattered pattern of buildings. Mature landscaping to the south of the appeal site affords some screening of the appeal site. Nevertheless, Otterham Quay Lane carries the route of a PROW and views into the site would be possible from the lane to the front of the appeal site.
16. The scale, design and architectural detailing of the dwellings in the vicinity of the site vary considerably. However, in the immediate vicinity of the appeal site residential development is characterised by frontage development. The proposed dwellings would be of a materially different form, scale and design to the existing buildings they would replace. While traditional materials would be used, due to their form, layout and fenestration, the proposed dwellings would appear somewhat incongruous on the site.
17. The proposed buildings would not appear cramped in the plot. However, the plots being centrally located within the site would contrast with the elongated form of existing built form.
18. Replacing the harsh areas of hardstanding that currently exists on the site with soft landscaping would result in some visual enhancement to the appeal site. Nevertheless, the appeal site frontage would be laid to hardstanding to accommodate the parking and turning for 6no. vehicles which would be domestic in appearance.

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19. Furthermore, alongside the built form of the dwellings, the impression of the residential setting would be reinforced by the large gardens and parking areas, and the associated domestic paraphernalia which would therefore be present across the whole site. Therefore overall, I find that the proposal for the new dwellings would be more incongruous within the wider landscape and rural setting than the existing built form.
20. Whilst there may be some benefit in the removal of the stable located at the site frontage, this is a modest structure of limited height, and therefore does not have a particularly imposing presence.
21. Being located within the middle of the site, I do not concur that the proposed dwellings would be sited in a similar position to existing buildings. Taking account of the above, and particularly the scale, position and appearance of the dwellings, I find the appeal proposal would be incongruous.
22. The site is also within an Important Local Countryside Gap (ILCG) as set out in policy DM25 of the Local Plan. The key objective of this policy is to maintain the separation of settlements, and the appeal proposal would not significantly erode this. However, the proposal would undermine the second and third identified purposes of the policy. That is, the development would neither safeguard the open and undeveloped character of the area, nor would it prevent encroachment or piecemeal erosion or changes to the rural open character.
23. For these reasons, I conclude on this issue that the proposal would harm the character and appearance of the area, with particular regard to the ILCG designation, in conflict with Policies ST1, CP3, CP4, DM14 and DM25 of the Local Plan. Collectively, amongst other things, these policies seek development to be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location which require development to protect, conserve or enhance the landscape.

#### *Habitat Sites*

24. It is understood that the development site falls within the Thames Estuary and Marshes Special Protection Area (SPA), the Medway Estuary and Marshes SPA and the Swale SPA. These sites have been designated for their international importance for the significant numbers of wildfowl, waders and terns that overwinter or breed on the SPAs. The Thames, Medway and Swale Estuaries include mudflats, reedbeds, saltmarsh and grazing marsh, rich and diverse ecosystems that provide much needed food and high tide roosts for waders and wildfowl.
25. The coastal areas are popular with a variety of recreational users, including dog walkers, running groups and boating enthusiasts. The proposed development is for two dwellings and as such the number of additional recreational visitors would be limited. However, in combination with other developments, likely significant effects cannot be ruled out.
26. The Conservation of Habitats and Species Regulations 2017 (as amended) requires where a project is likely to result in a significant effect on a European site, the competent authority is required to make an Appropriate Assessment of the implications on the integrity of the site.

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27. The affected sites are covered by the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) which ensures that the cumulative impacts of additional visitors, arising from new developments of housing and tourism, such as this development, to European sites, will not result in any likely significant effects which cannot be mitigated.
28. The appellant has indicated that they have made a per dwelling contribution to fund the strategic mitigation. The Council have confirmed receipt of the payment.
29. Notwithstanding this, given that I am dismissing this appeal for other substantive reasons it has not been necessary for me to consider this matter in any further detail.

*Whether the harm is outweighed by other considerations, including any fallback position.*

30. The decision of the court in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, sets out that for a development to be a fallback position there must be a real prospect of the development being implemented. In this context a "real prospect" means one that is more than merely theoretical. *Mansell* states that there is no legal requirement in every case for a fallback to depend on a planning permission having been granted or a developer stating precisely how any permitted development rights available under the GPDO would be made use of. The evidence needed in each will be a matter of planning judgement for the decision maker.
31. I find that on the evidence before me, there is a realistic prospect of the Class Q scheme being implemented at the appeal site. As such, it constitutes a clear fallback position against which to assess the appeal proposal. However, having regard to the fallback position the appeal scheme is not limited to minor differences between the approved scheme and the proposed development.
32. Whilst I recognise that the number of dwellings would be the same as the fallback position, the proposed dwellings would likely to be occupied more intensely than the Class Q scheme due to the additional bed spaces. However, there is limited evidence before me to quantify the increase in private motor vehicle journeys associated with the occupation of the development and occupiers would likely reside as a family unit, providing at least some opportunity to car share for certain journeys.
33. I am not persuaded, on the evidence before me, that the scale of the likely increase in private car journeys, over and above the Class Q scheme, would be anything other than insignificant. Therefore, the reliance of future occupiers of the appeal developments upon private car travel to access services and facilities would be substantially the same as for the Class Q fallback scheme. I therefore find that the appeal proposals' conflict with the settlement strategy, would be outweighed by the Class Q scheme having substantially the same level of harm in this regard.
34. The Class Q scheme would result in a development of a significantly different form to that proposed in this appeal. Under the Class Q scheme, the dwellings would be contained to the western boundary, comprising 1 no. two-storey buildings and a single storey property.

35. The proposed dwellings would have a larger footprint when compared to the conversion of the house and barn under the Class Q scheme. Although it is recognised that the appeal scheme would facilitate the removal of the warehouse and stable, not within the scope of the Class Q scheme, thus reducing the overall footprint of built form on the site. Be that as it may, the scale of the proposed dwellings, including their height, would be dominant in its setting when compared to the conversion scheme, which would be more reflective of the appearance of the existing buildings currently *in situ* and would retain a more open aspect. The Class Q scheme would be more sympathetic to the existing built form and limited in scale, mass and height. The proposal before me would have a domestic, and somewhat suburban style of dwelling, emphasised by their siting within the plot.
36. I recognise that the proposed gardens would be contained to the rear of the proposed dwellings and thus there would be limited views of any domestic paraphernalia. Although the gardens of the plots would be larger than those in the Class Q scheme.
37. The existing buildings on site are typical for such a rural location and are not explicitly harmful to the open countryside. Benefits of the fallback are that it would reinforce the prevailing character of the area by retaining more of an agricultural scale within the open countryside, including a reduced scale of domestic paraphernalia. The ridge heights of the fallback scheme would be lower than the appeal proposal.
38. It is clear that the weighing the effect of the appeal proposal against that of the fallback is a significant material planning consideration. However, overall, the appeal scheme is not broadly comparable to the layout of the Class Q scheme, and I find that its visual impact would be materially more harmful. The presented benefits against the fallback proposal, including enhanced amenity space, the removal of hardstanding, landscaping and biodiversity enhancements, do not outweigh my findings that the fallback would have less impact on the character and appearance of the area, such that it does not weigh in favour of allowing the appeal.

#### **Other Matters**

39. I am satisfied that an appropriate level of parking would be provided to serve the development and that the proposal would not harm the living conditions of neighbouring properties. Nevertheless, these are neutral matters that weigh neither for, nor against the proposal.
40. At the time the application was determined the Council could not demonstrate a Framework compliant housing land supply and the 'tilted balance', as set out in the Framework was engaged. The Council confirms that they now have a supply of 5.13 years. This is not disputed, and I have no reason to disagree with that view. As such the tilted balance as set out at Paragraph 11 d) of the Framework is not engaged.
41. The development would provide a small temporary economic benefit during construction. Once complete it would provide a benefit to the local economy and society through increased spend by in local services and facilities. The evidence suggests that ecological and landscape enhancements secured by a suitably worded planning condition would be limited. Overall, the benefits of the development are attributed limited weight in favour of the scheme.

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42. Even if the 'tilted balance' were engaged, in this circumstance, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, the material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.

### **Conclusion**

43. The Class Q fallback scheme would outweigh the proposals' conflicts with the Council's settlement strategy. However, it would not outweigh the adverse effect on the character and appearance of the area.
44. For the reasons stated, there are no material considerations of sufficient weight to indicate that a decision on this appeal should be made other than in accordance with the development plan. Having considered all matters raised, I therefore conclude that the appeal should be dismissed.

*R Gee*

INSPECTOR