



Appeal Decision

Hearing held on 27 January 2015

Site visit made on 28 January 2015

by **C J Anstey BA (Hons) DipTP DipLA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 May 2015

Appeal Ref: APP/V2255/A/14/2224509

Brogdale Road/Brogdale Place, Faversham, Kent, ME13 8SX.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Shepherd Neame Ltd. against the decision of Swale Borough Council.
 - The application Ref SW/13/1567, dated 23 December 2013, was refused by notice dated 25 March 2014.
 - The development proposed is the erection of 63 dwellings, open space, pedestrian and vehicular access, car parking, landscaping and associated works.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 63 dwellings, open space, pedestrian and vehicular access, car parking, landscaping and associated works at Brogdale Road/Brogdale Place, Faversham, Kent, ME13 8SX., in accordance with the terms of the application Ref SW/13/1567, dated 23 December 2013, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. At the Hearing an amended red-line site plan (drawing no. D-SLP- Rev A) was submitted on behalf of the appellant to replace that considered by the Council as part of the planning application (drawing no. D-SLP). The amended plan excludes a narrow sliver of land along the southern boundary of the site to reflect the appellant's land ownership. I have considered the appeal on the basis of this amended site plan given that it constitutes a non-material amendment and no interests would be prejudiced by this small reduction in the size of the site.
3. The planning application was also accompanied by a 1:500 scale illustrative layout plan. This layout plan shows the disposition of the dwellings on the site, the road layout and the location of the open space. As part of the appeal documentation a revised illustrative plan was submitted (drawing no. DACA-DWG) to reflect the revised site boundary. I have taken account of this plan in my consideration of the appeal.
4. A finalised Section 106 agreement, signed by the appellant, the Borough Council and the County Council, was submitted by the County Council after the close of the Hearing. I have taken this into account in my decision.

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Main Issues

5. The main issues in this case are:
- whether relevant policies for the supply of housing in the Borough are up-to-date, having regard to the 5-year supply of housing land;
 - the effect on the rural character of Brogdale Road and the rural approach to Faversham, having regard to the historical development and form of the town;
 - whether there would be a significant loss of the best and most versatile agricultural land;
 - whether the scheme should include provision for gypsy and traveller accommodation; and
 - whether the appeal scheme represents sustainable development, to which the *National Planning Policy Framework's 'presumption in favour'* applies.

Reasons

Description

6. The appeal site, which is about 3.4ha in area, is a rectangular, fairly flat, grassed field. It is situated in an urban fringe location on the southern edge of Faversham and to the south of London Road (A2). The site is bounded to the south and north by post and wire fencing and to the west by a 2m high deciduous hedgerow. Along the eastern boundary are a number of mature leylandii conifer trees.
7. To the north, between the site and London Road, there is a small housing estate, Brogdale Place, and other dwellings. Brogdale Road marks the site's eastern boundary and joins London Road to the north. On the east side of Brogdale Road there are a few scattered houses, school playing fields and beyond that the Abbey Secondary School. Immediately to the west is a commercial nursery, where there is a dense coverage of green houses and poly-tunnels. To the south there is gently rising open farmland extending to the M2 motorway which lies some 600m to the south.
8. The illustrative layout shows 63 dwellings, including 2, 3 and 4/5 bedroom houses. Of these 30% would be affordable housing. The developable area would measure about 2.3ha with some 1.1ha of open space located next to Brogdale Road and the southern boundary. The main vehicular access would be from Brogdale Road, towards the southern boundary of the site, with a pedestrian access in the north-east corner.

Development plan policies

9. There are a number of saved development plan policies in the adopted *Swale Local Plan 2008 [2006-2016] (SLP)* that are considered to be relevant to the determination of this appeal. The amount of weight to be attached to each of these policies is dealt with under the various issues, having regard to the government's *National Planning Policy Framework (the Framework)* and *Planning Policy Guidance (the Guidance)*.

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10. *SLP Policy SP1: Sustainable Development* is a general policy that seeks to ensure that new development accords with the principles of sustainable development. Amongst other things the policy indicates that development proposals should: avoid harming areas of environmental importance; secure the efficient use of previously-developed land; and reduce the need to travel.
11. *SLP Policy SP4: Housing* is designed to ensure that sufficient land is provided to satisfy housing need in accordance with the *SLP's* spatial strategy. *SLP Policies SH1: Settlement Hierarchy* and *H5: Housing Allocations* seeks to direct the majority of the Borough's housing growth (5,428 dwellings) to the Thames Gateway Planning Area (Sittingbourne and Isle of Sheppey) with limited development to meet local needs in Faversham and the Rest of the Swale Planning Area (377 dwellings). *SLP Policy H2: Housing* specifies that permission for new residential development will be granted for sites that are allocated or within defined built-up areas. Outside of the defined built-up areas and allocated sites new residential development will only be granted for certain limited exceptions.
12. *SLP Policy E6: Countryside* is designed to protect the quality, character and amenity value of the countryside and ensure that development outside the defined built-up boundaries is restricted to that which needs to be there. *SLP Policy E9; Protecting the Quality and Character of the Borough's Landscape* confirms the importance of protecting the quality, character and amenity value of the wider landscape of the Borough.
13. *SLP Policy FAV1: The Faversham and Rest of Swale Planning Area* specifies that the conservation of the historic and natural environment is the prime and overriding consideration. One of the priorities identified in the policy is support for meeting Faversham's development needs within the urban area so as to minimise greenfield land development.

Emerging local plan policies

14. *Bearing Fruits 2031: The Swale Borough Local Plan Part 1 [Publication Version December 2014] (SBLP)* is the emerging local plan. It was made available for consultation during December 2014 and January 2015 and the Council intend to submit the plan to the Planning Inspectorate for independent examination in the coming months. I have been referred by the Council to several policies in this plan and these are set out below under the relevant issue as is the weight to be attributed to them.

Issue 1: Supply of housing

15. On the basis of the housing requirement contained in the adopted *SLP* the Council accepts that within the Borough there is 3.17 years of housing land supply and a shortfall of 1,437 dwellings. These figures include provision for a 5% buffer and take account of the shortfall of dwelling completions in past years in accordance with the Sedgefield method. In my judgement, having regard to the material submitted, this is a reasonable assessment of the current position as regards housing land supply within the Borough.
16. In my view, therefore, there is a significant shortfall of deliverable housing sites in the Borough. Although I am aware of the distribution of housing development inherent in the *SLP* and the Council's recent endeavours to identify and release additional housing sites in Faversham this does not change

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my finding that in the Borough there is a shortage of deliverable housing sites. As the Council cannot demonstrate a 5-year supply of deliverable housing sites paragraph 49 of the *Framework* makes it clear that relevant policies for the supply of housing should not be considered up to date.

17. It is evident that certain of the adopted development plan policies are solely concerned with the supply of housing. These include *SLP Policy SP4: Housing*, *SLP Policy SH1: Settlement Hierarchy*, *SLP Policy H5: Housing Allocations* and *SLP Policy H2: Housing*. Although these policies remain part of the development plan they attract very little weight in view of the marked shortfall of housing land in the Borough.
18. Other adopted development plan policies contain elements that relate to the supply of housing. *SLP Policy SP1: Sustainable Development* endeavours to steer development to previously developed land within urban areas. *SLP Policy FAV1: The Faversham and Rest of Swale Planning Area* develops this approach by stating that Faversham's development needs will be met within the urban area so as to minimise green field development. *SLP Policy E6: Countryside*, amongst other things, seeks to restrict development outside built-up areas. Again although these policies remain part of the development plan those elements of the policies that relate to the supply of housing attract very little weight in view of the marked shortfall of housing land in the Borough.
19. Emerging *SBLP Policies ST3: The Swale settlement strategy* and *ST7: The Faversham area and Kent Downs strategy* indicate that Faversham will be a secondary urban focus for growth at a scale compatible with its historic and natural assets. Clearly these are housing supply policies. As the *SBLP* has not yet been submitted for examination and there are outstanding objections relating to the supply of housing very little weight can be attributed to these policies.
20. Applying *paragraph 215 of the Framework* it is considered that the local policies and elements of certain policies referred to above are inconsistent with the housing supply policies contained in *paragraph 47 of the Framework*.
21. I conclude, therefore, on the first main issue that since the Council cannot demonstrate a 5-year supply of deliverable housing sites, all relevant policies and parts of relevant policies for the supply of housing have to be regarded as out of date. In turn this means that in determining this appeal very little weight can be attributed to housing supply policies related to the distribution of development across the Borough, the release of previously developed sites in preference to the use of green field sites, and resisting housing outside built-up areas.

Issue 2: Rural character and appearance

22. Historically Faversham has mainly developed to the north of the A2. As a result the Council argues that development to the south of the A2 should not be allowed as it fails to respect the historical development and form of the town. From the material submitted and the discussion at the Hearing I am unclear as to why the historical development of Faversham and its current form is seen as being so significant that it merits protection. In reaching this view I am mindful that the historic core of Faversham lies some distance to the north of the A2 whilst a considerable amount of the land to the north of the A2 is occupied by housing estates of more recent origin. Furthermore there is already existing

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development south of the A2 including housing and a large secondary school and associated playing fields.

23. Notwithstanding this an important element of adopted *Policy SLP Policy E6: Countryside* is the protection of the quality, character and amenity value of the countryside. Similarly one of the elements of *SLP Policy SP1: Sustainable Development* is the avoidance of harm to areas of environmental importance. As these elements accord with national guidance these parts of the policies need to be accorded significant weight. *SLP Policy E9; Protecting the Quality and Character of the Borough's Landscape* also accords with national guidance and should be attributed significant weight.
24. Although the appeal site is not within a landscape designated for its quality or within the setting of the Ospring Conservation Area it forms part of the attractive open countryside to the south of Faversham and is clearly valued by local people. Consequently in its present state the site positively contributes to the rural character of Brogdale Road and the rural approach to Faversham. The proposal, therefore, would detract from the rural character and appearance of the local area.
25. There are a number of factors, however, that have a bearing on the degree of harm that would result. The appeal site is relatively small compared to the considerable amount of agricultural land extending southwards towards the M2 and is bounded by residential development to the north, glasshouses and poly-tunnels to the west, and school playing fields and several houses to the east. It is also at a slightly lower level than the agricultural land further to the south. As a result it is much more self-contained than other sites in the area. In my judgement these particular characteristics of the site and the surroundings would lessen the development's impact on the wider landscape. Furthermore the submitted illustrative layout makes provision for sizeable areas of open space and planting along the Brogdale Road frontage and southern boundary. In time this would help soften the appearance of the development and provide an appropriate area of transition between the developed part of Faversham and the countryside. Taking account of these factors it is my view that the proposed scheme would have a moderate adverse impact on the rural character of Brogdale Road and the rural approach to Faversham.
26. I conclude, therefore, on the second main issue that the proposal would have a moderate adverse impact on the rural character of Brogdale Road and the rural approach to Faversham. This brings the proposal into conflict with elements of *Policies SLP Policy E6: Countryside* and *SP1: Sustainable Development*, and with *SLP Policy E9; Protecting the Quality and Character of the Borough's Landscape*.

Issue 3: Agricultural land quality

27. The Council contend that the development of the site would lead to the unnecessary loss of the best and most versatile agricultural land and increase the pressure to develop other such land in the area. In support of this the Council refer to emerging *SBLP Policy DM31: Agricultural Land* which indicates that apart from in a limited number of specified instances development will not generally be permitted on the best and most versatile agricultural land (specifically Grades 1, 2 and 3a).

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28. I accept that in accordance with *paragraph 216 of the Framework*, account can be taken of emerging policies. However the *SBLP* has not yet been submitted for examination. Furthermore the wording of *SBLP Policy DM31* is different from that set out in *paragraph 112 of the Framework* which advocates the use of poorer quality land in preference to that of a higher quality where significant development of agricultural land is demonstrated to be necessary. The *Framework* does not rule out the development of the best and most versatile land as a matter of principle. In the light of this I consider very little weight can be attached to *SBLP Policy DM31*.
29. In my view the proposal does not involve a significant loss of the best and most versatile agricultural land. At 3.4 ha in area the field is very small in comparison to the amount of agricultural land around Faversham, most of which is of similar quality. I also note that the Council has recently identified other good quality agricultural land around Faversham for development. As it is not related to any other land-holding in the area its loss would not prejudice the continued operation of any farming business. Whilst acknowledging the Council's concerns about the release of other high quality land in the area south of the A2 each proposal needs to be determined on its particular merits, including its overall scale and relationship with existing development.
30. I conclude, therefore, on the third main issue that the proposal would not involve a significant loss of the best and most versatile agricultural land.

Issue 4: Gypsy and Traveller site accommodation

31. Emerging *SBLP Policy CP3: Delivering a wide choice of high quality homes*, in particular Criterion 6, indicates that for housing developments of 50 dwellings or more provision should be made for on-site gypsy and traveller pitches. The supporting text states that pitch provision should be at the rate of 1% of the total number of dwellings. The Council considers that in accordance with this policy a single gypsy and traveller pitch should be provided on the appeal site. I note that there is no support for this approach in the *SLP*.
32. I accept that in accordance with *paragraph 216 of the Framework*, account can be taken of emerging policies. However the *SBLP* has not yet been submitted for examination and there are unresolved objections to that part of *SBLP Policy CP3* relating to the provision of gypsy and traveller sites. Furthermore the particular approach to site provision inherent in the policy is not one that is set out in *the Framework* or in the *Planning Policy for Traveller Sites*. Consequently I believe that very little weight can be attached to *SBLP Policy CP3*. As a result I find no policy justification for the Council's approach of seeking the provision of a gypsy and traveller pitch on the site.
33. It is evident from the material submitted and the discussion at the Hearing that there is a need for additional gypsy and traveller site provision in the Borough. However it is less clear how this need is currently distributed and where it should be met. As a result it has not been established that Faversham is an appropriate location for additional gypsy site provision or whether there are more suitable areas available. Furthermore at a more detailed level gypsy sites usually include several pitches so that families can live together in small family groups. Consequently there is uncertainty as to whether a single pitch would address the need or prove attractive to would-be occupiers. In the light of this I do not believe that it has been established that there is sufficient evidence to support the provision of a single gypsy and traveller pitch on the appeal site.

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34. I conclude, therefore, on the fourth main issue that the development need not include provision for gypsy and traveller accommodation.

Issue 5: Sustainable development

35. *Paragraph 14 of the Framework* makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental. In my judgement the proposal would fulfil the economic role of sustainable development and would contribute to building a strong, responsive and competitive economy, by helping to ensure that sufficient land is available to support growth. In terms of the social dimension the scheme would contribute to boosting housing supply by providing a range of sizes and types of housing for the community, including a number of affordable housing units. The site is available and in the absence of any significant constraints could be developed in the near future.

36. As regards environmental considerations the site is reasonably well located in terms of accessibility to the various services and facilities available in the town, including schools. Although the historic medieval core of Faversham town centre is located some distance away it is not so far as to rule out access by walking or cycling. For longer trips alternatives to the private car are readily available with regular train services from Faversham station to London St Pancras and Victoria, Canterbury and Dover. There is also a regular bus service operating along the nearby A2 to Sittingbourne. The proposed 1ha of land to be given over to public open space will increase the opportunity for recreational activities, whilst the proposed pedestrian crossing will make it safer and easier to cross London Road.

37. It is clear from my consideration of the second main issue that in terms of the environment the proposal would have a moderate adverse impact on the rural character of Brogdale Road and the rural approach to Faversham. However it is my view that the positive attributes of the development, in terms of the economic, social and environmental gains outweigh the negative visual impact, and that when taken as a whole the scheme would constitute sustainable development. Consequently the *Framework's* presumption in favour of sustainable development applies.

38. I conclude, therefore, on the fifth main issue that the proposed scheme constitutes sustainable development and therefore the *Framework's* 'presumption in favour' applies.

Other matters

39. Local people have raised a number of other concerns including the impact on highway safety, traffic congestion, residential amenity, biodiversity, drainage, and the capacity of local services and facilities. However, having considered all the material before me, including the views of statutory authorities and the various reports submitted, none of these matters individually or cumulatively would be likely to cause overriding harm, and they are not, therefore grounds for dismissing the appeal. In particular I note that the Highway Authority has acknowledged that there would be no unacceptable impacts to the safe and free flow of traffic on London Road and Brogdale Road.

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Overall planning balance

40. I have concluded that the proposal does not involve a significant loss of the best and most versatile agricultural land, and that the proposed development need not include provision for gypsy and traveller accommodation. These considerations, therefore, are neutral and do not weigh against the scheme.
41. I have found that the proposed scheme constitutes sustainable development and therefore the *Framework's* 'presumption in favour' applies. In determining this I have found that there are a number of economic, social and environmental benefits associated with the scheme. These factors weigh heavily in favour of allowing the appeal.
42. I have found that since the Council cannot demonstrate a 5-year supply of deliverable housing sites, all relevant policies and relevant parts of policies for the supply of housing have to be regarded as out of date and accorded very limited weight. *Paragraph 14* of the *Framework* makes it clear that planning permission should be granted, where relevant policies in the development plan are out-of-date, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole.
43. My conclusion on the second main issue is that the proposal would have a moderate adverse impact on the rural character of Brogdale Road and the rural approach to Faversham, and is therefore contrary to development plan policy. In my judgement, however, this adverse impact would not significantly and demonstrably outweigh the identified benefits of the proposed development.

Conditions

44. I have considered the planning conditions put forward and discussed at the Hearing in the light of the advice in *the Guidance*. I have applied the standard outline conditions (*Conditions 1, 2 & 3*). To ensure that the development proceeds in accordance with what has been approved the plans are specified (*Condition 4*). The submission of samples of materials for approval is required to make sure that those used are in keeping with local character (*Condition 5*). In the interests of public amenity and safety the development needs to be laid out in accordance with the principles of 'Secure by Design' (*Condition 6*). Parking space, and the retention of such areas, is necessary to minimise on-street parking and associated disturbance to residents (*Condition 7*).
45. Given the sensitive location of the site on the edge of Faversham and the need to ensure a high quality development a Development Brief for the site needs to be produced to guide the scheme (*Condition 8*). Most of the material required for the production of this Brief is contained in the application and hearing documents. In order to control the height of the new dwellings, thereby minimising the impact on the surrounding area, details of existing and proposed levels are required (*Condition 9*).
46. The provision of appropriate sewerage and drainage works to serve the site are necessary (*Condition 10*). The roads and associated elements need to be laid out in a satisfactory and timely manner (*Condition 11*). Landscaping details are required to ensure that the site is suitably landscaped and in keeping with local character (*Conditions 12 & 13*). In the event that any contamination is found on the site a remediation scheme strategy will be required (*Condition 14*). The

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dwellings need to meet appropriate levels of sustainable construction
(*Condition 15*).

47. During the construction period various matters, including the parking of vehicles and plant, hours of operation, burning of waste, condition of roadways and dust emissions, need to be controlled to protect highway safety or residential amenity (*Conditions 16-21*).
48. As no exceptional reasons have been put forward the removal of permitted development rights is not justified. As provision for cycle parking would be within domestic curtilages there is no need to require the provision of covered secure cycle parking facilities.

Section 106 Agreement

49. The finalised section 106 agreement, which will make provision for affordable housing, public open space and social and community infrastructure, is compliant with *paragraph 204* of the *Framework* and *Regulation 122* of the *CIL Regulations 2010*.

Overall Conclusion

50. My overall conclusion, therefore, is that there are compelling grounds for allowing the appeal subject to appropriate planning conditions. None of the other matters raised outweigh the considerations that have led to my decision.

Christopher Anstey

Inspector