



Appeal Decision

Site visit made on 25 October 2017

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

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

Decision date: 13th November 2017

Appeal Ref: APP/V2255/W/17/3175061

Land adjacent Kaine Farm House, Breach Lane, Upchurch, Kent, ME9 7PH

- 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 T Ripley against the decision of Swale Borough Council.
- The application Ref 16/507425/FULL, dated 17 October 2016, was refused by notice dated 19 April 2017.
- The development proposed is demolition of seven existing farm buildings (totalling 1,666 sq m) and the erection of six detached houses and garages (totalling 1,096 sq m) and associated SUDS ponds, landscaping and wildlife planting.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council against the appellant. This is the subject of a separate Decision.

Main Issues

3. These are:
 - Whether the proposed dwellings would be in a suitable location having regard to local policies concerned with housing in rural areas and the accessibility to services and facilities;
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - Whether any harm arising is outweighed by other material considerations.

Reasons

Suitable location

4. The appeal site comprises Kaine Farm House and a collection of utilitarian agricultural buildings and stables which lie to the rear. These are not currently in active use and are dilapidated in appearance due to their state of repair. It is proposed to replace them with 6 houses. The immediate surrounding area is undulating countryside mainly comprising farm or grazing land. Nevertheless there are some dwellings nearby as well as agricultural, commercial and equestrian related built development and a solar farm. Whilst evidently rural in character the locality is not pristine countryside and due to the containment of the site the existing buildings do not detract unduly from it.

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5. The settlement strategy for Swale is hierarchical in that Sittingbourne provides the primary urban focus for growth and Faversham and Sheerness are the secondary urban focus with lesser aspirations for rural local service centres and other villages. The proposal would be outside the built-up area boundaries of any settlement. Policy ST3 of the Swale Borough Local Plan of 2017 provides that development will generally not be permitted at locations such as this.
6. The appeal site is not previously-developed land as defined by the National Planning Policy Framework but has buildings on it so that the proposal would not encroach onto greenfield land. In any event, not all brownfield land will be suitable for development according to paragraph 5.3.5 of the Local Plan. The text also indicates that new housing will normally be supported on appropriate windfall sites. But in delivering a wide choice of high quality homes Policy CP3 provides that windfall sites will be steered to locations in accordance with Policy ST3 as well as being subject to other caveats. Consequently the overarching settlement strategy is the key guide to the suitability of the scale and location of development. This includes the redevelopment of existing buildings to create windfall housing.
7. The site is in close proximity to other houses within the hamlet of Breach but because of its position and size cannot reasonably be described as an infill plot. This is typically a narrow gap in an otherwise built-up frontage. Consequently neither this argument nor those regarding redevelopment and windfall sites alter the conflict that would occur with Policy ST3. Furthermore, to permit the proposal would undermine and dilute the settlement strategy which is part of delivering sustainable development in Swale according to Policy ST1.
8. The closest settlement to the appeal site is Newington and, according to the appellant, it is 1.6km to the railway station, shops and services. These are therefore potentially within walking and cycling distance. The lack of a footpath and lighting along Breach Lane may be a deterrent for some although a quieter route along Mill Hill and a footpath is feasible. The range of facilities available at Newington is commensurate with a large village. Other places such as Sittingbourne and the Medway towns can be accessed by bus using the hail and ride stop very close to the site. Furthermore, the railway station provides access to London and can be reached without use of a car.
9. Indeed, the appeal site is not in a remote location so that future occupiers would have alternative travel choices to the car. The smaller villages of Upchurch, Lower Halstow and Hartlip are not far away. In addition, there are various employment opportunities fairly close by including the Newington Industrial Estate and Enterprise Centre. However, the extent of conveniently available destinations is not of a high order and the means to reach them has limitations. There is therefore likely to be overall reliance on car use.
10. The appellant refers to various decisions taken by the Council at sites in Upchurch, Danaway and Newington and an appeal decision at Spade Lane, Hartlip (APP/V2255/A/14/2220447) where the issue of the relationship to services was considered. These have been taken into account but are not definitive and the proposal has been assessed on an individual basis.
11. In this case the accessibility to services and facilities would not be poor. There would be scope to do so by means other than by private transport but the extent to which this is likely to occur would be limited. Furthermore, Policy CP2 emphasises that development should be located in accordance with the

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settlement policies in order to minimise the need to travel. The proposal would encourage car use and therefore would not contribute to the ambition of achieving an integrated approach to the provision of transport infrastructure. Overall it would not promote sustainable transport and hence the proposed development would not be in line with Policy CP2.

12. In conclusion on this issue the proposed dwellings would not be in a suitable location for housing and would not accord with relevant development plan policies in this respect.

Character and appearance

13. The proposed houses would be sizeable and predominantly two stories high. They are designed in a vernacular fashion and most of them would be arranged around a central court which is intended to resemble a traditional farmyard. Although generally taller the new buildings would occupy similar positions to the existing ones. However, the overall built footprint and hard surfacing would be reduced and the westerly 'spread' of development would be slightly less than it is now. Planting is also proposed together with a landscape buffer and wildflower meadow beyond the southern and western boundaries.
14. Whilst the rundown buildings at the site are not of great beauty neither are they uncommon features in the countryside. By contrast the dwellings would have an obviously domestic appearance and the proposal would effectively create a short residential cul-de-sac with a close juxtaposition of buildings. This suburban layout would be wholly at odds with the pattern of development nearby which is characterised by dwellings fronting directly onto the road and by a rather scattered disposition of buildings. Whilst attractive in themselves the relationship of dwellings with one another and their design would not result in a group that 'belongs' in this setting. Rather it would appear as having been artificially imposed and the proposal would accordingly be discordant.
15. The site is in a slight dip and the topography, vegetation and other existing buildings would restrict public views. Nevertheless the proposal would be visible at close hand from the public footpath as it runs through the site and also from along it for a little way to the west. The other main viewpoints would be at the site entrance and along the lane to the north. From these places the adverse visual effect of a cluster of houses unexpectedly extending back from the lane in a rural setting would be experienced. Whilst there are other houses in the vicinity it is the number of residential buildings, their layout and the development in depth that would be particularly jarring in the local scene.
16. Local Plan Policy DM24 seeks to conserve and enhance valued landscapes including those that are not designated. Because the site is already developed the wider landscape impacts would be neutral. However, the proposal would harm the character and appearance of the surrounding area. It would therefore not comply with the general development criteria of Policy DM14 which, amongst other things, expects development to be sympathetic and appropriate to its location.

Other material considerations

17. The Inspector's Report of June 2017 on the Local Plan examination found the Council had demonstrated that there is a 5 year deliverable supply of sites to meet the requirements of the Framework. This position is not 'fixed' for all

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time but for the purposes of this decision that finding is authoritative and of considerable weight. The appellant has not provided detailed evidence to contest the Council's stance but refers to an appeal at Canterbury Road, Dunkirk (APP/V2255/W/17/3172378) where the figure of a 5.4 year supply has been challenged. The outcome of that appeal is awaited and so the conclusions in the proof provided can only be given limited weight.

18. The Local Plan is to be reviewed to resolve the details of the highway infrastructure required to support planned development beyond the first 5 years of the Local Plan period. As such, a full review is due to be completed for adoption by April 2022. However, this does not change the present position in terms of housing supply and the likelihood that the current Local Plan will be short-lived does not affect its status. The Council has already undertaken a further call for sites but this should be seen as pro-active plan-making rather than anything else.
19. The level of supply does not allow for much tolerance should housing sites fall away for any reason. However, national policy is predicated around achieving a 5 year supply including an additional buffer and this is the current state of play in Swale. As such, the Local Plan is not out-of-date and paragraph 14 of the Framework does not apply. It is also notable that the examination Inspector specifically rejected arguments that additional sites should be allocated including those in the rural areas. This appears to be due to the strategic aim of concentrating a higher proportion of growth at Sittingbourne and Sheppey rather than more viable sites elsewhere.
20. The expectation is that the proposal would provide for executive housing. This is said to be needed in Swale as not many such properties are built. However, there is no evidence to indicate that this type of accommodation should be prioritised. The Planning Practice Guidance notes that rural housing is essential to ensure that local facilities are viable but there is limited evidence that these are under threat. In providing 6 new units the proposal would respond to the aim of boosting significantly the supply of housing. This consideration could nonetheless be applied to all proposals for residential development wherever they are located and the level of supply in Swale is presently such that this is a matter of limited weight.
21. The buildings to the west of Kaine Farm House have previously been used for calf rearing and as a farm shop. These uses could lawfully resume in the future with the potential for unneighbourly consequences for those living close to the site. It is also reasonable to suppose that the appellant would wish to obtain a return from the land rather than leaving it idle.
22. Whilst theoretically possible it is nevertheless necessary to consider the likelihood of disruptive activities resuming. There is evidence from a local farmer that the buildings could be used intensively for keeping livestock but that they are in need of investment. From this it cannot be certain that restoring the existing buildings for such purposes would be economic. Nothing indicates that circumstances have changed to the extent that it would now be financially worthwhile to re-commence uses that ceased some time ago. Furthermore, the buildings are not well suited for conversion to commercial uses as the cost of meeting energy performance standards is likely to outweigh any benefits. Whilst neither eventuality can be ruled out the risks to amenity are small and this matter correspondingly carries limited weight.

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23. This finding also means that the potential traffic implications of a light industrial use carries little weight as they are unlikely to occur. The difference between the estimated two-way vehicle trips between the proposed and past uses of the site would be minimal. Previously large and noisy agricultural vehicles would have gone into and out of the site but that is not the situation now and the prospects of this re-occurring are slight. Therefore the claimed reduction in vehicle movements and associated impacts is a neutral factor in the overall balance and is not one that favours the proposal.
24. Prior approval is not required for the change of use of the rearmost building to form 2 residential units. This represents a legitimate alternative option for the appellant. Even if the open-sided barn were also to benefit from prior approval as the appellant originally there would be a lingering uncertainty about the other buildings at the site. The proposal would result in a comprehensive redevelopment and settle its immediate future once and for all. However, there is no evidence that an agricultural use would automatically take place in the remaining structures for the reasons previously given. Therefore sweeping them away is not, in itself, a consideration of great weight.
25. If implemented the proposal would increase the distances between Kaine Farm House and 4 Breach Lane and the closest building on the appeal site from about 6.6m and 12.4m to around 27.8m and 31.6m respectively. However, the nearest existing structure is quite low due to the fall of the land and is offset from the main rear-facing windows of both properties. Consequently the impact on existing living conditions is not as marked as the distances suggest and so the greater physical separation that would occur is of limited benefit.
26. The proposal would increase the amount of soft landscaping and has the potential to improve biodiversity in line with the Framework. The alignment of the footpath could also be improved to give it greater definition thereby affording walkers greater safety in terms of potential conflict with vehicles. That said, there is no evidence that the current arrangement is dangerous or has deterred usage. The sustainability credentials of the proposed houses would be high. This is laudable but reaching these standards is increasingly becoming the norm. Nevertheless these are all aspects of the proposal that weigh in support of it although not significantly.
27. One of the units is earmarked for a relative of the appellant in order to meet his needs in a tailored manner. It is clearly an important matter for the family to be able to make provision in this way to overcome existing accommodation deficiencies. Whilst there is no reason to doubt the appellant's intentions in this regard there is no mechanism in place to secure this arrangement. Neither is there evidence about other possible options or whether the situation requires the construction of 6 additional houses. This is nevertheless an additional material consideration.
28. At Milstead an Inspector has recently allowed an appeal for a single dwelling (APP/V2255/W/17/3171596) in conflict with the locational strategy of the then Local Plan. However, the scheme was described as infilling within the hamlet and was clearly of a different scale to the proposal. Hence it can be distinguished from it.
29. Whilst not universal there is a considerable volume of local support for the proposal. I have taken this into account particularly in assessing the ease and

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likelihood of accessing services and the station at Newington. Nevertheless these views in themselves are not decisive.

30. The appellant has put forward a wide range of considerations as benefits that would ensue from the proposal. These have been assessed above and weight attributed accordingly. However, in many cases similar planning advantages could be derived from a scheme that was for a lesser scale of development and no evidence has been put forward to indicate that this is not possible. This therefore further reduces the weight to be attached to them.

Final Balancing

31. The proposed development would undermine and dilute the settlement strategy for Swale, encourage car use and harm the character and appearance of the surrounding area. It would conflict with the development plan as a whole. Paragraph 12 of the Framework confirms that it should therefore be refused unless other material considerations indicate otherwise. Whilst there are a number of these that favour the proposal they do not collectively outweigh the development plan conflict and the harm identified.
32. Therefore for the reasons given the proposal is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR



Costs Decision

Site visit made on 25 October 2017

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

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

Decision date: 13th November 2017

Costs application in relation to Appeal Ref: APP/V2255/W/17/3175061 Land adjacent Kaine Farm House, Breach Lane, Upchurch, Kent, ME9 7PH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Swale Borough Council for a full award of costs against Mr T Ripley.
 - The appeal was against the refusal of planning permission for demolition of seven existing farm buildings (totalling 1,666 sq m) and the reception of six detached houses and garages (totalling 1,096 sq m) and associated SUDS ponds, landscaping and wildlife planting.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. When the appeal was made in May 2017 the Inspector's Report into the Local Plan examination had not been received. It was therefore reasonable for the appellant to include the argument that a 5 year housing land supply had not been demonstrated. The adoption of the Local Plan in July 2017 brought some clarity to the situation. However, because housing supply is a "moveable feast" the appellant was entitled to maintain that, for a variety of reasons, the accepted position should be treated with caution. As part of this attention was drawn to another appeal at Canterbury Road, Dunkirk where the figure has been challenged (APP/V2255/W/17/3172378). Overall the position was not so clear-cut that it was unreasonable to continue to advance this issue as a material consideration.
4. Furthermore, settling the question of the 5 year housing land supply would not necessarily be decisive. The appellant has also put forward a number of factors supporting the scheme backed up by adequate evidence. Whatever the Council's views about the merits of the site and the conflict with the development plan this was not an appeal with no reasonable prospect of succeeding. Whilst that has been the eventual outcome it was not unreasonable to pursue the appeal so that an impartial decision-maker could undertake the necessary balancing. Therefore the circumstances outlined in the first bullet point of paragraph 053 of the Planning Practice Guidance do not obtain in this case.

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5. The Council also complains about having to respond to "factually incorrect information" in the appellant's appeal statement. None of the matters referred to comprise blatant attempts to mislead or to provide inaccurate data. Rather they represent the appellant's interpretation of relevant considerations in support of the appeal. As part of the normal 'cut and thrust' of the process the Council has had the opportunity to respond and it was reasonable for the original comments to set out the appellant's views.
6. Therefore unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not occurred and an award of costs is not warranted.

David Smith

INSPECTOR