




---

## Appeal Decision

Inquiry held between 26 and 29 September 2017 and closed on 11 October 2017

Site visit made on 29 September 2017

by **Nick Palmer BA (Hons) BPI MRTPI**

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

Decision date: 23 November 2017

---

**Appeal Ref: APP/V2255/W/17/3172378**

**Land north of Canterbury Road, Dunkirk, Kent**

- 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 Mr Simon Reynolds of Quinn Estates Limited against the decision of Swale Borough Council.
  - The application Ref 16/505118/OUT, dated 15 June 2016, was refused by notice dated 16 November 2016.
  - The development proposed is a mixed use development comprising up to 77 residential dwellings with associated commercial (B1) and retail (A1) units, hard and soft landscaping and associated infrastructure.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is for outline permission with all detailed matters except for access reserved. An illustrative masterplan was submitted with the application and I shall consider that plan on the basis that it is illustrative of a possible scheme.
3. On 26 July 2017 the Council adopted its Local Plan (LP) entitled 'Bearing Fruits 2031: The Swale Borough Local Plan'. This supersedes the 2008 Local Plan policies that were referred to in the Council's decision. My decision shall be made on the basis of the relevant LP policies.
4. A signed Section 106 Agreement was submitted after the Inquiry sessions but before the Inquiry was closed and I shall take that Agreement into account.

### Main Issues

5. From all that I have read, heard and seen I consider that the main issues in the appeal are:
    - i) the effect of the proposal on the character and appearance of the area, with specific reference to its effect on the landscape;
    - ii) whether or not the site is a suitable location for the proposed development having regard to the Council's settlement strategy; and
    - iii) whether or not the Council can demonstrate a five year supply of deliverable housing sites and the implications for planning policy.
- 

<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/W/17/3172378

---

## Reasons

### *Character and Appearance*

6. Dunkirk is a small settlement, the built up area as defined in the LP covering linear residential development along Canterbury Road and Courtenay Road, which are at right angles to each other. Those two roads partially enclose a former World War 2 radar station which is a Scheduled Ancient Monument. The remaining mast is a grade II listed building. The appeal site is an open field to the east of the built up area and lies between the settlement and Bossenden Wood. To the south east of the site there is a small employment park and a small number of bungalows that are isolated from the main part of the settlement. Within the site there is an area of hardstanding which I saw on my visit is used for parking of lorries and trailers and storage of various materials. This area is adjacent to the road frontage and behind a hedge.
7. The proposed development would substantially occupy the open space between the built up area of the village, the employment park and Bossenden Wood. There is a timber yard between part of the eastern site boundary and the wood but the buildings and outside storage within that yard are small in scale and an open aspect towards the wood is maintained.
8. The landscape is predominantly wooded, the site and the settlement occupying an open break in the woodland. The landscape is designated an Area of High Landscape Value (AHLV) in the LP and is identified as being of value at the Kent level. In the Swale Landscape Character and Biodiversity Appraisal (2011) (LCA) the site falls within the Blean Woods West Landscape Character Area. The LCA describes the undeveloped nature and remoteness of the area and notes that the landscape forms part of one of the most extensive areas of semi-natural woodlands in the south-east of England. Thus the landscape is of value at the County as well as local levels.
9. The adjacent employment uses may affect the general tranquillity of the area and background noise from the A2 road may also have this effect. However the generally remote character would be altered by the proposal and the village would take on a more urban appearance. The proposal would substantially increase the size of the settlement and largely remove the open setting between the settlement and the wood. For these reasons the development would be highly intrusive in the context of the generally open and wooded landscape.
10. Two of the guidelines in the LCA are of particular relevance. One requires conservation of wooded fringes while another requires that development relates to the settlement pattern and that it protects the settings of settlements. Although the proposal would preserve an element of open land adjacent to the wood, this area would be minimal in relation to the scale of development proposed and much of that area is already occupied by the timber yard. The setting of the settlement would be harmed and the proposal would be out of scale with the settlement. For these reasons it would not accord with the LCA guidelines.
11. I acknowledge that there are limited public views into the site because of the built developments on Courtenay Road and Canterbury Road and the adjacent woodland all of which enclose the site. However the frontage would be opened up and the development would be prominent in views from Canterbury Road

---

<https://www.gov.uk/planning-inspectorate>

2

Appeal Decision APP/V2255/W/17/3172378

---

and when approaching on the slip road from the A2. Views of the development would also be obtained from the rear of the Courtenay Road properties and from that road in gaps between buildings. Views would also be possible from the footpath within Bossenden Wood, although those views would be filtered by intervening trees. The Parish Council has applied to the County Council for that path to be given the status of a public footpath. Although the proposal would have limited impact on longer distance views it would have significant impact on views in the immediate area.

12. The adjacent employment park is limited in extent and in terms of the scale of its buildings and structures. The warehouse occupied by Agrii is of significant size but the buildings are close to Canterbury Road and have only a limited effect upon the openness of the area between the village and the wood. The timber yard was approved recently but the scale of its operations is limited and controlled by conditions. Permission has also recently been granted for external storage racking at Agrii but this would be contained by the existing adjacent buildings.
13. The radar mast and the area of the former radar station are designated heritage assets. The Council's reasons for refusal were not based on any harm to the settings of those heritage assets and I see no reason to disagree. The mast is a large structure in the context of its predominantly open surroundings and the limited scale of the village. Its significance derives from its historic interest and as such it is of value rather than detracting from the character and appearance of the area.
14. I take into account the proposed new planting which would help to soften the appearance of the development and to blend it into its surroundings. However neither this nor a condition limiting the height of the buildings would be sufficient to overcome the harm that I have identified.
15. Paragraph 109 of the National Planning Policy Framework (the Framework) requires protection and enhancement of valued landscapes. For the reasons given the landscape is of value both locally and in a wider context and the proposal would unacceptably harm the character and appearance of the area.
16. In coming to this view I have taken into account the allocation in the LP of a site for residential development at Bull Lane, Boughton. Although that site will extend the built up area and is within the AHLV it is much smaller than the appeal site and it adjoins a much larger village and for these reasons is not directly comparable to the proposal.
17. The overall requirement of Policy DM24 of the LP is to protect the value and character of the Borough's landscapes. Part C of that policy requires all development to have regard to the guidelines in the LCA. I have found that two of those guideline requirements would not be met. Although the policy allows for adverse landscape impacts to be balanced against social and economic benefits, for the reasons given the proposal would not accord with policy DM24 of the LP.

#### *Location*

18. Policy ST3 of the LP sets out the policy requirements in terms of the settlement strategy. Boughton, which is about 1 km away from the site, is defined as a Rural Local Service Centre in Table 4.3.1 of the LP and Dunkirk is a lower order

---

<https://www.gov.uk/planning-inspectorate>

3

Appeal Decision APP/V2255/W/17/3172378

---

settlement ('other villages with built-up area boundaries'). The policy focusses development on the urban centres while Rural Local Service Centres are identified as providing the tertiary focus for growth. In other villages such as Dunkirk, development will be permitted within the built-up area boundaries. Outside those boundaries development is restricted under policy ST3. The appellant agrees that the proposal would not accord with that policy.

19. Boughton has a range of local facilities that include a primary school and village hall/library, restaurants, a public house and retail facilities including a post office. In Dunkirk there is a village hall and employment opportunities while just outside the village there is a public house and a farm shop. Regular bus services run along the main road to Canterbury and Faversham, each destination being about 5 miles away. I note the Parish Council's concerns about the lack of medical facilities in the area but I nevertheless find that the site has a reasonably good level of accessibility to services and facilities by sustainable means of transport. Thus, while undoubtedly residents would use the car to a great extent, other travel options would be available.
20. Paragraph 4.3.23 of the LP describes the primary purpose of policy ST3 as being to protect the open countryside from isolated and/or large scales of development. The paragraph goes on to say that some minor development outside the built-up area boundaries may be essential for the social, economic or environmental health of a community. The proposal would include a shop and business floor space both of which would clearly benefit the local community in terms of increasing local provision and reducing the need to travel. However the development as a whole would far exceed the scale of development envisaged in the LP as being acceptable in this location. Although I have found that the development would be accessible by sustainable means, for these reasons the proposal would not accord with the settlement strategy as set out in the LP.
21. While there would be benefits in terms of strengthening the community the development would overwhelm the limited scale of the existing settlement. For these reasons, and given the clear and undisputed conflict with policy ST3, I conclude that the site is not a suitable location for the proposed development. The proposal would not accord with policy ST1(4) of the LP which requires development to accord with the settlement strategy.

#### Housing Land Supply

22. Although the LP has only recently been adopted, the Statement of Housing Land Supply that was before the Local Plan Inspector was that of 2015/16. A more recent Statement (SHLS) for 2016/17 is now available. The housing land supply at 5.4 years remains the same as in the 2015/16 Statement. The identified surplus of 0.4 years' worth of housing supply equates to 340 dwellings. The Council explained that although there have been slippages in timings of delivery for some sites these have been compensated by increased rates of provision on other sites. The appellant has questioned a number of assumptions that are made in the SHLS. These concern the anticipated rates of housing delivery, lapses of permissions and slippages. The trajectory rises steeply to a very high level of provision in year 5 in comparison to previous rates. In addition to these matters the appellant questions the Council's method of accounting for demolitions in its calculation. I shall examine each of these points in turn.

---

<https://www.gov.uk/planning-inspectorate>

4

Appeal Decision APP/V2255/W/17/3172378

---

#### *Rates of Delivery*

23. The Strategic Housing Land Availability Assessment (SHLAA) assumed annual delivery rates per developer of 30 to 40 dwellings. This annual range is not disputed but the appellant questions the higher rates of delivery which have been assumed for a number of sites in the supply calculation. The Council explained that it has used information gained from developers and its knowledge of previous delivery rates on particular sites.
24. It is evident that higher numbers of developers have previously been involved in particular sites than was assumed by the Council in Appendix E of the SHLS. Nonetheless it is also evident that there have been wide variations in rates of delivery. For example at Iwade, 211 dwellings were completed by 3 developers in 2003/4 and 124 dwellings with 1 developer and a Registered Social Landlord more recently. There are other examples of completions of over 70 dwellings in one year by a single developer. Therefore evidence of past delivery rates does not support a rigid assumption of 30 to 40 units per year. In the annotated schedule included in the Statement of Common Ground the assumed delivery rates are supported by the information that has been provided on the number of developers involved. This is the case in respect of sites at East Hall Farm and Quinton Road in Sittingbourne for example.
25. Factory constructed units are intended at Rushenden Road, Milton Pipes and Istill Mill. The use of this type of construction supports higher rates of delivery at those sites. It was also agreed at the Inquiry that flatted development may deliver housing more quickly than conventional housing development. This type of housing would be provided at Fountain Street, Cockleshell Walk and The Bell Centre in Sittingbourne. Higher rates of delivery on those sites would be justified on this basis. I note that in the case of The Bell Centre, there may be detailed issues potentially relating to viability but the evidence in this respect is inconclusive. Although the appellant thinks that the annual delivery rate in years 4 and 5 should be adjusted it is not suggested that this site should be removed from the supply calculation.
26. The Council has produced correspondence from the owner of the site at Love Lane, Faversham to the effect that there is no litigation that would prevent the 90 dwellings in the housing supply from being delivered.
27. While I acknowledge that developers are often optimistic about their delivery assumptions, the Council has taken a cautious approach to those assumptions as provided in developers' annual returns<sup>1</sup>. That caution covers both the annual numbers of expected rates of delivery and the timings of development. Where uplift from the SHLAA rates to 45 dwellings per annum has been assumed this has been justified on the basis that sites appear to be straightforward to develop and developers are in place. For these reasons I find that the Council's assumptions with regard to rates of delivery are reasoned and not overly optimistic.

#### *Net Completions*

28. The appellant has pointed out that in a number of cases new dwellings that are included in the supply calculation would entail demolition of existing dwellings.

---

<sup>1</sup> For example at Great Grovehurst Farm Sittingbourne, Stones Farm Sittingbourne, Plover Road Minster, Oare Gravel Works Faversham, High Street Newington, Froggnal Lane Teynham, Station Road Teynham, Thistle Hill Minster and land south-east of Iwade

Appeal Decision APP/V2255/W/17/3172378

---

If the net figure were considered this would result in a loss of 140 dwellings from the supply.

29. The Council has explained that it records demolitions as and when they occur and that the housing supply figure is adjusted accordingly. Thus demolitions are included within the overall calculation of the housing supply requirement. The number of dwellings in question forms a small proportion of supply and if the 140 dwellings were discounted the Council would still have more than a 5 years' supply. However given that demolitions are accounted for in the supply calculation I find no need to discount those dwellings.

#### *Lapses*

30. Footnote 11 to paragraph 47 of the Framework states that *sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.* The Council has acknowledged in its 2016 Position Paper that there is risk of non-delivery particularly on small sites which have permission but where development has not commenced but no lapse rate has been applied to the calculation of housing supply. The viability of both allocated sites and those with permission has been taken into account in the SHLS. In instances where there may be viability issues with permitted sites the lead-in times have been adjusted to take this into account. There is no specific evidence before me to justify the removal of a certain percentage of permitted sites on grounds of viability, demand or phasing however.
31. National research which has been referred to by the appellant indicates that 10-20% of permissions do not materialise into a start on site. The three examples of applications to renew permissions which were provided by the appellant do not amount to lapses although the renewals may have resulted in delivery slippage. The Council advised that the question of whether a lapse rate should be applied was considered by the Local Plan Inspector. I find that there is a lack of substantive evidence to justify the application of a standard lapse rate. However if a 10% lapse rate were to be applied to all sites with planning permission this would amount to 176 dwellings which if removed from the supply would still leave a supply in excess of 5 years.

#### *Slippage and Scale of Provision*

32. The annotated schedule and the trajectory graph in the Statement of Common Ground illustrate the degree to which the delivery of major sites both allocated and with permission have slipped over the past few years. However the adoption of the LP will have provided greater certainty. Slippages over the last year which have resulted in losses from the 5 year supply have been compensated for by increased delivery from other sites. The projected peak in delivery in year 5 now stands at 1,773 dwellings compared to 1,699 in the trajectory that was examined as part of the LP evidence and as such does not differ greatly from that which was found to be sound.
33. Housing provision of more than 1,000 dwellings in a year has only been achieved once in the last 35 years and on this basis the appellant doubts whether delivery of 1,773 dwellings in a single year is realistic. Some 570 of

---

<https://www.gov.uk/planning-inspectorate>

6

Appeal Decision APP/V2255/W/17/3172378

---

those dwellings would be in Sittingbourne and the appellant questions whether the market could stand this level of provision in such a short space of time.

34. The effect of further slippage would only increase the peak in year 5 if not compensated for by greater delivery in earlier years. I recognise the appellant's concern in this respect but am reassured by the increased record of delivery over the past year and the certainty provided by the adopted LP. The sites which have been moved back in the trajectory appear to reflect a more cautious approach taken by the Council in its assumptions and this provides further reassurance.
35. Policy ST2 of the LP requires a review of the LP to be carried out and adopted by April 2022. This will consider necessary improvements to highway infrastructure and its effect on housing provision after that date. The Highway Authority and Highways Agency have confirmed that required highway improvements will not prevent the sites identified in the housing supply from coming forward. It is clear that there are no infrastructure constraints to the achievement of housing delivery in the next 5 years.

#### *Housing Land Supply Overall*

36. For the reasons given in the preceding paragraphs I find that the Council's housing land supply position as set out in the SHLS is reasonably robust. There is insufficient evidence before me to justify the application of a lapse rate to sites with permission but even if a rate of 10% were to be applied this would not result in the Council having less than a 5 years' supply.
37. The appellant has drawn attention to two discrepancies in the number of dwellings as applied for and those which appear in the supply calculation<sup>2</sup> which amount to 9 dwellings. If these were added to the 176 that would be lost as a result of a 10% lapse rate to permitted sites, the total of 185 would still result in a surplus of 155 dwellings.
38. The Government's consultation on 'Planning for the right homes in the right places' follows earlier consultation entitled 'Fixing our broken housing market'. Table 1 in the latest consultation document proposes that for plans adopted in the last five years, the new standardised method of calculating supply should be used when next reviewing or updating the plan. Limited weight can be given to the consultation proposals at this stage but in any case the standardised method would not apply on the basis of there being a recently adopted plan.
39. For these reasons I conclude that the Council can demonstrate that it has a five year supply of deliverable housing sites. On this basis the Council's policies for the supply of housing are up-to-date.

#### *Planning Obligation*

40. The Section 106 Agreement would secure the provision of affordable housing and financial contributions towards education and library provision. Further financial contributions would be secured towards mitigation measures in respect of Bossenden Wood to ensure that birds are not disturbed by increased visitor pressure and towards similar measures in respect of nearby Special Protection Areas. The Agreement would also secure the provision of on-site

---

<sup>2</sup> Orbital Sittingbourne and Chequers Road Minster

Appeal Decision APP/V2255/W/17/3172378

---

public open space and local employment both in construction of the scheme and its end use. The financial contributions would be necessary to mitigate the effects of the development and would not therefore represent overall benefit to the area. The use of local labour and provision of local employment would represent general benefits and I shall take these into account in the final balance.

#### **Balance**

41. I have found that the proposal would not accord with Policies ST1, ST3 and DM24 of the LP. The proposal would not accord with the development plan when read as a whole. There are however material considerations that weigh in favour of the proposal. The provision of 77 new dwellings would be of benefit in contributing to the housing supply given the need to boost significantly the supply of housing. The affordable housing provision at 40% of the total would represent a further benefit which would address the need that has been identified by the Parish Council. This provision would also be of particular benefit in the context of the past low level of provision in the Borough and the low policy expectations in respect of affordable housing provision in other parts of the Borough.
42. The development would also provide a retail shop which could be occupied as a local convenience store. Heads of terms for an occupier have been agreed with the appellant. This would be of clear benefit both to the residents of the proposed development and existing residents in the village as well as those working in the nearby employment park. It would reduce the need to travel by car to other facilities.
43. The proposed B1 floor space would consolidate the existing employment provision in the area and allow for local residents to work locally, thereby further contributing to a reduction in the need to travel. Economic benefit would also accrue from the use of local labour in construction. I give significant weights to all of these identified benefits but those weights are not sufficient to outweigh the clear conflict with the development plan and the harms that I have identified with respect to the character and appearance of the area and the Council's settlement strategy.

#### **Conclusion**

44. For the reasons given I conclude that the appeal should be dismissed.

*Nick Palmer*

INSPECTOR



Appeal Decision APP/V2255/W/17/3172378

---

**APPEARANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

William Upton, of Counsel instructed by Mid Kent Legal Services

He called

David Huskisson Dip LA CMLI	Huskisson Brown Associates
Luke Simpson BSc MSc MRTPI	Principal Planning Consultant, Adams Hendry Consulting Ltd
Julie Davies BA (Hons) BTP MRTPI	Senior Planning Officer, Swale Borough Council
Jim Wilson	Major Projects Officer, Swale Borough Council

**FOR THE APPELLANT:**

Jeremy Cahill, of Queens Counsel instructed by Karen Cooksley, Partner,  
Winckworth Sherwood

He called

David Williams BA (Hons) Dip (Hons) LA MLI	David Williams Landscape Consultancy Ltd
Paul Burley BA (Hons) MPhil MRTPI	Partner, Montague Evans LLP

**RULE 6 PARTY:**

John Peto	Chair of Dunkirk Parish Council
Jeffery Tutt	Vice Chair of Dunkirk Parish Council

**DOCUMENTS SUBMITTED AT THE INQUIRY**

**SUBMITTED BY THE LOCAL PLANNING AUTHORITY**

- 1 List of appearances
- 2 Swale Borough Council Technical Paper No. 6: Interim Review of Local Landscape Designations and Important Countryside Gaps (December 2014)
- 3 Letter from RSPB to Swale Borough Council dated 6 September 2017
- 4 Tables entitled 'Planning Obligations – Consideration against Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and Paragraph 204 of the National Planning Policy Framework dated 26.09.17 and 28.09.17
- 5 Correspondence from NHS Canterbury and Coastal Clinical Commissioning Group dated 8 and 24 May 2017

---

<https://www.gov.uk/planning-inspectorate>

9

Appeal Decision APP/V2255/W/17/3172378

---

- 6 E-mail from RSPB dated 28 September 2017
- 7 Extract from the Swale Borough Local Plan 2008 – Inset Map 11
- 8 Standard letter sent to developers by the Council requesting information on deliverability of housing sites
- 9 Extract from spreadsheet for KCC HIA data
- 10 E-mail from Angus Scott to the Council dated 27 September 2017
- 11 Closing Submissions

SUBMITTED BY THE APPELLANT

- 12 List of appearances
- 13 Opening Statement
- 14 Note on provision of employment floorspace with attached correspondence from Chris Bichard, heads of terms between the appellant and Bridgeway Stores dated 12 September 2017 and evidence of site delivery of the appellant
- 15 Landscape Context Plan 0276 L1B
- 16 Site Appraisal Plan 0276 L2E
- 17 Landscape Strategy Plan 0276 L3B
- 18 Building Heights Plan 0276 L6A
- 19 Contextual Note in relation to Core Document F1 – Norton Ash Garden Centre Site Appeal
- 20 Ecology Technical Note TN2: Consideration of Potential Effects on Church Woods, Blean SSSI Associated with Cat Predation dated 12 September 2017
- 21 Ecology Technical Note TN3: Alternative Measures to Mitigate Potential Effects on Church Woods, Blean SSSI Associated with Recreational Pressure dated 28 September 2017
- 22 Ecology Technical Note TN4: Consideration of Potential Effects on Church Woods, Blean SSSI Associated with Cat Predation (Update) dated 28 September 2017
- 23 Swale Borough Council Annual Monitoring Report 2013/14
- 24 Details of applications to renew permissions
- 25 Closing submissions
- 26 Signed Section 106 Agreement

SUBMITTED JOINTLY

- 27 Statement of Common Ground on Housing Land Supply
- 28 List of Suggested Conditions

---

<https://www.gov.uk/planning-inspectorate>

10

Appeal Decision APP/V2255/W/17/3172378

---

SUBMITTED BY DUNKIRK PARISH COUNCIL

- 29 Covering note
- 30 Opening Statement with attached Planning Decision Notice 16/507025/FULL, plans, aerial photograph and appeal decision ref APP/V2255/W/17/3172403
- 31 A literature review on the effect of pet cats on nearby protected wildlife sites by Footprint Ecology
- 32 Note on Medical Practices in and around the site
- 33 Closing Statement