
Appeal Decision

Site visit made on 28 June 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 30th August 2017

Appeal Ref: APP/U2235/W/17/3174352

Tumblers Plat, Tumblers Hill, Sutton Valence, ME17 3DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr John Rayner against Maidstone Borough Council.
 - The application Ref 16/508374/FULL, is dated 8 December 2016.
 - The development proposed is described as 'erection of two detached dwellings together with associated parking, access and landscaping on land at Tumblers Plat, Tumblers Hill, Sutton Valence'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Main Issues

2. Whether the appeal proposal would preserve the special architectural or historic interest of Sutton Castle, a grade II listed building and its setting, the Scheduled Ancient Monument (SAM), the archaeology and the pattern of development in the locality.

Reasons

Policy

3. The appellant suggests that the Council cannot demonstrate a five year housing land supply. It provides a number of appeal decisions¹, in support of that position. However, during the course of the appeal the Council has published its 5-year Housing Land Supply figures as at 1 April 2017. That concludes that the Council can demonstrate a 6.3 year housing land supply. Further, the Inspector's Report on the Examination of the Maidstone Borough Local Plan (27 July 2017) confirms that the Council can demonstrate a 5 year housing land supply. That is the most up to date information before me. I do not have a substantive challenge to that position.
4. Having regard to the above, I consider on the balance of available evidence that the Council is able to demonstrate a five year supply of deliverable housing sites and thus paragraph 49 of the National Planning Policy Framework (the Framework) is not engaged on that basis.
5. I have noted that the emerging Maidenhead Local Plan (2016) (eLP) is at an advanced stage of preparation having been through examination. In

¹ APP/U2235/W/16/3145575; APP/U2235/W/16/3151289

accordance with paragraph 216 of the Framework, I accord significant weight to those emerging policies.

Heritage Assets

6. Sutton Valence Castle, a twelfth century tower keep castle is close to the appeal site, situated nearer to the village of Sutton Valence. Its ruins are a listed building and a SAM. It is suggested, by Historic England, that it was probably built to control the road that led from Maidstone to the channel ports of Rye and Old Winchelsea; a purpose illustrated today by its panoramic views of the Weald of Kent and East Sussex to the South.
7. Its most prominent feature appreciable today, is a square stone keep, now ruined, which includes the listed building. That would have been part of a larger complex, which would have included a large defended enclosure, comprising an inner and outer bailey surrounded by a wall and perhaps a ditch in parts. Domestic and utilitarian buildings would have been located within the baileys. The gate to the outer bailey would have been protected by an open defensible enclosure, called a barbican, which would have been located on the eastern side of the Castle. The Council suggest that the appeal site may be situated within the historic barbican.
8. On the basis of the information before me, it is possible that the appeal development would be sited within land which once formed part of the barbican to Sutton Valence Castle. Further, the appeal site is part of land recognised as having potential for archaeological importance. I note the historic, social and economic connections that the appeal site could have had with the Castle. On that basis, without a full assessment of the significance of the heritage assets, the Castle's setting and the contribution that the appeal site makes to it, the archaeology of the appeal site and the impact of the appeal development, I cannot be assured that unacceptable harm to the significance of the heritage assets, both designated and non-designated would not result.
9. Whilst the appeal development would introduce further built form into the land that surrounds the Castle, I accept that due to the separation distance, the slope of the land, the existing trees and proposed planting, no material visual harm would be likely. However, I am not completely satisfied, on the information before me, that some harm to other aspects of the Castle's setting, such as its historic, social and economic connections with the appeal site, would not be a consequence. That would include its archaeology.
10. In coming to this conclusion, I have taken account of the fact that the appeal land has been landscaped and gardened in its recent past and that no evidence of previous archaeological finds is before me. However, no assessment of the archaeological significance of the appeal site, through a desk top study or field evaluation is before me. Therefore, in light of its possible connections with the Castle, I cannot be assured of the effect of the appeal on its archaeology. That Historic England suggests that any archaeological remains of the barbican could have equivalent significance to the Scheduled remains adds to my concern.
11. The requirement for information on which to base any decisions on works or development which would affect a heritage asset is set out in section 12 of the Framework. At paragraph 128, it requires an applicant to describe the significance of any heritage assets affected, including any contribution to their

setting; the level of detail being proportionate to the asset's importance and no more than sufficient to understand the potential impact of the proposal on their significance. In this case, I do not consider sufficient information is before me to fully assess the impact of the appeal on the heritage assets identified.

12. Significance of heritage assets, designated or non-designated, can be harmed or lost through alteration or destruction or development within its setting. In light of this, I consider that planning conditions could not effectively mitigate the potential harm identified.
13. A previous permission at The Old Parsonage² is brought to my attention. However, although closer to the Castle, as that relates to a two storey garage building on land which previously accommodated development, even though larger than that previously in place, it does not replicate the circumstances of this appeal. In any event, that permission and any works carried out at that site do not justify this appeal.
14. All in all, I cannot be assured that unacceptable harm to the significance of the listed building, the SAM and archaeology of the locality would not result. I therefore cannot be assured that it would not be contrary to paragraphs 132 and 139 of the Framework. Those paragraphs, together, indicate when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Further they state that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to SAMs should be considered subject to the same policies for designated heritage assets. It could also fail to accord with eLP Policy DM3. That policy aims for development that protects the historic and natural environment.

Pattern of Development

15. The appeal site includes part of the large garden to Tumblers Plat, which is a detached chalet bungalow that fronts onto the road. It is close to the village of Sutton Valence, accessible by a footpath. However it is located within open countryside in the Maidstone Borough-Wide Local Plan 2000: Saved (MBWLP). MBWLP Policy ENV28 seeks to prevent development in the open countryside that would harm the character and appearance of the area.
16. The appeal site sits within the Greensand Ridge Special Landscape Area. I agree that the appeal development would have a minimal effect on the landscape character of the locality. However, it would be outside the defined urban area and village boundary of Sutton Valence. Even though garden land, the proposed development would result in built form on land outside the defined urban area, which at present is generally free of development.
17. However, the proposed development would be set behind the ribbon of dwellings fronting onto Tumblers Hill, which would generally retain the existing street scene. Further, it would be contained within the garden of the host dwelling, and the appeal site is enclosed by roads on three sides. It would retain the existing tree screen, cobnut orchard and include additional landscaping and landscape management. It would work with the slope of the land, which would ensure that it did not materially affect mid and long distance views within the countryside, would reflect the loose pattern of development in

² Ref 14/506212/FULL

the locality and would be appropriately designed. For these reasons, it would generally sit comfortably within the locality and retain the rural character and appearance of the countryside.

18. Even though the appeal site forms part of the open countryside that surrounds Sutton Valance, the proposed development would not be contrary to MBWLP Policy ENV28. For the same reason, it would generally accord with eLP Policies SP17, DM34 and DM4. Those policies, together, aim for proposals which would result in high quality design, protect the character and appearance of the countryside and for development on brownfield sites to reflect the character and appearance of individual localities.

Public Benefits

19. In accordance with paragraph 132 of the Framework, I accord great weight to the conservation of designated heritage assets and non-designated heritage assets that are demonstrably of equivalent significance to SAMs. For the reasons stated earlier in my decision, I cannot be assured that unacceptable harm would not be a consequence and therefore that the public benefits before me would be sufficient to outweigh that harm, to which I would attach significant importance and weight, mindful of my statutory duty.³ Those public benefits include two additional dwellings, within walking distance to some facilities and services, which would make a small contribution to the Council's housing land supply and help support local services. However, the Council can demonstrate a five year housing land supply and I have no evidence before me to suggest that local services are under threat. It would also include the enhancement and management of the cobnut orchard and landscaping enhancements generally and would provide some employment during building work. Even if that land were considered to fall within the definition of brownfield land, I still would not have certainty that the benefits of its development would outweigh the potential harm.

Other Matters

20. I have noted the appellant's concern regarding the handling of the appeal application. However, that is a matter between the appellant and the Council in the first instance. In any event informal advice is not binding upon the Council and I have made my decision in accordance with the Council's formal position as set out in its statement of case.
21. A condition to restrict permitted development rights in relation to the proposed dwellings would not overcome my concern, as my concern is the initial development. I have had regard to the suggestion that the appellant could carry out development and excavation on the appeal site that would not require planning permission. However, such works would not replicate the scale of the proposed development before me.
22. The evidence before me refers to an Emerging Neighbourhood Plan. The Council's questionnaire confirms at question 24m that it is at an early stage in its preparation and no document is before me. I am therefore unable to attach weight to it.

³ section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

23. The appellant's comments with regard to policies in the eLP relating to brownfield land have been noted, but that is not a matter for me.

Conclusion

24. The appeal development would have some benefits, as outlined above. However, in the absence of full information regarding the significance of the heritage assets identified and the impact of the appeal development on them, I cannot be assured that unacceptable harm to those heritage assets would not result. Further, for the same reasons, I cannot be assured that the public benefits before me would outweigh any potential harm to those heritage assets.
25. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be dismissed and planning permission refused.

R Barrett

INSPECTOR