



Appeal Decision

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by H Miles BA(Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2019

Appeal Ref: APP/V2255/W/18/3212702 Western Link, Faversham, ME13 8TN

- 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 George Barnes of Shepherd Neame Ltd against the decision of Swale Borough Council.
 - The application Ref 17/505079/OUT, dated 29 September 2017, was refused by notice dated 6 April 2018.
 - The development proposed is outline application with all matters reserved for erection of 50 houses, provision of open space (1.1ha), new vehicular access, strategic landscaping and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis.
3. In the interests of clarity, it was confirmed to me that the following plans are indicative only: Planning indicative layout (4993 D-01 G), Planning indicative layout (4993 D-01 L), Planning indicative sections; (4993 D-02B), Planning indicative elevations (4993 D-03 A). I have considered the appeal on this basis.
4. A revised plan was submitted within the appellant's evidence which was not before the Council at the time that they made their decision (4993 D-01 Rev R). The plan includes notation that shows an area where it suggested that layout would be determined as part of this appeal. I appreciate that the application was submitted in outline and therefore it would be open to the appellant to propose this arrangement when reserved matters were submitted. However, interested parties made their comments based on the evidence before them, with a reasonable expectation that a detailed assessment of the site layout would be made at a later stage. Therefore, in the interests of fairness and openness, these revised plans will not form any part of this assessment.
5. In the Statement of Common Ground agreed between the main parties, it is confirmed that the Council would not pursue the part of its second reason for refusal relating to the loss of best and most versatile agricultural land. I have considered the appeal on this basis.

6. A signed and dated agreement pursuant to section 106 of the Town and Country Planning Act 1990 was submitted after the hearing. This includes obligations relating to Adult and Social Care, Community Learning, Libraries, Off-Site Formal Sports, Primary Education, Secondary Education, Wheelie Bins, Youth Services, Affordable Housing and SPA mitigation.

Main Issues

7. The main issues are:

- The effect of the proposed development on the setting of the Syndale Conservation Area.
- The effect of the proposed development on the character and appearance of the rural area.
- The effect of the proposed development on highway safety with particular reference to the level crossing.

Reasons

Setting of the Syndale Conservation Area.

8. The Syndale Conservation Area (the CA) derives its significance from its mainly open character and appearance, including the landscaped parkland which surrounded the, now destroyed, Syndale House. It includes mainly undeveloped land with a limited number of buildings, and also sites of historic and archaeological interest. Although outward views may not be of particular importance to the parkland's original significance, nevertheless, the surrounding open setting makes a positive contribution to the way in which the open character and appearance of the CA is experienced. Consequently, the undeveloped nature of the appeal site, which is in very close proximity to the CA boundary, makes an important positive contribution to the significance of the CA for this reason.
9. The proposed development would change what is currently an undeveloped piece of open land which is close to the boundary of the CA into urban residential development. I agree that the provision of open land to the southern part of the site would reduce this urbanising effect. However, even with this area of landscaping the development to the northern part of the site is still in close proximity to the CA and the proposed development would nonetheless have a negative effect on the undeveloped setting to the CA.
10. Both main parties confirmed at the hearing that the proposed development would result in less than substantial harm to the setting of the CA, and I agree with these conclusions. I note the appellant's position that this harm would be at the low end of the 'spectrum' of less than substantial harm. Nonetheless I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of designated heritage assets and any harm to such assets should require clear and convincing justification.
11. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset that harm should be weighed against the proposal's public benefits. This requires a balancing exercise of harm against the public benefits of the proposal.

12. The benefits put to me include that the proposed development would result in the provision of 50 homes, 20 of which would be affordable (and 18 of which are 3 and 4 bedroom family homes), and I agree that this is a notable benefit of this scheme.
13. It would provide economic support for the construction industry during construction, albeit that this benefit would be for a limited time, and household expenditure from future residents would support the local economy. However, these benefits are not unique to this scheme. The proposed development would also provide an area of 1.1ha of open space. I have considered the mitigating effect of the open space above in terms of its effect on the character and appearance of the area, and this informs the position that there would be less than substantial harm to the CA. I understand that a residential development such as this would be expected to provide some open space for future residents. As such the wider public benefits of this provision are limited.
14. I note that some trees on site would be retained, however as they already exist I do not consider this a benefit of the proposals per se. Whilst conditions are suggested which would provide ecological mitigation for reptiles on the site, I am not presented with any mechanism to secure enhanced ecological measures along the railway line. I note that ecological enhancements (including bird and bat boxes) would also be secured by condition. However, based on the evidence before me I understand that such benefits would not be unique to this development.
15. Nevertheless, taking the above into account, these public benefits would not outweigh the great weight that I am required to attach to the heritage asset's conservation. I therefore conclude that the proposed dwellings would fail to accord with national policy which seeks to conserve and enhance the historic environment.
16. Consequently, the proposed development would have a harmful effect on the setting of the Syndale Conservation Area. In this respect, it would be contrary to policies ST7 and DM33 of Bearing Fruits 2031 The Swale Borough Local Plan Adopted July 2017 (the Local Plan), which together require that development affecting the setting of a conservation area will preserve or enhance all features that contribute positively to the area's special character or appearance.

Character and appearance

17. Together Policies ST1, ST3 and ST7 of the Local Plan outline the Swale settlement strategy. They include that at locations outside the built up boundaries development will not be permitted except in specific circumstances including where the development would protect the intrinsic value and beauty of the countryside, amongst other things. These policies also seek to maintain the individual character of settlements and preserve aspects of the morphology of Faversham which contributes to its significance. These policies are generally consistent with the Framework.
18. The site is outside the defined built up area boundaries for the purposes of the development plan. The site is separated from the built up area boundary of Faversham by the railway line. This acts as a prominent physical barrier between the residential development (including the land adjacent to the existing housing where I understand that permission has been granted for

residential development) and the surrounding countryside land. There is open land on all three other sides, albeit that the A2 and Western Link Road (and roundabout) separate the site from the neighbouring open space. There is also a building and forecourt which appeared to be used for car sales fronting the A2 close to the site. Due to its location surrounded by open land it appears as a single stand-alone unit rather than part of the built up area of Faversham. Consequently, although it is close to built development in places, the open undeveloped nature of the appeal site makes a positive contribution to the intrinsic character of this pleasant countryside location.

19. The development of the site would introduce built form to this open area, eroding the open and undeveloped qualities set out above. Consequently, it would undermine these attractive rural characteristics of the site and would be harmful to the intrinsic character and beauty of the countryside for these reasons.
20. I appreciate that the proposed landscaped area would result in only part of the site being occupied by buildings and would assist to soften the visual impact of the development on the approach to Faversham. However, the urban edge of Faversham is reasonably well defined at present and I consider that the landscaping proposed would be insufficient to mitigate the harm of the proposal extending built form into the countryside, adversely affecting the setting of the settlement.
21. At the hearing my attention was drawn to Policy DM24 (Conserving and Enhancing Valued Landscapes) of the Local Plan. Planning permission was not refused with reference to this policy and I am not presented with evidence which leads me to conclude otherwise.
22. Consequently, the appeal scheme would cause harm to the character and appearance of the rural area. As such, in this respect, it would be contrary to Policies ST1, ST3 and ST7 of the Local Plan, the aims of which are outlined above.

Highway Safety

23. Following the Council's determination of the planning application Network Rail submitted comments which raised concerns about public safety in relation to the Union Level Crossing resulting from an increase in the number of people using the facility. While I note that the appellant disagrees with these conclusions, he has not submitted detailed evidence to dispute them. As such, in the absence of substantive evidence to demonstrate otherwise, I conclude that without any form of mitigation the proposed development would result in harm to highway safety.
24. A mechanism to prevent this was suggested by way of a negatively worded condition which would require that a physical barrier be constructed which would close the access to the level crossing from the southern side, thereby removing any additional crossing movements from future occupiers.
25. The level crossing forms part of a public right of way which leads from St Nicholas Road to the A2, across the appeal site. I heard that the physical barrier proposed would require a diversion to this public right of way. I also heard that both Kent County Council and the Faversham Footpath Association

had concerns about the proposed alternative route as it would be longer, would include steps and would be less convenient.

26. I have had regard to the advice in the planning practice guidance that Grampian conditions should not be used where there is no prospect at all of the action in question being performed within the time-limit imposed by the permission.
27. Based on the evidence before me I am not satisfied that there is no prospect at all of the right of way being rerouted or closed. As such this issue could be addressed via a negatively worded condition which would ensure that the additional crossings by pedestrians would not take place as a result of the proposed development.
28. I have not been provided with any mechanism to improve the existing crossing. Furthermore, I have been made aware of an appeal decision¹ at a site in a different local authority area. I note the Inspector states that his conclusions are 'in the absence of any measures to improve the safety of the unmanned railway crossing'. As can be seen above, measures, in the form of a negatively worded condition, are considered in this appeal, and therefore these cases are notably different.
29. Consequently, the proposed development would not result in a harmful effect on highway safety with particular reference to the level crossing. I am not directed to policies of the development plan relevant to this issue. Nevertheless, in this respect, the proposed development would comply with the relevant advice in the Framework including paragraph 109.

Planning Balance

30. The Council are unable to demonstrate a 5 year housing land supply. Therefore, in accordance with paragraph 11 d) of the Framework, policies which are most important for determining the appeal proposal i.e. Policies ST1, ST3 and ST7 are out of date. This position is agreed by the main parties in the Statement of Common Ground. The Framework states that planning permission should therefore be granted unless specific policies in the Framework provide a clear reason for refusing the development proposed. Footnote 6 appended to this makes clear that this includes policies relating to designated heritage assets. Given my finding of conflict with those policies of the Framework and with Policies ST7 and DM33 of the Local Plan, the appeal proposal cannot therefore be considered sustainable development for which the Framework presumes in favour.

Conclusion

31. For the reasons above, this appeal should be dismissed.

H Miles

INSPECTOR

¹ APP/D3830/V/17/3166992

APPEARANCES

FOR THE APPELLANT

Michael Bedford QC	Cornerstone Barristers
Simon Milliken	Milliken and Company Chartered Surveyors and Town Planners
Jonathan Billingsley	The Landscape Partnership
Jonathan Edis	Heritage Collective
Chris Blamey	RGP
Peter Hadfield	Ecology Solutions

FOR THE LOCAL PLANNING AUTHORITY

Andrew Byrne	Senior Planning Officer, Swale Borough Council
Simon Algar	Design and Conservation Manager, Swale Borough Council
Michael Ellis	Public Rights of Way Officer Kent County Council

INTERESTED PERSONS

Elliot Stamp	Town Planner Network Rail
Ormus Khan	Liability Advisor Network Rail
Gemma Kent	Level Crossing Manager Network Rail
Susanna Foster	Commercial Scheme Sponsor Network Rail
Anne Salmon BA, MCD, MRTPI	Faversham Footpaths Association

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter from Faversham Footpaths Group dated 7th October 2019 and Document from Anne Salmon BA on behalf of Faversham Footpaths Group
2. Closing Statement on behalf of the Appellant
3. Policy DM24 of the Local Plan

DOCUMENTS SUBMITTED AFTER THE HEARING

1. S.106 Agreement dated 22/10/2019
2. Extracts from Developer Contributions Supplementary Planning Document Adopted 30 November 2009
3. Open Spaces and Play Area Strategy 2018-2022
4. Policy CP7 of the Local Plan