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## Appeal Decision

Site visit made on 9 March 2020

**by Hilary Orr MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 April 2020**

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**Appeal Ref: APP/L2250/C/19/3237169**

**Brattle Lodge, Kennards Lane, Brookland, Romney Marsh TN29 9FH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr and Mrs A Tomkins against an enforcement notice issued by Shepway District Council.
  - The enforcement notice, numbered DHA/M/KLB/AS, was issued on 12 August 2019.
  - The breach of planning control as alleged in the notice is the erection of a dwellinghouse in the approximate position outlined in a red hatching on the attached plan.
  - The requirements of the notice are:
    1. Demolish the dwelling house.
    2. Permanently remove all resultant debris from the demolition of the dwelling house.
    3. Reinstate the land and to its former condition by levelling the land and re-sowing with grass seed.
  - The period for compliance with the requirements is 12 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Procedural matter

2. The Councils local plan and Core Strategy are currently under review. However, as they have not reached an advanced stage, I give them limited weight.
3. My attention has been drawn to the Council's reasons for issuing the notice and in particular the third paragraph. This refers to the development having been completed within the previous four years. The appellant has not advanced an appeal under ground (d), nor have I been provided with any evidence to suggest that the development had been substantially completed for more than four years, and was thus lawful, at the time that the notice was issued on 12 August 2019. The appeal has therefore been considered in the context of the evidence and facts before me.

### Main Issues

4. I consider that the main issues for determining the appeal are;
  - the location of the development; and

- The effect of the development on the character and appearance of Romney Marsh, a Kent Landscape Character Area (RMLCA).

## **Reasons**

5. The site is located at the junction of King Street and Kennards Lane within an area of open countryside. The site comprises some 0.49 hectares with a number of outbuildings and paddocks used for the keeping of a variety of sheep and donkeys. It originally formed part of the larger holding including Brattle House until the appellants split the site, with Brattle House being sold.
6. A prior approval application was granted by the Council for the change of use and conversion of a single storey agricultural barn to a single dwelling (Y15/0013/PA). However, during the course of construction, it became clear that the barn was not capable of conversion. It was therefore demolished and the dwelling subject to the enforcement notice was constructed. An application to retain the dwelling, as built, was then submitted to the Council (Y16/1192/SH). This application has not been validated.
7. It is not in dispute that the barn, subject to the prior notification was completely demolished before the new dwelling was built. Consequently, the appeal must be considered in the context of the construction of a new dwelling.

## *Location*

8. Policy SD1 of the Shepway Core Strategy 2013 (CS) sets out the districts spatial strategy. This policy seeks to ensure that additional development is focused on the most sustainable towns and villages, as set out in policy SS3. Policy CSD3 goes on to say that development in the open countryside will only be allowed exceptionally, where a rural location is essential. It goes on to state that the future spatial priority for new development in the Romney Marsh Area is on accommodating development at the towns of New Romney and Lydd, and at sustainable villages. The National Planning Policy Framework (the Framework) discourages residential development within the countryside in unsustainable locations.
9. The site lies close to two other dwellings, but falls outside any settlement boundary and as such, is located in the countryside. The appellant's have not sought to advance any agricultural justification for the dwelling.
10. From the evidence provided, the village of Brookland lies some distance to the south of the site. It is the appellant's case that there is access to public transport from Brookland, although I have not been provided with any details of the routes or frequency of any public transport services. From my site visit it was clear that the surrounding roads, including those leading to Brookland, generally do not have pedestrian footpaths, are very narrow with large drainage ditches and are unlit. This would make walking and cycling, especially in the winter months or after dark, a less attractive alternative to the private car.
11. From the evidence provided Brookland has a primary school and a church. The appellant acknowledges that the bakery and Royal Oak public House have both closed, although an alternative business is being sought. They also contend that there is a farm shop outside the village, although I have no evidence to demonstrate distance involved or the range of goods available. Neither have I

been provided with evidence to confirm where access to health care or other essential services can be found.

12. Accordingly, in the context of this rural location, where I accept that accessibility is not normally as good as that of urban areas, I do not consider that the development provides a viable alternative to the use of private cars for residents. The appeal site is therefore, not in a suitable location for new housing, given its location outside any established built up boundary. Consequently, it is contrary to saved policies SS1, SS3, CDS3 and CSD4 of the CS, and saved policies SD1 and CO1 of the Shepway District Local Plan Review (2006) (LP). These policies when taken together seek to provide new homes in accordance with the settlement hierarchy and reduce the need for travel by car unless they cannot be practicably located within an existing settlement and require a countryside location.

#### *Character and appearance*

13. The site lies within the RMLCA and the area is generally characterised by flat farmland with scattered farms and dwellings. I acknowledge that Brattle House lies to the east, with Brookland Place to the west, but the very rural and open character of the land surrounding these properties, gives the area a very strong sense of being in the countryside.
14. The development has introduced a substantial two storey dwelling into a site where previously there were open paddocks and a number of small scale agricultural type buildings. The dwelling is of brick and timber clad design with large windows and a Juliet balcony facing Kennards Lane. Access is from Kennards Lane through a gated drive with car parking to the front. Whilst the building is not unattractive, its design does not reflect the scale and characteristics of the remaining agricultural buildings on the site.
15. I acknowledge that the building is viewed against the backdrop of the remaining buildings to the north and existing screening to the east. Nonetheless, the height, scale and design of the dwelling results in a building that is overly dominant in the landscape. This is exacerbated by the very open nature of the site, with the dwelling highly visible in the context of this rural countryside setting.
16. Overall the dwelling, as a result of its height and design, results in a significantly more developed and urban appearance of the site, when compared with the previous position. The development in this prominent location affects the prevailing character of the landscape by introducing a dwelling and associated formal planting, domestic paraphernalia and parking, into what is essentially open countryside. This urbanising effect is also apparent from the surrounding fields, which form part of the RMLCA. Consequently, the dwelling appears incongruous, given the countryside setting of the site.
17. For the above reasons I find that the dwelling has introduced an incongruous form of development into this predominately rural area, which fails to protect or enhance the landscape character and functioning of the Local Character Area. Consequently, it has caused significant harm to the character and appearance of the RMLCA and the wider countryside. It therefore conflicts with policies SS1, SS3, CSD3 and CDS4 of the CS, and saved policies SD1, CO1 and CO5 of the Shepway District Local Plan Review (2006) (LP). These policies seek to protect the countryside for its own sake, with new development permitted

where it protects or enhances the landscape character and functioning of Local Landscape Areas.

18. As I have found that the dwelling is not in a suitable location for new residential development and has caused significant harm to the character and appearance of the area. Accordingly, the benefits of providing one dwelling, is significantly and demonstrably outweighed by the significant harm I have identified.

### **Other matters**

19. The Council's second reason for issuing the notice relates to the potential harm that the development may have had on protected species, or whether the development has given rise to contamination. It is the Council's case that without a planning application and the associated documents, they cannot be sure that harm has not been caused, and if so, whether mitigation measures may be required. On the other hand, I acknowledge that the appellants may have already provided this information to the Council as part of their unvalidated planning application, although I have not been provided with any copies. However, as I have found against the development for the reasons set out above, I do not need to reach a finding on this matter.
20. I am very mindful of the appellants circumstances, and the series of events that have led to this appeal and the effect that this decision may have on the them. I have carefully considered the appellants suggestion of imposing a personal condition. However, such a condition would not overcome the significant harm that I have identified above, or lead me to a different conclusion. I have also considered the Human Rights issues that may be pertinent to this appeal. However, the decision I have reached is both proportionate and necessary to overcome the harm caused by the unauthorised development.
21. I am also aware of the uncertain situation that currently exists with regard to COVID-19. Under s173A the Council have the power to extend the time for compliance with the notice. This is however, a purely discretionary power within the Councils' gift to exercise.
22. Paragraph 11 of the NPPF provides a presumption in favour of sustainable development, and planning permission should be granted, 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.

### **Conclusion**

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Hilary Orr*

INSPECTOR