
Appeal Decision

Site visit made on 15 September 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 7 October 2020

Appeal Ref: APP/J2210/W/19/3241662

Sweech Farm, Herne Bay Road, Sturry CT3 4NG

- 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 Hawken and Mr Mason, and Stonebrook Properties Ltd against the decision of Canterbury City Council.
 - The application Ref 18/02514, dated 6 December 2018, was refused by notice dated 26 June 2019.
 - The development proposed is construction of a pair of two-storey cottages and a two-storey dwelling, the conversion of the former oast building to a single dwelling incorporating a roof extension to reconstruct the kiln roof and cowl, the reinstatement of former thatched barn and conversion into a single dwelling, restoration and repair works to the Granary and replacement building (Milking Parlour) comprising 3No. dwellings: together with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: -
 - The effect of the proposal on European Designated Sites.
 - The effect on the character and appearance of the site and the surrounding area with particular reference to Sweech Farmhouse, Granary and Oast/Stable Block, which are Grade II Listed Buildings; and: -
 - Whether the site is a suitable location for the proposed development with reference to the spatial strategy in the development plan;

Reasons

Background

3. The appeal site comprises a group of buildings facing onto Herne Bay Road. In the vicinity of the site Herne Bay Road is lit and provided with footways on both sides. It is subject to a 40 MPH speed limit. To the east and north of the application site is open countryside and to the west is the small settlement of Sweechgate. To the south lies the settlement of Sturry.
4. The site consists of a former farmstead including a farmhouse and granary, both Grade II Listed Buildings, together with curtilage listed derelict oast/stable and derelict milking parlour. A Grade II listed thatched barn previously formed

part of the farmstead. However, this collapsed some time ago and the materials have been placed in storage.

5. Planning permission has previously been granted for the construction of three cottages within the site and conversion of the former stable block/oast house to a dwelling, and the reinstatement of the listed barn (Council Ref: CA//10/01299).
6. Subsequent to the Council's determination of the appeal proposal the Council has granted permission for a development of 4 dwellings and reinstatement of the Grade II former stable block/oast house to a dwelling (Council Ref: CA//19/01498).

Effect on European Protected Site

7. The site is located within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Areas, (the SPA), which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policies SP6 and LB5 of the Canterbury District Local Plan -2017- (the Local Plan) seek to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the Local Plan the Strategic Access Management and Monitoring (SAMM) Mitigation Measures for the coastal SPAs and Ramsar sites incorporates strategic mitigation measures to be delivered to avoid adverse impacts.
8. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
9. Paragraph 175 of the National Planning Policy Framework -2019- (the Framework) states, with regard to habitats sites, that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused". The SPA is used for public recreation and therefore the proposed development is likely to generate an increased recreational use and thus, in combination with other development, have a significant effect on the features of interest of the SPA.
10. Although I note the willingness of the appellant to enter into a legal agreement to provide the SAMMS payment, a financial contribution towards mitigating the effects of the proposal on the SPA, no such agreement is before me.
11. I am, therefore, unable to complete the AA favourably and, as such, I must conclude that, following Appropriate Assessment, the proposal would cause harm to the European Protected Site. Therefore, the scheme would conflict with Policies SP6 and LB5 of the Local Plan. Similarly, it would conflict with those parts of the Framework that seek to protect the natural environment.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Character and appearance

12. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in making decisions on planning applications that may affect a listed building or its setting, special attention is paid to the desirability of preserving the building or its setting. In addition, Paragraph 193 of the Framework requires, 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.
13. The significance of the listed buildings derives from their historical connexion and agricultural function within the landscape, together with their vernacular construction and architectural details. Despite the dilapidated appearance of some of the buildings the group retains an insight into the layout and form of a typical English farmstead.
14. The proposal would reinstate the former barn and erect buildings in the corner of the site in the location of former outbuildings. Their design and use of materials would create a rustic appearance.
15. The reinstatement of the barn building would use materials reclaimed from the demolition. Although using the existing materials, the building would be reinstated as a dwelling, rather than its former use. This, together with the conversion of the stable block/oast house would recreate the appearance of the agricultural group of buildings surrounding the farmyard. The proposal would bring the stable block/oast house back into use and preserve its future. The granary roof would be reinstated as thatch.
16. The proposal would open up closer views of the historic farmstead and therefore improve its setting and better reveal its significance from the public realm.
17. The current dilapidated state of the milking parlour, which is prominent in views from the road when looking at the group of buildings, makes a negative contribution to the setting of the buildings.
18. The parking for the new dwellings which would replace the milking parlour are located to the front of the site, forward of the new dwellings. This, together with the overall additional residential paraphernalia and activity associated with the additional dwellings, would be noticeable from the road and would have a negative effect on the character of the historic farmstead. Whilst it may be possible to landscape the frontage of the site to reduce the perception of the car parking, no proposed scheme is before me to demonstrate that this could be achieved successfully and, in any case, the increased activity at the accesses would remain.
19. Drawing these points together, the proposal would, in this case, recreate the layout of the historic farmstead, restore and repair dilapidated buildings and secure the future of the stable block/oast house. The form and design of the new buildings would reflect the rural and agricultural nature of the historic farmstead. Together these benefits outweigh the harm that would accrue through the activity and paraphernalia of the increase in residential activity and paraphernalia and enhance the character and appearance of the site and so, in this case, the proposal would preserve the setting of the listed buildings.

20. I therefore conclude that the proposal would not result in harm to the character and appearance of the site and the surrounding area with particular reference to Sweech Farmhouse, Granary and Oast/Stable Block, which are Grade II Listed Buildings. The proposal would, therefore, comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990. It would also comply with Policies DBE3 and HE4 of the Local Plan in as much as these seek to ensure that development affecting the setting of listed buildings should preserve and enhance their character and appearance and the special features for which they are designated. The proposal would also be in accordance with those parts of the Framework which seek to conserve and enhance the historic environment.

Suitable location

21. Policies SP1 and SP4 of the Local Plan comprise the Council's overarching spatial strategy and settlement hierarchy and are broadly consistent with the provisions of the Framework in as much as they seek to promote sustainable development in larger communities with access to services and facilities. Sturry is identified within SP4 as a rural service centre, within the hierarchy's second tier.
22. Although no development boundary is identified within the Local Plan for Sturry, when considering planning application Council Ref: CA//19/01498, the Council came to the view that the site lies within the settlement and is, therefore not restricted by policies controlling development in the countryside. Policy HD4 of the Local Plan which seeks to control development within the countryside is, therefore, not applicable.
23. The appeal site is located in close proximity to existing dwellings and is not isolated. Paragraph 78 supports new housing where it will enhance or maintain the vitality of rural communities.
24. Sturry is a settlement identified as suitable to accommodate some growth, contain a range of services which would cater for the needs of future residents on a day-to-day basis. The site is within walking and cycling distance and there is footway linkage from the site to these. Further, there are bus services that connect the site to the larger settlements of Herne Bay and Canterbury running along Herne Bay Road, with bus stops within walking distance, together with a railway station in Sturry. The buses run a frequent service and the railway station would provide connexions to settlements further afield.
25. The Framework recognises that sustainable transport solutions will vary between urban and rural areas and that rural housing development in smaller settlements can enhance or maintain the vitality of rural communities. The amount of travelling required to access facilities providing for the day-to-day needs of residents would be modest and not solely restricted to use of a private car.
26. The proposed development would provide new housing in a location with access to transport and services and where it would enhance or maintain the vitality of the rural economy. Further, the development would not extend the built-up area of Sturry.
27. For the reasons given above I conclude that the site is a suitable location for the proposed development with reference to the spatial strategy in the

development plan. It is therefore in accordance with policies SP1 and SP4 of the Local Plan which together, amongst other things, seek to locate development in sustainable locations. Further the proposal accords with the aims of the Framework to achieve sustainable development.

Planning Balance and Overall Conclusion

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
29. The proposal would deliver an additional eight dwellings in a sustainable location to supplement housing delivery. The appellant has queried whether the Council is able to demonstrate a five year housing land supply.
30. Even if I were to conclude that the Council were currently unable to demonstrate a five year housing land supply the contribution made by the proposal would be moderate. The proposal would provide economic support to local businesses and services. It would secure the future of the listed buildings whilst enhancing the character and appearance of their setting and better revealing their significance from the public realm. Taken together, these are benefits which carry moderate weight.
31. However I have found that the proposal would, in the absence of appropriate mitigation, result in unacceptable harm to the European Protected Site. I am mindful of the advice within the Framework that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. This harm therefore carries very significant weight. The presumption in favour of sustainable development does not apply where the proposal is likely to have a significant effect on a European Protected Site.
32. On the evidence before me I therefore conclude that the benefits accruing would not outweigh the unacceptable harm identified to the European Protected Site.

Conclusion

33. For the reasons given above the appeal is dismissed.

I Dyer

INSPECTOR