



## Appeal Decision

Site Visit made on 18 November 2020

**by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI**

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

**Decision date: 11<sup>th</sup> December 2020**

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**Appeal Ref: APP/V2255/W/20/3246265**

**Land Off Jubilee Fields, Upchurch ME9 7AQ**

- 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 Gold Property Development Ltd against the decision of Swale Borough Council.
  - The application Ref 19/501773/OUT, dated 1 April 2019, was refused by notice dated 9 October 2019.
  - The development proposed is an outline application for residential development of 41 No. 2, 3 and 4 bedroom houses.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was in outline with only access to be determined at this stage. An indicative layout showing how 41 dwellings could be provided on the site was presented to which I have had regard in reaching my decision.
3. The Council refused the application for two reasons, the second of which related to the issue of surface water drainage. In response to this the appellant submitted additional information which has been the subject of further consultation with the Lead Local Flood Authority (LLFA). As a result, the LLFA (Kent County Council) is satisfied that its concerns could be addressed by the imposition of appropriate conditions. The Council has confirmed that its objection in relation to this issue has been overcome and I have determined the appeal accordingly.

### Main Issue

4. The main issue is therefore the suitability of the site for residential development having regard to local and national policy for the location of housing.

### Reasons

5. The appeal site is an open field on the outskirts of the village of Upchurch. It is adjacent to existing residential development on Jubilee Fields and Wallbridge Lane. The remainder of the site abuts open, undeveloped land.
6. The Council's spatial strategy is set out in Policy ST3 of the Swale Borough Local Plan 2017 (Local Plan) which identifies a hierarchy of 5 types of settlement. Sittingbourne (Tier 1) is the primary focus for housing, retail and employment development serving a wide catchment area. Upchurch is one of many villages in Tier 5 that provides basic services such as a shop and school to meet some of the residents' day-to-day needs. However, the policy restricts development in these villages to minor infill and redevelopment within the built-up area boundaries.

Beyond these boundaries is defined as open countryside where development will not normally be permitted.

7. The site's location, just beyond the boundary of a Tier 5 village makes it one of the least desirable locations for new residential development. Upchurch is within Tier 5 because it has limited services. Whilst there is a convenience store, a primary school and a public house, to reach comprehensive shopping facilities, attend a secondary school or access significant employment opportunities requires a journey to Rainham, Sittingbourne or possibly further afield. Whilst journeys to school may be possible by bus, the distances to the nearest railway station and other destinations make it likely that future occupants would find it more convenient to rely on the car for many of these journeys. This would be so even if they choose to make shorter trips on foot or by bike. I note that Policy CP2, although not cited in the Council's decision notice, seeks to minimise the need to travel and promote use of sustainable transport. As residents would rely to a considerable extent on the private car to get around, the scheme would be contrary to this policy.
8. The local primary school is operating close to capacity. The proposal is expected to generate demand for an additional 11 school places for primary school age children. However, there is capacity in other primary schools in the Sittingbourne Rural West Area and some children currently travel into Upchurch from the surrounding area. Given the school's admission criteria it seems likely that it will, over time, aim to balance its intake and prioritise children that live close by. As a result, the number of journeys to school by car is unlikely to change significantly in the longer term.
9. The proposal would encroach into undeveloped land, resulting in an urbanising effect on the area. These effects would be localised as the site is well-contained and new planting could be incorporated into the scheme. On this basis, any conflict with Policies DM14 and DM24 would be limited and could be addressed through approvals at the reserved matters stage, if the development was otherwise acceptable. Nevertheless, the loss of this open area would adversely affect the intrinsic value of the countryside which the Local Plan seeks to protect through the definition of the built-up area boundaries.
10. Taking all these factors into account, I conclude that the site would be an unsuitable location for a residential development contrary to the Council's spatial strategy for delivering sustainable development in Swale set out in Policies ST1, ST3 and CP3 of the Local Plan. By undermining the Local Plan's proposed distribution of housing in the district, there would also be limited conflict with Policy ST5, which seeks to focus development on the urban area of Sittingbourne.
11. These conclusions are consistent with the assessment of a proposal for an identical number of dwellings on the site that was dismissed on appeal<sup>1</sup> in 2017. The Inspector considered that the site's development for housing would be contrary to Policy ST3 and would undermine the Council's overall spatial strategy which is part of delivering sustainable development in Swale as set out in Policy ST1. It would also encourage car use, a factor also counting against that proposal, if only to a limited degree. The only significant change since that decision is the Council's inability to demonstrate a five-year supply of deliverable housing sites. I will address this matter later. However, it is not a factor that alters the position of Upchurch in the settlement hierarchy or the propensity of future residents to choose car travel over other modes. It therefore remains the case that a residential development on the site conflicts with the development plan as a whole.

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<sup>1</sup> APP/V2255/W/17/3174106

## **Other Matter**

12. The appeal site is within 6km of the Medway Estuary and Marshes Special Protection Area (SPA) and the Swale Estuary SPA. These are European designated sites protected for the populations of rare and vulnerable birds and migratory species that they support. The Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations) require the decision maker to undertake an appropriate assessment (AA) before giving any permission where there are likely to be significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
13. Residential development within 6km of the SPAs is likely to result in degradation of the protected areas arising from additional recreational activities. The effects of such activity arising from this development would be small. However, when considered in combination with other plans and projects, it is likely that there would be a significant effect.
14. The Council has developed and adopted a Strategic Access Monitoring and Management Strategy (SAMMS) as a means of mitigating the impact of additional recreational activities on the SPAs. These mitigation works are being undertaken by a partnership of local authorities, developers and environmental organisations and have been supported by Natural England (NE) as an effective means of protected the SPAs.
15. On this basis the Council undertook an AA and was satisfied that subject to a contribution towards the SAMMS the proposal would be acceptable. NE was consulted on the outcome of the AA and confirmed its support for this approach. In these circumstances it has not been necessary for me to consult NE separately. The appellant has provided a planning obligation which secures the appropriate contribution. I can therefore be certain that the proposal would not adversely affect the integrity of the SPAs.

## **Planning Balance**

16. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites (5YHLS). Paragraph 11 d) ii) of the Framework, often referred to as the tilted balance, is therefore engaged. It is apparent from an appeal decision<sup>2</sup> earlier this year that the 5YHLS is no more than 4.6 years and may be closer to 4 years. The shortfall is therefore of concern but cannot be said to be acute. The Council has embarked on a local plan review and is actively addressing this shortfall with the publication of its Housing Delivery Test Action Plan.
17. The construction of 41 dwellings would make a valuable contribution to the supply of housing in Swale. The social benefits associated with the provision of new homes is supported by the Framework, which seeks to boost supply. As 40% of them would be secured as affordable, this would be compliant with local policy and would be an added benefit of the scheme.
18. However, the Framework advises that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. Considering the social aspects of the scheme, there is no specific evidence to suggest that the need for affordable homes in Upchurch is particularly pressing. In the short term, the school would face difficulties accommodating the extra 11 children. Whether the additional residents in the village would give rise to improved bus services or an

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<sup>2</sup> APP/V2255/W/19/3238171

expansion of hours at the GP surgery appears to be based on conjecture rather than firm evidence. The social benefits therefore attract only moderate weight in the scheme's favour.

19. It is reasonable to assume that future residents would support local shops and other services, thereby supporting the local economy, as would creation of jobs during the construction period. However, these economic benefits would be small and mostly short term. They therefore carry limited weight. Contributions to local infrastructure and services are needed to make the development acceptable in planning terms and are therefore neutral in the balance.
20. The appeal site is said to be available and the housing could be delivered quickly. These are factors in the scheme's favour. However, the Framework only gives great weight to these factors when considering the use of suitable sites within existing settlements. The site's availability therefore carries little weight.
21. The Framework advocates identifying and pursuing opportunities to promote walking, cycling and public transport, actively managing patterns of growth to support this objective. Locating homes in a village where residents would have fewer opportunities to choose these means of transport than in other settlements in Swale, would be not sit comfortably with this approach.
22. Furthermore, the extent to which occupants would rely on a car would not contribute to reducing emissions or moving to a low carbon economy which are also important objectives of the Framework. In addition, by using a site that is currently open and undeveloped, there would be harm to the intrinsic character of the countryside, albeit that this would be limited. The proposal is therefore at odds with the Framework's environmental objectives. Considered collectively these environmental harms attract significant weight in the balance.
23. Drawing these matters together, I find that the scheme is contrary to the objectives of the Framework as a whole. As the shortfall in the 5YHLS is not acute, the cumulative adverse impacts of the proposal would significantly and demonstrably outweigh the scheme's modest social and limited economic benefits. Consequently, the presumption in favour of sustainable development does not apply.

## **Conclusion**

24. I have found that the proposal conflicts with the development plan as a whole. The other considerations in this case, namely the shortfall in 5YHLS and the provisions of the Framework, are of insufficient weight to outweigh that conflict. For this reason, the appeal is dismissed.

*Sheila Holden*

INSPECTOR