



Appeal Decision

Site visit made on 18 January 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2021

Appeal Ref: APP/V2255/W/20/3247555

Land to the rear of 132 High Street, Newington ME9 7JH

- 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 Levi Hegarty against the decision of Swale Borough Council.
 - The application Ref 19/500029/FULL, dated 20 December 2018, was refused by notice dated 27 November 2019.
 - The development proposed is described as "*proposed 4 bedroom detached dwelling. The proposal includes a carport/garage*".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Levi Hegarty against Swale Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the description of the proposed development from the planning application form although I note it is expressed differently on other documents. In addition, I have removed wording which is not an act of development.
4. The Council has confirmed that the first reason for refusal set out in the Council's decision notice is incorrect. The Council has explained that this happened as a result an administrative error that was only brought to light upon the submission of the appeal. The Council clarifies that the first refusal reasons should read: -

"The proposed development would represent unjustified and unnecessary residential development within the countryside, and outside of the defined built up area boundary, in a manner harmful to the character, appearance, and intrinsic amenity value of the countryside. The proposal is therefore contrary to policies ST1, ST3, DM9 and DM14 of the adopted Swale Borough Local Plan 2017; and to the advice of paragraphs 11, 79 and 170 of the National Planning Policy Framework."

5. This first reason for refusal reflects the discussion set out in the Council Officer's report and the first recommended reason for refusal set out in that report. The Council would like the Officers report and the above reason for refusal to form the basis of this appeal. This matter relates to refusal reason

one only with refusal reason two remaining as set out in the Council's decision notice.

6. It is clear from the appellant's statement that the appellant has read the Officer's report and is aware of the differing first reason for refusal. Indeed, the appellant confirms that he will concentrate on the reason given within the Officer's report as the reason set out on the Council's decision notice does not make sense. The appeal process has provided the appellant and third parties the opportunity to consider and comment upon both the Council Officer's report and decision notice. Therefore, I do not consider the interests of third parties have been prejudiced.
7. I have considered the appeal on the basis of the refusal reason as set out in paragraph 4 above, which is the same as the reason for refusal set out in the Council Officer's report and the reason the Council confirms should have been given.

Main Issues

8. The main issues in this case are: -
 - a) Whether the proposal is an appropriate location for a new dwelling having regard to the spatial strategy of the development plan and the effect of the proposed development upon the character and appearance of the countryside; and
 - b) The effect of the proposal upon the Swale Special Protection Area (SPA).

Reasons

Location, character and appearance

9. Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the Local Plan) has defined its built-up area boundary and Policy ST3 of the Local Plan seeks to provide new homes in accordance with the settlement hierarchy for the Borough. Part 5 of Policy ST3 states "*At locations in the countryside, outside the built-up area boundaries as shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities*".
10. Although the proposed carport/garage would fall within the built-up area boundary, the remainder of the site, and where the dwelling is proposed, would be outside the built-up area boundary of Newington. As such, the appeal site would not be an appropriate location for residential development.
11. The appeal site is situated behind existing development fronting onto High Street (A2). The land to the south of the appeal site, although hosting a small number of dilapidated structures, is generally open and largely undeveloped. The appeal site is sandwiched between the urban area and rural landscape. There is a wire fence and row of trees running along the south side of the site that separates the site from the wider rural area.
12. The appellant advises that the site has been used for many years in association with No 132 as a builder's yard with open storage and parking of vehicles. Although the site has a loose gravel surface with vehicles parked at the site at

the time of my visit, apart from one small structure at the eastern end of the site, the site is open and undeveloped. The photographs provided by the appellant show this to be the case. In this respect the site exhibits the attributes of the undeveloped countryside, rather than one of a suburban or urban site.

13. The erection of a dwelling would create a site of domestic appearance. The development would have a significantly urbanising effect upon the site and would substantially change its character. This would result in a diminution of the rural character and appearance of the area.
14. I have been directed to a residential development known as Eden Meadow and the New Farm car sales/workshop site where those developments project further south than that of the appeal site. However, I have not been provided the full details of those developments and when they were granted planning permission. It may be that they predated the revised 2019 National Planning Policy Framework (the Framework) and the 2017 Local Plan. If so, those developments would have related to a different development plan context where different considerations may have applied. I do not consider that those developments would justify either setting aside the current applicable development plan policies or the proposed development at this appeal site.
15. For the above reasons, I conclude that the proposed development would not be an appropriate location for a new dwelling having regard to the spatial strategy of the development plan. Furthermore, the proposed development would have a harmful effect upon the character and appearance of the countryside. The proposal would, therefore, conflict with Policies ST1, ST3, DM9 and DM14 of the Local Plan. These policies seek, amongst other matters, to resist development in the countryside and to conserve and enhance the countryside.

Swale SPA

16. The Council has identified that the site lies 6km of the Swale SPA and advises that a contribution is required to mitigate the potential recreational disturbance impacts of the proposed development upon that protected area. The need for mitigation has been acknowledged by the appellant and it is understood that a mitigation payment has been made to the Council. Notwithstanding this, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail or require an appropriate assessment to be undertaken to assess the development's effect upon the integrity of the protected habitat.

Other considerations

17. The Council cannot demonstrate a five-year supply of deliverable housing sites but the shortfall of 0.4 years is limited. Consequently, because of the provisions of footnote 7, paragraph 11d)ii of the Framework should be applied.
18. Paragraph 213 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The intrinsic character and beauty of the countryside is recognised by the Framework. Development in rural areas is not precluded but the Framework indicates that great weight should be given to the benefits of using suitable sites within settlements for homes and therefore supports the general thrust of the Local Plan in terms of the location of housing. The appeal site lies

adjacent to the built-up area boundary close to services, facilities and public transport and is not constrained by land designations, design, highway, or neighbour living conditions concerns. However, it is nevertheless outside the built-up area and where such development would be harmful to the character, appearance, and wider amenity value of the countryside.

19. Set against the harm identified there would be limited social and economic benefits associated with the proposal. An additional dwelling would make little difference to the overall supply of housing and the support one extra household would provide to the local economy would also be minimal. Consequently, the adverse impacts on the housing strategy and the countryside would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

20. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reason given, the appeal should not succeed.

Nicola Davies

INSPECTOR