



Appeal Decision

Site visit made on 18 November 2020

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/V2255/W/20/3253055

Black Cottages, Mutton Lane, Ospringe, ME13 8UH

- 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 Ed Jacobs against the decision of Swale Borough Council.
 - The application Ref 19/504417/FULL, dated 30 August 2019, was refused by notice dated 25 November 2019.
 - The development proposed is the erection of 2 No. dwellings and car ports.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 No. dwellings and car ports at Black Cottages, Mutton Lane, Ospringe, ME13 8UH in accordance with the terms of the application, Ref 19/504417/FULL, dated 30 August 2019, subject to the conditions set out in the schedule attached at the end of this decision.
2. An application for costs was made by Mr Ed Jacobs against Swale Borough Council. This application is the subject of a separate Decision.

Preliminary matters

3. This appeal application was made following the refusal of an identical application made in 2018, LPA reference: 18/502098/FULL. That application was refused in July 2018. The 2018 refusal was appealed: although it was dismissed, the Inspector did not do so on the basis of the reasons for refusal given by the council, but solely on the ground of unacceptable harm to the Swale Special Protection Area. The reason for dismissing that appeal has been addressed in that the appellant has now paid to the council the required sum of £500.78 in accordance with the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy.
4. It is clear that the council has not accepted the previous Inspector's decision on certain matters. Whilst I have been provided with a copy of the previous appeal decision, I am making my judgements on the basis of the policies and arguments put before me.

Main Issues

5. The main issues in this case are whether the proposed development would be unsustainable, would preserve or enhance the character or appearance of the Ospringe Conservation Area, or be harmful to the character and value of the countryside.

Reasons

6. The starting point is the development plan: determination must be made in accordance with the plan unless material considerations indicate otherwise¹. In this case the refusal notice cites 1 policy: policy ST3 of Bearing Fruits 2031: The Swale Borough Local Plan 2017. As far as this appeal is concerned, this policy can be condensed to the following:
- Policy ST 3
The Swale settlement strategy
By use of previously developed land within defined built up area boundaries and on sites allocated by the Local Plan, development proposals will be permitted in accordance with the following settlement strategy:
1. The main Borough urban centre of Sittingbourne will provide the primary urban focus for growth ...;
 2. The other Borough urban centres of Faversham and Sheerness will provide the secondary urban focus ...;
 3. The Rural Local Service Centres will provide the tertiary focus for growth ...;
 4. Other villages with built-up area boundaries, as shown on the Proposals Map, will provide development on minor infill and redevelopment sites within the built-up area boundaries ...;
 5. At locations in the open countryside, outside the built-up area boundaries 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.
7. It is common ground that the appeal site is outside the built-up area boundary. Thus, 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". The caveat should be noted "unless supported by national planning policy". Having noted this, it is necessary to have regard to "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".
8. In respect of the final clause set out at the end of paragraph 7 above, I would say that 2 new dwellings could play a part in supporting the limited, but important elements of Ospringe village of the primary school and the church (and the Ship Inn, some 400m away along the road). I am given no information about the vitality of these, but from experience it is likely that the situation is that they would welcome additional population for support. As to contributing to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, these are generalised requirements, as noted by the "where appropriate": these elements must be judged by the particular locality of the proposal site and its surroundings.
9. In this context, the most important element is the Ospringe Conservation Area. There is a degree of dispute as to whether the site is within the conservation

¹ Section 38 (6), Planning and Compulsory Purchase Act 2004

area. It is clear to me, by reference to the conservation area boundary on the map that has been supplied to me, that a small part of the site is within the conservation area. The remainder of the site is within the setting of the conservation area. Additionally, as I am told, there is a grade II listed building, Laurel Cottage, on the other side of Mutton Lane, just to the west.

10. In respect of the conservation area and its setting, I must pay special attention to the desirability of preserving or enhancing its character or appearance. As things stand at present, the appeal site does nothing to preserve or enhance its character or appearance. In this regard, the planning officer's report criticises the submitted design of the dwellings as being of uninspiring suburban housing-estate design. Clearly this is a matter of planning judgement. Certainly the design follows a simple pattern, but in terms of general form and massing, gabled pitched roofs, simple canopy porches and fenestration, there are similarities with other buildings in the area that do make a positive contribution to their surroundings. The palette of materials has been chosen with black stained timber weather boarding dominating much of the elevations, above a red facing brick plinth or ground floor that reflects local character.
11. I am satisfied that the design of the proposed dwellings is suitable for the location, the simple form amounting to a virtue in assimilating the dwellings into the setting. I conclude that the proposed dwellings would assist in preserving or enhancing the character or appearance of the Conservation Area and its setting, by removing an unattractive and decaying jumble of remains of buildings and replacing these with permanent development which is sympathetic to its surrounds. They would also bring an improvement to the setting of Laurel Cottage, the listed building.
12. At this point I will deal with the question of whether the appeal site is in a sustainable location. This is not a requirement of Policy ST3, other than in terms of supporting the vitality of rural communities, a point that I have touched on in paragraph 8 above. The appellant's appeal statement includes an analysis of local amenities and services in relation to distance and travel time from the site, on foot or by bicycle, which suggests that the development would be situated in a reasonably accessible location. The council criticises this on the basis that the travel times may not be entirely accurate and that Mutton Lane is unlit with no footways. Nevertheless, I conclude that, for much of everyday requirements, the site can claim to be in a reasonably sustainable position.
13. Following from these considerations, in large measure, bearing in mind the particular circumstances of the location of the appeal site and its surroundings, the appeal development conforms to much of part 5 of Policy ST3. It is a matter of planning judgement whether, on this basis alone, the appeal should be allowed. In terms of the main issues identified in paragraph 5 above, arising from the text of the refusal reason, the site is within a rural area, it is to a degree sustainable, and would not harm the particular character and value of the countryside in which it is situated (rather the reverse, as it would remove the current eyesore), and would be beneficial to the conservation area.
14. I move on to other material considerations. The text of Policy ST3 begins "*By use of previously developed land*", highlighting the value of previously developed land for development. Of course, a site outside the built-up area boundaries, will not be favoured by the policy simply by being previously developed land, unless supported by national planning policy. In any event, the

National Planning Policy Framework (the Framework) is a material consideration of substantial importance.

15. Paragraph 79 of the Framework states that Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply (of which only c) is pertinent here): c) the development would re-use redundant or disused buildings and enhance its immediate setting. Thus, the Framework countenances allowing for even isolated homes in the countryside, when reusing redundant or disused buildings. Clearly, the appeal site is not 'isolated' – a term that takes its normal meaning², being physically separate or remote from a settlement. It is also necessary to exercise some caution in having regard to this policy since the appeal proposal is not reusing existing buildings; nevertheless there is a 'disused' building on the site, albeit quite dilapidated with its roof having partly collapsed.
16. Framework paragraph 84 states that *"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist" (emphasis added).*
17. I have already indicated a degree of community need in respect of supporting the vitality of rural communities, and Framework paragraph 83 emphasises that planning policies and decisions should enable - part d) *"the retention and development of accessible local services and community facilities, which include shops, public houses and places of worship"*.
18. The Framework has policies for the redevelopment of previously developed land in the Green Belt (paragraph 145 g), although not applicable here, clearly indicating that the government places importance on the reuse of previously developed land. The definition of 'Previously Developed Land' is set out in Annex 2 to the Framework, and describes it as *"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time"*.
19. The site once supported two cottages to the front and an array of outbuildings; the tumbledown remains of the outbuildings now clearly exist. The site was not occupied by agricultural or forestry buildings, nor has it been a minerals or

² See *Braintree DC v SSCLG* [2018] EWCA Civ. 61

waste site; it is not in a built-up area, and the process of time has not blended the remains into the landscape. It is previously developed land.

Conclusions

20. The appeal proposal can be seen to be in conflict with Policy ST3, in so far as that policy is directed at limiting development outside of the built-up area boundaries shown on the Proposals Map. But for the reasons that I have explained, the proposed development should be supported as it would meet much of that policy's intention, as set out in item 5. Taken together with the fact that it is in a reasonably sustainable location, it has the benefit of reusing previously developed land; it helps to preserve or enhance the character or appearance of Ospringle Conservation Area and its setting, and improves the setting of a listed building; and to a modest extent it would enhance the character and value of the countryside and the vitality of a rural community. I conclude that the appeal should be allowed.

Other matters

21. The council makes reference to a number of historic appeal decisions. However, these decisions were taken at a time when planning policies were not the same as they are today. I have dealt with this appeal in accordance with current policy, and have not found assistance in the previous cases. It appears that at present the council cannot demonstrate a full 5-year supply of housing land, although I note that the officer's report states that it is now able to demonstrate 4.6 year's supply. This proposal would make a small contribution to the shortfall, but of itself this fact is not of significance in this appeal.

Conditions

22. The council has requested a number of conditions be imposed on any planning permission. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text.
23. I consider that these conditions should be imposed for the following reasons: condition 2 - for certainty and avoidance of doubt; conditions 3 and 4 - to ensure a high standard of materials and joinery is used commensurate with the location within the conservation area and its setting; condition 5 - in the interests of highway safety and to ensure that adequate parking and turning facilities are provided; condition 6 - in the interest of promoting energy efficiency and sustainable development; condition 7 - in the interests of water conservation and sustainability; condition 8 - in the interests of promoting sustainable modes of transport; and condition 9 - in the interests of residential and visual amenity respecting the location within the conservation area and its setting. In addition, conditions 5, 6 and 7 are to meet the requirements of policies DM19 and DM21 of the adopted Local Plan, and Section 4 of the Swale Borough Council Parking Standards (May 2020).

Terrence Kemmann-Lane

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans numbered 1970.01, 1970.05 D, 1970.10 E, 1970.11 C 1970.12 C, 1970.13 B, and 1970.14 B. 1970.
- 3) No development beyond the construction of foundations shall take place until samples of all facing materials to be used in the development hereby permitted shall have been submitted to and approved in writing by the Local Planning Authority.
- 4) No development beyond the construction of foundations shall take place except in accordance with detailed drawings, which shall have been previously submitted to and approved in writing by the Local Planning Authority, of all new joinery work and fittings, together with sections through glazing bars, frames and mouldings, at a scale of 1:10.
- 5) Notwithstanding the details submitted, a detailed drawing of the parking/turning area, showing adequate parking and turning space in line with Section 4 of the Swale Borough Council Parking Standards (May 2020), shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details and the parking area so shown shall be maintained clear of obstruction at all times.
- 6) The dwellings hereby approved shall be constructed and tested to achieve the following measure: At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended). No development other than demolition and site clearance shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).
- 8) Before the houses hereby approved are first occupied, cycle storage (2 cycles per dwelling) shall be provided in accordance with details which shall have been submitted to and approved in writing by the local planning authority
- 9) Upon completion of the development hereby permitted, no external alterations, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) or not, shall be carried out.