
Appeal Decision

Site visit made on 1 February 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/V2255/W/20/3244473

Land at Swale Way, Great Easthall Way, Great Easthall, Sittingbourne ME10 3TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Chris Hall of Trenport Investments Ltd against the decision of Swale Borough Council.
 - The application Ref 19/500866/OUT, is dated 8 February 2019.
 - The development proposed is residential development (up to 9 dwellings), and open space; including associated access (vehicular/cycle/pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.
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Decision

1. The appeal is allowed and planning permission is granted for residential development (up to 9 dwellings), and open space; including associated access (vehicular/cycle/pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development at land at Swale Way, Great Easthall Way, Great Easthall, Sittingbourne ME10 3TF in accordance with the terms of the application, subject to the completed legal unilateral undertaking dated 23 June 2020 and the conditions set out in the end schedule.

Application for costs

2. An application for costs has been made by Mr Chris Hall of Trenport Investments Ltd against Swale Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline with approval being sought for access only. Matters relating to appearance, layout, scale and landscaping have been reserved. I have dealt with the appeal on this basis.

Background and Main Issues

4. This appeal has been lodged following the Council's failure to determine the application. The Council in its statement of case has put forward reasons for refusal had Members of the Planning Committee been in a position to determine the planning application.

5. Having regard to the Council's case, I consider the main issues to be: -
- a) The proposed development would fail to provide a community facility, specifically a health centre, at the site;
 - b) The effect of the proposed development upon the character and appearance of the site and wider area;
 - c) The effect of noise upon the occupiers of the proposed development from the adjoining existing Community Centre;
 - d) The effect of the proposed development upon parking pressure in the area; and
 - e) The effect of the proposed development upon the Swale Special Protection Area (SPA).

Reasons

Community facility

6. The site is not allocated for community use in the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the Local Plan). Whilst Policy CP6 of the Local Plan encourages safeguarding existing community services and facilities, this policy does not offer support for providing a medical centre at the appeal site. Policy DM14 of the Local Plan sets out general development criteria that requires development to accord with adopted Supplementary Planning Documents and Guidance.
7. The community provision was first put forward in 2003 and 2009 under the (Review) Development Briefs for the larger development of the East Hall Farm site. The appellant's Planning, Design and Access Statement indicates these to be non-statutory documents. The Council's case explains that the site was originally reserved for development with a health centre, as part of a local centre including land to the southwest which is now occupied by a community centre and land to the northwest which was reserved for a retail/public house local centre.
8. The appellant has provided an overview of the community facilities sought by both briefs. The 2003 Brief showed a neighbourhood centre on both sides of the estate access road. Land to the south of Great Easthall Way, including the appeal site, was shown as a possible location for a public house, subject to viability, and land north of Great Easthall Way for shops, also subject to viability. The 2009 updated Brief identified the appeal site as a location for a possible community centre and a medical centre, subject to viability.
9. The appellant has drawn my attention to a Section 106 Legal Agreement attached to the outline planning permission for the wider Great Easthall development that requires the developer to offer the land identified for neighbourhood uses to the NHS for a medical centre over a two-year period. The site was offered to the NHS between March 2013 and June 2016 with the NHS declining to make an offer. Various copies of correspondence from and relating to the NHS indicates this to be the case. On this basis, I consider the requirements of the S106 to have been satisfied.
10. The Council's officer report to its Planning Committee advises its Members that the lack of community provision has been previously addressed under a

planning permission contained within the parcel of land immediately east of the site. As part of that residential scheme the Planning Inspector found that a community facility of a convenience store, as originally planned under the (Review) Development Briefs, would not be commercially viable. The Inspector *"acknowledged that such a provision would to an extent promote the social well-being of the community, however the Brief recognised that retail uses (and other uses) need to be commercially viable"*. On this basis the Council advised its Members that the provision of community facilities within this location has previously been addressed.

11. Notwithstanding its advice to its Members, the Council considers that in line with the original development briefs the site presents an opportunity for community development noting that the residential development of the site would also modestly add to the demand for such community facilities.
12. The residential development of the site would prevent the development of a community facility from coming forward. The large residential development of the East Hall Farm estate hosts no community facilities over and above recreation areas and the community centre. Notwithstanding this, in its Officer report to Members the Council's appraisal comments that the appeal site lies within the built confines of Sittingbourne where residential development would be considered to be acceptable. It is further advised that Sittingbourne is the most sustainable location within the existing settlement hierarchy as set out within the Local Plan. Sittingbourne has a range of local facilities including shops, public houses and doctor's surgery.
13. On the evidence available to me it appears that the NHS has little interest in the site for providing a medical centre. Furthermore, a community shop in the locality has been determined to be unviable and the site forms part of Sittingbourne where there is current a doctor's surgery. Taken collectively, these factors lead me to the conclusion that there would be little demand for a medical centre at this location. For these reasons, I do not consider the development of the appeal site would be significantly harmful to the amenities and well-being of local residents if the site were not safeguarded for the provision of a medical centre. Furthermore, I do not consider the proposal would materially conflict with Policies CP6 and DM14 of the Local Plan.

Character and appearance

14. The site is currently an undeveloped overgrown site adjacent to the community centre with its associated games court and parking area. On the approach to the residential East Hall Farm estate the site is prominently visible at its entrance as it forms part of a roundabout on Great Easthall Way. On the approach to the estate the appeal site would be seen against the backdrop of the existing dwellings within the estate, which I saw to be a mix of two and two and a half storey dwellings with those properties closest to the community centre being a mix of two and three storey. The two and three storey properties would be those most closely visible within the approach backdrop.
15. The layout plan that supports the proposal only provides an indicative layout for the site. The appellant's noise assessment that has been submitted in support of the appeal suggests that for acceptable noise impacts upon the future occupiers of the development, the dwellings would be required to be grouped together near the centre of the site and face outward. It is suggested that this would give the development a cramped appearance.

16. I have not been provided with information relating to the density of development within the wider estate. Nonetheless, I saw that the existing development in the area is tight knit. I do not consider that a development of up to 9 dwellings at the site would be at odds with the character and pattern of existing development in the wider area or that it would appear overtly cramped as a group. Furthermore, it is likely that the dwellings would be of two and/or three storey. I do not consider this would be out of keeping in the context of the existing residential development close by and that would be visible in the back drop of the development when approaching the East Hall Farm estate.
17. I acknowledge that the existing community centre is a part single part two storey building and, if the development were to take place, would be sited between taller residential development. However, there would be separation between the respective residential developments and the community centre and an openness around the community centre would be maintained. I consider this space around the centre and between those taller developments would prevent the proposed development from appearing to visually dominant the centre.
18. Consequently, I consider that a development of appropriate density and scale could be achieved that would not appear as an inappropriately cramped development within the site or be overtly visually prominent, noting that it would be situated at the entrance to the wider estate. For these reason, I conclude that the proposed development would not be likely to cause visual harm to the character and appearance of the area or represent an overdevelopment of the site. The proposal would, therefore, not materially conflict with Policy DM14 of the Local Plan that requires, amongst other matters, development to reflect the positive characteristics and features of the site and locality and to be sympathetic to the location.

Noise

19. Concern has been expressed in respect of noise arising from the community centre and its impact upon the proposed development. This could threaten the way the centre and its associated outdoor grass area operates which could have implications for the holding of events and potential loss of funding if events are limited or cancelled. A Noise Statement supported the planning application and the issue of noise disturbance relating to future occupiers of the development was not raised as a concern by Council Officers or the Council's Environmental Health Officer who made comments on the proposal. The Council's Environmental Health Officer indicated satisfaction with the findings of the acoustic report, subject to appropriate mitigation measures. A planning condition has been recommended by the Council's Environmental Health Officer, which has been included in the list of suggested conditions provided by the Council to be imposed if the appeal were to be allowed.
20. The appellant has submitted a further Noise Statement in support of the appeal. Its findings indicate that the community centre would not pose an insurmountable problem in terms of providing typical mitigation in the form of acoustic perimeter fencing and an appropriate specification for glazing within the dwellings pertaining to the proposed development. The statement indicates that the likelihood of significant harm to the living conditions of future occupiers would be extremely small, both as a result of the exceptionally low number of events where amplified music is likely to escape the centre at any

volume, and because there are normal operations for controlling any such noise within the appeal site and housing design. On this basis Members of the Council's Planning Committee have resolved not to pursue the noise reason for refusal that had earlier been set out as a Council concern and reason for refusal had the Council been in a position to determine the planning application.

21. In addition to those noise reports that have been provided, a further Noise Statement was carried out when there were two classes in the Centre with music. The results of this survey verify the results and conclusions of the original Noise Statement.
22. I consider that events at the centre with its outdoor grassed area would create some noise perceptible to the future occupiers of the proposed development. I am advised that a planning condition is in place that restricts opening hours of the community centre to 22:00 Sundays to Thursdays and midnight on Fridays and Saturdays and that there is a licence to host music on Saturdays only that must cease by 21:00.
23. The Council has requested that if the appeal is allowed a condition be imposed requiring a scheme to demonstrate that internal noise levels within the residential units and the external noise levels in back gardens and of the relevant amenity area would conform to applicable standards and sound insulation and noise. On the evidence available to me I consider that this would ensure that appropriate measures would be put in place that would prevent unacceptable levels of noise being experienced by future occupiers of the proposed development.
24. For these reasons, I do not consider that there would be significant unacceptable noise imposed upon the future occupiers of the proposed development from the adjoining existing community centre. The proposal would, therefore, not materially conflict with Policy DM14 of the Local Plan that requires, amongst other matters, development not to cause significant harm to amenity.

Parking pressure

25. The Council's technical adviser, Kent County Council Highways and Transport, has commented on the proposal. It is noted that the number of vehicle movements for the proposed dwellings would not constitute an increase over and above the site being potentially used as a health/medical centre. It is also noted that sufficient measures have also been proposed to safeguard the parking relating to the existing hall.
26. There is an existing parking barrier at the entrance to the community centre. To facilitate access to the proposed development that barrier would be required to be removed. Concern is expressed that this could give rise to visitors to the community centre parking within the development, particularly when private events take place, that may demand additional parking within the vicinity. There is also concern that visitors to the dwellings would make use of the community centre parking facility.
27. The appellant advises that parking relating to the residential development would comply with the standards set out in the Kent Design Guide Review Interim Guidance Note 3 (2008) and is committed to provide parking for the proposed development in accordance with an emerging supplementary

planning document that is currently being prepared by the Council. As the proposal is currently in outline and the number of resultant dwellings at the site has not been determined, other than there would be no more than 9 at the site, the parking requirement has yet to be fully established. I have no substantive evidence before me that would indicate otherwise than the appropriate parking standards would be achieved for the development at the site.

28. There are currently 15 parking spaces associated with the community centre, which I am advised is an over provision of 5 parking spaces. On the available evidence I see no substantive reason why there would not be enough parking spaces to accommodate activities taking place at the centre.
29. Consequently, I do not share the concern that the proposed residential development and adjacent community centre would create respective parking pressure within either of the developments that might be harmful to highway convenience and residential living conditions.
30. For these reasons, I do not consider the proposed development would create parking pressure that would be harmful to the area. Furthermore, I do not consider the proposal would materially conflict with Policy DM14 of the Local Plan that requires, amongst other matters, parking to accord with the County Council's standards.

SPA

31. The Council has identified that the appeal site is located within 6km of the Swale SPA which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Regulations). Although not specified as a potential reason for refusal by the Council, this is a matter highlighted by the Council to be relevant to the proposed development.
32. Policy DM28 of the Local Plan provides an ecologically sound basis for managing the risk of potential adverse effects on the sites which, in combination with other developments, may impact them significantly. The Local Plan places a policy requirement that when significant harm cannot be avoided through consideration of alternative sites or adequate mitigation provided on-site or within the immediate locality, compensatory measures will be achieved within the relevant Biodiversity Opportunity Area.
33. The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref C-323/17) ruling determined that the development cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.
34. The SPA sites are protected and subject to statutory protection as an internationally important habitat for a number of important rare and vulnerable birds and for regularly occurring migratory species. New households in the Borough would increase recreational disturbance, including dog walking, (particularly off the lead) and predation of birds by cats, which have the potential to negatively affect birds.
35. I agree that the proposed development has the potential to increase disturbance to birds upon the SPA through increased recreation pressure from dog walkers from additional households. Adequate mitigation clearly could not

- be provided on-site. I, therefore, must consider whether measures could be put in place to avoid or mitigate the impact of the pressure arising from the proposed development on the SPA and the effectiveness of any proposed measures.
36. Natural England has confirmed that additional development and associated recreation is likely to impact on the integrity of the European Sites and their qualifying features. For development within 6km of the SPA Natural England indicates that a financial contribution to the Thames, Medway and Swale Estuaries Strategy Access Management and Monitoring (SAMM) Strategy is required and that such strategic mitigation must be in place before any dwelling is occupied.
37. The required mitigation works would be carried out by Bird Wise, in partnership with Natural England and the SAMMs Board and various north Kent Councils, the RSPB, Kent Wildlife trust, amongst others. The mitigation strategy aims, amongst other matters, to promote responsible dog walking, to develop a Code of Conduct, provide warden/visitor engagement and ongoing monitoring across the SPA sites to check on success of measures, necessity for future measures, and the necessity for enforcement. Elements of the mitigation strategy also deal with new access infrastructure and a strategic review and changes to parking.
38. I consider that in order to mitigate the impact of increase recreational disturbance created by the new households proposed by the planning application, a financial contribution to the SAMM Strategy is necessary to mitigate the impact of the development upon negatively affected birds. The mitigation measures to be implemented within the SPA from collection of the standard SAMMs tariff would ensure that these impacts will not be significant in the long-term. Both the Council and Natural England have confirmed that the proposed financial contribution to mitigate the effect on the SPA is sufficient to avoid an adverse impact on the integrity of the European Site arising from the proposed development.
39. The Appellant has provided a completed Section 106 Legal Unilateral Undertaking (UU) to ensure this payment. Given the discussion above, completion of such an obligation would be necessary to make the development acceptable in planning terms. Both the Council and Natural England comment that the UU would adequately secure the deliverability of such measures and the Council advises that the UU would secure the payment at the appropriate time.
40. I conclude that the proposed development does include appropriate mitigation to ensure that it does not, in combination with other development, have an adverse effect of the SPA. Consequently, the proposal would not materially conflict with Policy DM28 of the Local Plan which provides a policy framework for managing the potentially adverse risk that the net increase in development could have upon the SPA.

Conditions

41. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. The three standard conditions relating to reserved matters applications are necessary.

42. In the interests of biodiversity, as well as the character and appearance of the area, conditions relating to hard and soft landscaping are appropriate. To prevent inconvenience to road users a parking or garaging of cars condition is required. To promote energy efficiency a condition relating to increasing energy efficiency and thermal performance and reducing carbon emission and construction waste is necessary.
43. I consider a code of construction practice and a construction time activities limitation condition to be overly onerous requirements in this case as these conditions would relate to good practice works during construction rather than the act of development itself for which planning permission is being sought. A condition is sought requiring the development be designed to achieve a water consumption rate of no more than 110 litres per person per day. The wording of this condition provided by the Council indicates that this would be a Building Regulations requirement, therefore, in view of this I consider this to be an overly onerous planning condition to impose.
44. In the interests of the health and well-being of future occupiers of the development a risk associated with contamination condition is necessary. A noise condition is also necessary for those reasons set out earlier in this decision letter. These have been put forward as pre-commencement conditions. Both these conditions are fundamental to the acceptability of the proposed development and, therefore, they are necessary to be agreed before development takes place.

Conclusion

45. For the reasons set out above, and subject to the UU and those conditions listed, this appeal should be allowed and planning permission is granted.

Nicola Davies
INSPECTOR

SCHEDULE OF CONDITIONS

1. Details relating to the appearance, landscaping, layout and scale of the development hereby permitted shall be submitted to and approved by the local planning authority before the development is commenced.
2. Application for approval of reserved matters referred to in Condition 1 above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.
3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The details submitted pursuant to condition 1 above shall show adequate land reserved for the parking or garaging of cars (in accordance with applicable adopted parking standards). The land reserved for the parking or garaging of cars shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order) shall be carried out on such land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto; such land and access therefore shall be provided prior to the occupation of the dwelling(s) hereby permission.
5. All hard and soft landscape works submitted and approved pursuant to condition 1 above shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the local planning authority.
6. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed or die, become severely damaged or diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season agreed.
7. No development shall take place until a scheme to minimise the impacts of noise from the use of the community centre on both the interior of the residential properties and their associated rear gardens has been submitted to and approved in writing by the local planning authority. The work specified in the approved internal and external noise levels scheme shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings and the scheme as agreed shall thereafter be retained for the lifetime of the development.
8. Prior to the construction of any dwelling above ground level in any phase of the development, details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emission and construction waste, shall be submitted to and approved in writing by the local

planning authority. The development shall thereafter be carried out in accordance with the approved materials and measures.

9. The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved in writing by the local planning authority:

- a) A preliminary risk assessment which has identified:
 - All previous uses
 - Potential contaminants associated with those uses
 - A conceptual model of the site indicting sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.
- b) A site investigation, based on a) above to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) A Remediation Method Statement (RMS) based on the site investigation results and the detailed risk assessment (b) above. This should provide full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are completed and identifying any requirements for longer-term monitoring or pollutant linkages, maintenance and arrangements for contingency action.
- d) A Closure Report is submitted to the local planning authority on completion of the works. The Closure Report shall include full verification details as set out in c) above. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

END OF SCHEDULE