
Appeal Decision

Site Visit made on 21 September 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021

Appeal Ref: APP/V2255/W/21/3272228

6 Elm Way, East Church, Sheerness ME12 4JP

- 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 Miss Wendy Streeter against the decision of Swale Borough Council.
 - The application Ref 20/505587/FULL, dated 23 November 2020, was refused by notice dated 2 February 2021.
 - The development proposed is "Continued use as residential dwelling including raising ridge height and creating 2 new bedrooms at first floor level".
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Decision

1. The appeal is dismissed.

Planning Background

2. The appeal property is a house incapable of being occupied at present¹, as confirmed within the appellant's statement. The Council advise the building is subject to a planning condition restricting its residential occupation to specified months of the year² to ensure it remains holiday accommodation, rather than permanent accommodation. The appellant has claimed its use as permanent accommodation is lawful. The Council have referred to an application for a certificate of lawfulness³ which sought confirmation that the building's occupation throughout the year as permanent residential accommodation was lawful, but the application was refused and I have not been informed of any appeal being made against that decision.
3. No evidence has been submitted to demonstrate the lawfulness of any use of the building as part of this appeal. I have therefore assessed the appeal based on the description of the proposal provided by the appellant, which seeks planning permission for the continued use of the building as a residential dwelling. Based on the information before me, this would comprise permanent accommodation replacing holiday accommodation, which would be new residential development.

¹ I noted parts of the front elevation had been removed and very little of the roof remained intact, apart from trusses, leaving almost all of the building open.

² Condition (iii) of planning permission SW/75/1192: "The chalet shall only be occupied for the period 1st March to 31st October in any one year. Grounds: The chalet is considered unsuitable for permanent residential occupation and is located within a rural area of the Kent Development Plan (1967 Revision) where it is not intended that permanent residential development shall take place."

³ The Council's reference 20/501855/LDCEX

Main Issues

4. Taking the above into account, the main issues are: (i) the principle of the proposal with specific regard to its location and the replacement of holiday accommodation; (ii) the effect of the proposal on the living conditions of the residents of 2 Elm Way ('No.2'), with specific regard to privacy; (iii) the effect of the proposal on the character and appearance of the area; and (iv) the effect of the proposal on the Swale Special Protection Area ('the SPA').

Reasons

Location and replacement of holiday accommodation

5. The appeal site is a small plot located at the end of an unmade drive occupied by various secluded single storey dwellings on plots of similar sizes. The drive is largely surrounded by extensive areas of land used for the siting of mobile homes used as holiday accommodation, with open countryside beyond to the east, south and west, and the coastline and sea to the north.
6. Policy ST 3 of the Council's Local Plan⁴ defines the settlement hierarchy within the Borough, directing new residential development to the main urban centre of Sittingbourne, followed by Faversham and Sheerness, Rural Local Service Centres, and then other villages with built up boundaries. It advises that the role and functioning of Sheerness will be supported by the other urban local centres within the West Shippey Triangle to meet the Island's development needs on previously developed sites or at existing locations and allocations well related to the urban framework and strategic transport network.
7. The Council has confirmed the appeal site lies outside any settlement boundaries designated in their Local Plan, within the open countryside for the purposes of applying Policy ST 3. The appellant claims the appeal site is a strategic site in Sheerness where it would be supported by the other urban local centres within the West Sheppey Triangle. The appellant has not supported this claim with any evidence, whereas the Council's reasoning in this regard is clear and aligns with the supporting text and Picture 4.3.2 which accompany Policy ST 3. The appeal site is not, therefore, a strategic site or located within a settlement boundary.
8. Policy ST 3 states new development will not be permitted in the open countryside, outside built-up boundaries, unless support is offered by national planning policy and it is demonstrated that the vitality of rural communities are protected and enhanced, amongst other things. I have been directed to various paragraphs in the Framework⁵, but none of these suggest new residential development would be appropriate in this location outside the settlement boundary. There is no evidence to suggest the proposal is necessary to protect or enhance rural communities.
9. Policies CP 2 and CP 3 of the Council's Local Plan state new development will be located in accordance with Policy ST 3, amongst other things, which would minimise the need to travel for employment and services and to facilitate sustainable transport. Policy ST 1 also requires all development to accord with the Local Plan's settlement strategy outlined by Policy ST 3. The remote location of the appeal site indicates that residents of the proposal would be

⁴ 'Bearing Fruits 2031': The Swale Borough Local Plan (2017)

⁵ The National Planning Policy Framework (2021)

reliant on private motor vehicles to access employment and services, and no evidence has been provided to suggest otherwise.

10. The proposal would be located within the least preferred location for new development in the Council's settlement hierarchy, which would fail to minimise the need to travel for employment and services and would not facilitate sustainable transport. It would therefore conflict with Policies ST 1, ST 3, CP 2 and CP 3 of the Council's Local Plan, the aims of which I have outlined above. The Council have referred to Policy DM 9 of their Local Plan, which offers support to affordable housing in rural areas. As the proposal would relate to market housing, it does not receive any support from this policy either.
11. The proposal would result in the loss of holiday accommodation in a rural area. Policy DM 3 of the Council's Local Plan seeks to encourage the sustainable growth and expansion of business and enterprise in the rural area and prohibits residential development which would reduce the potential for rural employment and/or community facilities, unless it is demonstrated there is no demand for such purposes, or they would be undesirable or unsuitable. Policy ST 6 relates to development on the Isle of Sheppey and requires proposals to support the existing tourism offer, amongst other things.
12. I noted some small businesses which would offer employment opportunities centred around the holiday park trade prevalent in the area surrounding the appeal site. The appeal building's use as holiday accommodation would offer a modest level of support to those rural tourism-orientated businesses, which would not be replicated at the same level by the permanent accommodation proposed. Although the proposal would have a low-level harmful impact upon nearby rural business, the loss of holiday accommodation in this location would also reduce the existing tourism offer. No evidence has been submitted to demonstrate holiday accommodation in this location is undesirable or unsuitable. The proposal would therefore fail to accord with the aims and requirements of Policies DM 3 and ST 6 of the Council's Local Plan.

Living Conditions

13. The proposal would create three dormer windows facing northwest, towards the residential property at No.2. Those proposed windows would serve two bedrooms and a bathroom and would overlook the side and rear garden of No.2 due to the height of the windows and the short distances involved. The level of overlooking would be significant as the windows would provide clear views into the neighbouring garden.
14. I note representations made by the occupant of No.2, confirming that they support the proposal and that both they and the appellant intend to plant more trees and shrubs along the shared boundary. No details have been provided of any intended planting, but in any case, the short distance between the proposed first floor front elevation windows and the rear garden of No.2 means that any planting would have to be substantial to prevent any unacceptable levels of overlooking. Although the current occupant of No.2 supports the proposal, the unacceptable harm that would be caused by the inevitable overlooking would be long lasting, also affecting all future occupants of No.2.
15. Overlooking from the bathroom window could be prevented by a condition restricting the window's opening and requiring it to be obscure glazed, but it would be unreasonable to attach such a condition to the bedroom windows

because they would be the only windows serving those rooms, which would make an important contribution to the quality of living conditions of future residents. The use of obscure glazing to all three front elevation dormer windows would also have adverse implications for the appearance of the proposal. Moreover, having to consider such glazing treatment would indicate that the development, in close proximity to No.2, is also less than ideal in terms of satisfactory living accommodation for future occupiers of the proposed dwelling.

16. The proposal would significantly reduce the privacy of occupants at No.2, causing unacceptable harm to their living conditions. This harm could not be reasonably prevented through the installation of obscure glazing to all three first floor front elevation windows and I have not been presented with sufficient information to convince me boundary planting could appropriately mitigate the harm. The proposal would therefore fail to accord with Policies CP 4 and DM 14 of the Council's Local Plan. These require, amongst other things, that development should not cause significant harm to amenity and create comfortable places.

Character and Appearance

17. The character and appearance of the area surrounding the appeal site is heavily influenced by holiday parks with rows of mobile homes interspersed with some low-level buildings; the notable exceptions are the two storey public houses near the centre of the holiday park and at its main entrance. Land levels vary throughout the surrounding area, offering views of mobile homes and nearby buildings at higher levels than the appeal site to the south and east. The buildings along Elm Way and its junction with First Avenue all appear to be single storey and set within secluded plots, creating an intimate setting, despite the more open views behind the appeal site. In this context, the existing single storey form and modest design of the appeal building is typical of the area and sympathetic to its surroundings.
18. The proposal would introduce a gambrel roof with three dormer windows on each of the front and rear elevations, creating what would appear as a prominent two storey building. In this location, amongst a range of low-level, small buildings and mobile homes, the proposed gambrel roof design would be an odd addition to the area. It would appear uncharacteristically tall and out of context with its surroundings, with two blank dormers and one obscure glazed dormer window proposed on the rear elevation which would emphasise its dominant and unwelcome appearance. The proposal would fail to respect the character or appearance of the appeal site's surroundings and would not comprise high-quality design appropriate to its location.
19. The proposal would therefore harm the character and appearance of the area, contrary to Policies CP 4, DM 14 and DM 16 of the Council's Local Plan. These require, amongst other things, development to be of a high-quality design which would be appropriate to its context in respect of scale and height.

The SPA

20. The Council has advised that the appeal site lies within 6km of the SPA. As the proposal would result in the replacement of holiday accommodation with permanent accommodation, Natural England have advised that it may result in increased recreational disturbance to the SPA, but that they would be satisfied

its likely harmful effects could be mitigated, subject to an appropriate financial contribution being secured. The Council have advised that payment of £253.83 in accordance with the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy ('the SAMMS') would mitigate the likely adverse effects of the proposal on the SPA. Natural England have confirmed these measures to be ecologically sound, but no such payment has been made by the appellant.

21. The appellant has claimed the appeal site is over 6km from the SPA, would not create potential for recreational disturbance to the SPA, and would conserve and enhance the natural environment because it includes an upward extension. No evidence has been submitted to support these claims. The appellant has suggested that a payment in accordance with the SAMMS could be required by condition, but I do not consider a condition requiring payment of a financial contribution towards off-site mitigation measures would meet the relevant tests⁶.
22. The proposal would likely have a significant effect on the SPA from increased recreational disturbance. This is because the appeal building is subject to a condition restricting its occupation to certain months of the year. The proposal would allow the appeal building to be occupied throughout the year, increasing opportunities for recreational disturbance to the SPA.
23. In the absence of any evidence demonstrating the payment or securing of a financial in accordance with the SAMMS, I consider it likely that the proposal would cause harm to the SPA. This would be contrary to Policies ST1, DM14 and DM28 of the Council's Local Plan, which require, amongst other things, development to conserve the natural environment, including internationally protected areas such as the SPA.
24. I would need to undertake an Appropriate Assessment in accordance with the Habitats Regulations⁷ if I was minded to grant planning permission. However, as I have found the proposal would result in harm in respect of all the other substantive main issues, there is no need for me to consider this matter further.

Other Matters

25. The appellant has referred to the Council's Interim Planning Policy Statement for park home sites ('the IPPS'). This does not form part of the Council's development plan, but remains a material consideration, as set out in the IPPS report⁸. The IPPS sets out six criteria, all of which need to be met for the Council to support the conversion/redevelopment of holiday accommodation to permanent accommodation. No evidence has been submitted to demonstrate the proposal satisfies any of these criteria, but based on the information presented I can conclude the proposal does not accord with the first and sixth criteria, as I have found the site is not in a sustainable location with access to services and facilities; and that the site layout is not acceptable in terms of privacy and amenity of site occupants, as the proposal's bedroom windows would need to be obscure glazed to avoid unacceptable levels of overlooking. The proposal does not therefore accord with the IPPS.

⁶ Paragraph 003 Reference ID: 21a-003-20190723 of the Planning Practice Guidance

⁷ The Conservation of Habitats and Species Regulations 2017 (as amended)

⁸ Swale Borough Council Meeting Report dated 17 June 2020

26. It has been suggested that appeal decisions at other sites offer support for the proposal because they show that other properties have been extended by various degrees, contributing to the character of the area. None of the examples referred to appear to be within the locality of the appeal site and the Council has advised they are all sited within the settlement boundary. I have not been provided with the full details of those cases and it has not been demonstrated that any of those developments inform the character of the area surrounding the appeal site. The appeal decisions referred to do not therefore effect my reasoning on the main issues.
27. I note the appellant's references to parts of the Framework which encourage sustainable development. I have found that the proposal would constitute poor design in a location which would be inappropriate for new market housing as a replacement for holiday accommodation, likely to harm the SPA. The proposal would not therefore comprise sustainable development.

Conclusion

28. For the reasons given above I conclude that the proposal would fail to accord with the development plan and there are no material considerations, including the Framework, that would indicate planning permission should be granted. The appeal should therefore be dismissed.

L Douglas

INSPECTOR