



Appeal Decision

Site Visit made on 12 October 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2021

Appeal Ref: APP/V2255/W/21/3268392

Land at Gore Farm, Chaffes Lane, Upchurch, Kent ME9 7BE

- 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 AC Goatham & Son against the decision of Swale Borough Council.
 - The application Ref 19/505938/OUT, dated 19 November 2019, was refused by notice dated 7 August 2020.
 - The development proposed is change of use of land from agricultural to residential and the erection of two C3 dwellinghouses.
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Decision

1. The appeal is allowed and outline planning permission is granted for change of use of land from agricultural to residential and the erection of two C3 dwellinghouses at Land at Gore Farm, Chaffes Lane, Upchurch, Kent ME9 7BE in accordance with the terms of the application Ref 19/505938/OUT dated 19 November 2019 subject to the conditions in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. At Part E of the appeal form, it is stated that the description of development has not changed, but a different wording has nevertheless been entered. While this reflects the description on the Council's decision notice, neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. The appeal seeks outline planning permission. Approval is sought for matters of access and layout and I have considered the appeal on this basis. While I have had regard to the plans submitted as part of the application, I have regarded details of the reserved matters of scale, appearance and landscaping of the development as illustrative.

Main Issue

4. The main issue is whether or not the development would be a suitable location for housing having regard to relevant local and national policy and:
 - i. The position of the site within the countryside and its accessibility to services and facilities;
 - ii. the effect of the proposal on the character and appearance of the area; and
 - iii. the effect of the proposal on best and most versatile agricultural land.

Reasons

5. Policy ST 3 of 'Bearing Fruits 2031 The Swale Borough Local Plan' (adopted 2017) sets out the settlement strategy for the borough. It provides that development will not be permitted outside of built-up area boundaries unless supported by national planning policy and 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 Council's reason for refusal also refers to Policy ST 6, but this relates to the Isle of Sheppey area, and having regard to the location of the site it seems to me that Policy ST 5 which is instead cited in the Council's appeal statement is of more relevance. This policy provides further detail of the strategy for the Sittingbourne area, including that housing should be provided within urban and village confines or in accordance with allocations.

Location

6. The appeal site comprises part of a large parcel of land which is planted as an orchard and which forms part of a wider holding known as Gore Farm. It is located on a bend in Chaffes Lane at the junction with Oast Lane which runs to the west of the site, and a public footpath that runs along the northern boundary of the site. To the west of Oast Lane and the north of the footpath are dwellings on the edge of Upchurch, but the site is outside of the built-up area boundary of Upchurch as defined within the Local Plan and is therefore within the countryside in policy terms. The site is not allocated for development, and the proposal would therefore be contrary to Policy ST 5 of the Local Plan.
7. Nevertheless, it is immediately adjacent to the Upchurch built-up area boundary. The Local Plan identifies Upchurch as a 'Tier 5 other village with built up area boundary' which it describes as a variety of settlements, with the more sustainable providing primary education, recreation area, a shop and accessible by bus or train (of reasonable frequency).
8. The Council has drawn my attention to an appeal decision where an Inspector found that residents of a proposed development at Jubilee Fields, Upchurch would rely to a considerable extent on the private car and that the site would be an unsustainable location for development. However, I do not have full details of the case to enable me to draw any meaningful comparison with the circumstances in this appeal. Nor do I know what information was before the Inspector in that case, and I have therefore considered the appeal proposal on its own merits and reached my own conclusions according to the evidence that is before me.
9. Facilities within Upchurch include a primary school, GP surgery, recreation ground, village hall, shops and a pub. There are also bus stops served by routes stopping at larger centres including Sittingbourne, Rainham, Gillingham and Chatham. These are mostly located towards the village centre, but at my visit I saw that journeys from the site could be made via streets lined with footpaths and lighting, and the distance to reach them was not unreasonable with most accessible within around a 10 minute walk. Although I accept that walking or cycling may not be realistic options for all future occupiers, there would nevertheless be potential to access

some local services by sustainable travel modes, helping to reduce dependency on private vehicles.

10. There would be reliance on destinations further afield to meet needs including for secondary education, major employment and shopping, and I note that nearby bus services are fairly infrequent which would be likely to limit their attractiveness. However, at Picture 4.3.2 of the Local Plan, Upchurch is shown as being within an area with the second highest broad level of accessibility to local services. I appreciate that this is indicative, and reflects provision within nearby centres. Even so, the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and journeys to reach a wider range of services, including in Rainham, would be fairly short, helping to minimise the effect of travel by private vehicle. Moreover, given the scale of the proposal, the number of journeys would not be likely to be significant, and even if trips would in part be on relatively narrow rural roads, there is no firm evidence that the level of traffic likely to accompany the proposal would unacceptably harm highway safety or convenience.
11. Having regard to the accessibility of the services within Upchurch and the evidence before me, I consider that the proposal would be likely to offer additional support through patronage by future occupiers. The contribution would be small given the modest scale of the development, but could nevertheless help to sustain and potentially grow local services and facilities, and I consider in the circumstances that the proposal would at least maintain the vitality of rural communities. In this regard, it would accord with the requirement within Policy ST 3 to contribute to the vitality of rural communities. It would additionally be supported by provision within the Framework outlining that housing should be located where it will enhance or maintain the vitality of rural communities.
12. Given this support, I do not consider that Policy ST 3 of the Local Plan necessarily indicates an overriding presumption against the development outside of the built-up area boundary in this case. Nonetheless, there would be some dependency on private vehicles by occupiers contrary to objectives within the Framework to promote sustainable transport, albeit that the small scale of the development means that I consider the impact would be limited.

Character and Appearance

13. The Framework recognises the countryside's intrinsic character and beauty. Together with the large open fields, areas of woodland, and a few scattered individual buildings or small groups of buildings which predominantly characterise the surrounding area beyond the boundary of Upchurch, the undeveloped appeal site contributes an open and rural character and appearance to this part of the countryside. The presence of the development would result in a loss of openness, and would give the site a clearly domestic appearance. Together with the new access from Oast Lane which is designated as a rural lane by the Local Plan, it would therefore be urbanising.
14. However, there is no compelling evidence before me that the site is part of an area of particular landscape importance or value. Given the close

proximity of the site to neighbouring residential development within Upchurch and the presence of buildings which extend a little way along the opposite side of Oast Lane, I also did not find there to be a particular impression of tranquillity that would be harmfully eroded by the development.

15. Nearby dwellings on Chaffes Lane vary in form and architectural design resulting in a fairly mixed street scene, and while scale and appearance are reserved matters, I agree with the Council that there would be scope to provide a well detailed development which complements existing built form in the vicinity.
16. The Council raises concern that the layout of development on the site would be akin to ribbon development, but this would not be dissimilar to the south and east sides of Chaffes Lane where the closest dwellings are arranged in broad strips on the edge of the built-up area, and would not therefore be incongruous. The proposal would appear largely to continue the adjacent ribbon of dwellings at 97-113 Chaffes Lane to the west, and the plots to the dwellings would not extend significantly beyond the prevailing line of the rear of gardens to these neighbours. Similarly, they would not extend significantly beyond the general line of the rear of gardens to dwellings along the east of Chaffes Lane to the north of the site. The close relationship of the development with these neighbours means that the impression of encroachment into the countryside would be limited, and I consider that the development would essentially be appreciated as somewhat of a rounding off to the village.
17. There is no current defined boundary between the site and surrounding open land, but landscaping is a reserved matter and I see no reason that suitable planting and boundary treatment to ensure that the development would be well-contained and to prevent visual intrusion further into the countryside could not be provided. Landscaping would also offer potential to screen, at least partly, the development to views from the surrounding area, and the existing planting in the vicinity of the site means that views of the development would be largely localised.
18. The Council's Conservation and Design Officer raised concerns that the proposal would result in a suburban form of development closer to Gore Farm, harming the setting of this Grade II* listed building. I have therefore had special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the Council's officer report acknowledges information submitted by the appellant highlighting the significant distance and land levels and resulting lack of intervisibility between the site and Gore Farm. Given the evidence before me and the relationship of the site with Gore Farm and the nature and layout of the development, I am satisfied that the proposal would preserve the setting and significance of Gore Farm as a listed building.
19. Taking all of the above into account, I consider, subject to details of the reserved matters, that the proposal would assimilate well with its surroundings and the landscape, and that visual impacts of the development would be modest. The harm to the character and appearance

of the countryside would therefore be slight, but would nevertheless result in some conflict with Policies ST 1 and ST 3 of the Local Plan which include requirements to broadly protect and where possible enhance the intrinsic character and beauty of the countryside.

Best and Most Versatile Agricultural Land

20. There is no dispute between the parties that the proposal would result in the loss of Grade 1 agricultural land, which in accordance with the Framework is considered 'best and most versatile agricultural land'.
21. Policy DM 31 of the Local Plan outlines that development on agricultural land will only be permitted when there is an overriding need that cannot be met within the built-up area boundaries. However, the parties agree that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, and it therefore appears that requirements for housing cannot currently be met within the built-up area boundaries. Accordingly and in light of the Government's objective to significantly boost the supply of housing as recognised within the Framework, I consider that the requirement for housing could in this case represent an overriding need, justifying development on agricultural land.
22. Moreover, the area that would be lost from agricultural use is very small, and at my visit I saw that only part of the site is planted as orchard. In addition, the appellant comments that the land cannot be tilled because of the presence of a gas main, and I have no firm reason to doubt its evidence that the viability of the holding overall would not be adversely affected by the loss of the site.
23. For these reasons, I do not find that the loss of best and most versatile agricultural land would in this case conflict with Policies DM 3 or DM 31 of the Local Plan. Amongst other things, these policies set out that development will not be permitted where it would reduce the potential for rural employment, or where development on Grade 1 agricultural land would result in the remainder of the holding becoming unviable.

Conclusion on the Main Issue

24. Drawing matters together, I find that the development would help to support the vitality of Upchurch in accordance with the aims of the Framework, and would not unacceptably affect best and most versatile agricultural land. Nevertheless, the harm that the proposal would cause to the intrinsic value and character of the countryside would result in conflict with Policies ST 3 and ST 5 of the Local Plan, as well as with Policies CP 3 and ST 1 insofar as they steer development in accordance with the plan's settlement strategy and seek the protection or enhancement of the intrinsic character, beauty and tranquillity of the countryside. The accessibility of the site to services would also result in a degree of dependency on private vehicles contrary to objectives within the Framework to promote sustainable transport. The harm that the development would cause in these regards would be limited, but nevertheless leads me to conclude that it would not be suitably located.

Other Matters

25. I have considered appeal decisions referred to by the Council in support of its case. However, I am required to consider the proposal on its own, specific merits. Furthermore, not all of the details of each case have been provided to enable any meaningful or direct comparison with the circumstances that apply. These decisions do not therefore alter my conclusions on the appeal before me.

Medway Estuary and Marshes Special Protection Area

26. The site is within the Zone of Influence of the Medway Estuary and Marshes Special Protection Area (SPA); one of 3 SPAs on the North Kent Coastline which are classified for bird species that are rare and/or vulnerable in a European context, and form a critically important network for birds on migration. The sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
27. The Conservation of Habitat and Species Regulations 2017 impose a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). The development would be likely to result in additional demand for recreation locally, and such activity within the SPA/Ramsar sites could cause disturbance that would be detrimental to over-wintering or breeding birds. The demand resulting from the development alone would be relatively limited, but it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the SPA/Ramsar sites through recreational disturbance.
28. However, the Council collects financial contributions from new development to fund measures identified through the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy. The delivery of mitigation measures is to be through Bird Wise, a partnership of local authorities, developers and environmental organisations. Subject to the appropriate financial contribution being secured, Natural England has advised that it is satisfied the proposal will mitigate against the potential recreational impacts of the development.
29. The Council advises that a SAMMs mitigation payment has in this case been received, and indicates that the contribution will be used towards mitigation through Bird Wise. A completed 'SAMMs mitigation contribution agreement for ten units or less' also states that the contribution is towards the cost of measures identified in the SAMM to mitigate the likely impact of the proposed development on the protected habitat sites in accordance with the SAMM. Given the evidence before me, I am satisfied that the contribution would be used for its intended purpose and I consider that the mitigation measures secured would be effective to adequately overcome any adverse effects of the proposal.
30. In light of the above and following an AA, I find that the proposal would not adversely affect the integrity of the SPA/Ramsar sites.

Planning Balance

31. Because the Council is unable to demonstrate a 5-year supply of deliverable housing sites, the Framework provides that the policies which are most important for determining the application are deemed out-of-date, and the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is engaged. This outlines that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
32. The adverse impacts of the proposal are the harm that would be caused to the area's landscape, character and appearance and the loss of agricultural land. However, the level of harm would be modest. Furthermore, in the absence of a 5 year supply of housing, the settlement strategy within the Local Plan is not meeting housing needs, and a rigid application of Policies ST 1, ST 3, ST 5 and CP 3 insofar as they seek in principle to generally prevent housing development outside of built-up area boundaries would frustrate attempts to address the housing supply deficit. The weight that I afford to the conflict with these policies is therefore reduced. Nevertheless, the objectives within ST 1 and ST 3 to protect and where possible enhance the intrinsic value, character, beauty, landscape setting and tranquillity of the countryside accord generally with the Framework requirement to recognise the intrinsic character and beauty of the countryside. The conflict in these regards weighs against the proposal.
33. The adverse environmental impacts and conflict with Framework objectives to promote walking, cycling and public transport resulting from reliance on the private vehicle by future occupiers of the development also weighs against the proposal. That said, the provision of only 2 dwellings means that the scale of harm arising would be slight.
34. In terms of benefits, the proposal would make effective use of the site to provide 2 additional dwellings. The contribution would be small, but would still advance the Government's objective outlined within the Framework to boost significantly the supply of homes from a variety of sites as well as helping to meet local needs generally. The Framework also highlights that small and medium sized sites such as this can make an important contribution to meeting housing requirements and are often built out relatively quickly, and the appellant advises that the site can be delivered quickly. As a result, and in light of the housing under-supply position which the parties indicate is equivalent to around 4.6 years or around an additional 400 homes per year, I give great weight to the benefit of the additional housing.
35. The development would additionally result in some short-term economic benefits during the construction period, both direct and indirect. Occupiers would be able to access services within Upchurch to meet some day to day needs, as well as public transport, albeit of relatively limited frequency. Expenditure in the area by future occupiers would offer some ongoing support for the local economy and help to maintain the viability of existing services within the surrounding rural area; matters which are supported by the Framework and which would be a social benefit. I afford moderate

weight to these benefits in the planning balance, although the extent of each is tempered by the small amount of development.

36. I do not dispute the potential benefits of investment in the appellant's business to employment, the rural and national economy and food security, and note examples of investment from other development that has supported growth and expansion previously. The Framework advises that significant weight should be given to the need to support economic growth and productivity, and that the development and diversification of agricultural and other land-based rural businesses should be enabled to support a prosperous rural economy. However, from the evidence before me, I cannot be certain that any funding released by the development would be directed to the business and reinvested in this way. While I have no firm reason to doubt the appellant's intentions, this limits the weight that I can afford to this factor.
37. The adverse impacts of the development would be modest, and in the context of paragraph 11(d) of the Framework, I find that these adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies and is a material consideration that weighs in favour of the proposal. While the development would result in some conflict with Policies ST 1, ST 3, ST 5 and CP 3 of the Local Plan, I conclude that there are thus material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

Conditions

38. I have considered suggested conditions against the tests at paragraph 56 of the Framework. I have made minor amendments where necessary for clarity, brevity or to ensure compliance with the relevant tests.
39. I have attached standard conditions relating to the submission of reserved matters and the time limits associated with this (1, 2, 3). I have also included a condition specifying the relevant plans (4) for the avoidance of doubt and in the interest of certainty.
40. Details of how construction processes will be managed (5) are required prior to the commencement of development to safeguard the living conditions of neighbouring occupiers and highway safety, although I have combined a number of the Council's suggested conditions to avoid duplication. Also in the interests of the living conditions of neighbouring occupiers, I have attached a condition regarding hours of construction work (6). In the interests of environmental sustainability, a condition is necessary to secure efficient use of resources and measures to minimise carbon emissions (7). I have also imposed a condition to ensure ecological enhancement (8) in the interests of biodiversity, although I have amended the timescale for submission of details to ensure that measures will be effective and can be delivered.
41. To ensure highway safety and adequate provision for vehicles on the site, conditions are needed to secure turning and access (9), suitable standards of visibility (10) and parking (11). At condition 9, I have required that further details of access from the highway are submitted for approval as I

consider that the Council's suggested condition was insufficiently precise as to the nature of works that would be required. To promote the use of sustainable transport, secure cycle parking (12) and electric car charging points (13) are required, while a condition to control lighting (14) is necessary in the interests of biodiversity, albeit that I have altered the condition to require that details are submitted only where necessary.

42. The National Planning Practice Guidance advises that conditions requiring compliance with other regulatory requirements such as Building Regulations may not be relevant to planning or meet the test of necessity. Nevertheless, the development plan includes a requirement concerning the water efficiency standard to be met by housing, and I consider that a suggested condition to control water usage (15) is justified in this case and is necessary to preserve water resources and mitigate climate change.
43. The Council has also suggested conditions to require details of landscaping and provision for replacement planting. However, as these relate to the reserved matter of landscaping, they can be addressed in the consideration of future reserved matters applications for this aspect, or through the imposition of conditions on a reserved matters approval. These conditions are therefore unnecessary, and I have not imposed them.

Conclusion

44. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping and scale of development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.
- 2) Application for approval of the reserved matters must be made not later than the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted must be begun not later than the expiration of 2 years from the date of 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) Except where matters are reserved for final approval, the development hereby permitted shall be carried out in accordance with the following approved plans: 1443 P001 and 1443 P002.
- 5) The development shall not commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
 - i) provision on site to accommodate operatives' and construction vehicles loading, off-loading and turning;
 - ii) provision on site for parking for site personnel, operatives and visitors;

- iii) a programme for the suppression of dust during the construction of the development; and
- iv) measures to control the emission of dirt during construction, including precautions to guard against the deposit of mud and similar substances on the public highway including washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances.

The approved details shall be provided and adhered to throughout the construction period.

- 6) No construction work in connection with the development shall take place outside of the hours of 0800-1800 Monday to Friday and 0800-1300 Saturdays, nor at any time on Sundays or on Bank or Public Holidays.
- 7) No development above proposed ground level shall take place until details of materials and measures to be used to increase the energy efficiency and thermal performance of the dwellings and to reduce carbon emissions and construction waste have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter retained in accordance with the approved details.
- 8) No development above proposed ground level shall take place until an ecological enhancement plan has been submitted to and approved in writing by the Local Planning Authority demonstrating enhancements to be incorporated in to the site and where they will be located. The development shall be carried out in accordance with the approved details.
- 9) Notwithstanding the approved plans, no dwelling shall be occupied until details of the proposed means of access between that dwelling and the adopted highway comprising footways and/or footpaths and carriageways have been submitted to and approved in writing by the Local Planning Authority. The details should include the provision of a turning facility and related highway drainage, including off-site works; and any street lighting, street nameplates or highway structures. No dwelling shall be occupied until the approved means of access, with the exception of the wearing course to the footways and/or footpaths and carriageways have been completed in accordance with the approved details.
- 10) No dwelling shall be occupied until the area between the nearside carriageway edge and lines drawn between a point 2.4m back from the carriageway edge along the centre line of the access and points on the carriageway edge 43m from and on both sides of the centre line of the access has been cleared of obstruction to visibility at and above a height of 0.9m above the nearside carriageway level. The splays shall thereafter be maintained and kept free of obstruction at all times.
- 11) The details submitted for the approval of reserved matters shall show land reserved for parking or garaging in accordance with relevant standards, and no dwelling shall be occupied until the approved parking has been provided, surfaced and drained. The parking shall thereafter be retained for its designated use, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without

modification), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the vehicle parking areas.

- 12) No dwelling shall be occupied until space has been laid out within the site for cycles to be parked in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The provision for cycle parking shall thereafter be retained for that use at all times.
- 13) No dwelling shall be occupied until electric vehicle charging facilities have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The charging facilities shall thereafter be retained.
- 14) Any lighting shall only be installed on the site in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority demonstrating that the lighting has been designed to ensure there will be minimal light spill on to the site boundaries and the surrounding area.
- 15) The dwellings hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied until the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2010 (as amended) has been provided to the Building Control Inspector. Water limiting measures to meet this standard shall thereafter be retained.

End of Schedule