



Appeal Decision

Site visit made on 9 November 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/V2255/W/20/3261730

Land at Oak Lane, Upchurch ME9 7AY

- 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 Mr I Daniel against the decision of Swale Borough Council.
 - The application Ref 20/501448/OUT, dated 24 March 2020, was refused by notice dated 7 July 2020.
 - The development proposed is described as 7no. residential dwellings with all matters reserved except for access (Suggested 2 bedroom, 3 bedroom and 4 bedroom mix).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For completeness I have added the postcode the from the Council's decision notice in the banner heading above.
3. The application is made in outline with all matters reserved for future consideration except for access. I have considered the appeal on this basis. I have regarded plans indicating the site layout of dwellings as indicative only.
4. The appellant submitted a Statement of Common Ground (SoCG) as it was their expectation the appeal would be conducted under the Hearing procedure. As the appeal is being determined under the Written Representations procedure and the Council has not agreed to the SoCG, whilst I have considered its contents, I have not treated them as common ground.
5. Since the appeal was lodged the revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and Appellant the opportunity to comment upon the implications of this and taken the views into account in determining this appeal.
6. The appellant's evidence refers to plans which I have sought to obtain, but have not been provided to me. Therefore, I have no option but to proceed to determine the appeal without these.

Main Issues

7. The main issues are:
 - the effect of the development upon the open countryside and important local countryside gap; and,

- whether or not the development would be in a suitable location for accessibility to services and facilities.

Reasons

Countryside gap

8. The settlement hierarchy in Policy ST3 of the Swale Borough Local Plan (2017) (the LP) directs development to within 5 tiers of settlements reflecting their roles, based on matters such as infrastructure, services and facilities. Upchurch is an 'other village' in tier 5. The appeal is outside the built-up limits of Upchurch, falling within the lowest tier 6, of open countryside. Development is only permitted where supported by national planning policy and it can demonstrate 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.
9. Policy CP3 of the LP directs development in accordance with Policy ST3 but also to windfall sites, except where the character of the site, local context or environmental value determines otherwise. The site is also within an area designated as an important local countryside gap (ILCG) by Policy DM25 of the LP. Within ILCGs development should not undermine one or more of their purposes. These include maintaining the separate identities and character of settlements by preventing their merging, safeguarding the open and undeveloped character of the areas, preventing encroachment and piecemeal erosion by built development or changes to the rural open character.
10. The appeal site comprises a flat open maintained primarily grassland area of approximately 0.4 hectares with a small outbuilding. It is surrounded by a tall hedgerow on Oak Lane beyond which is an amenity grassland area and playing fields to its north east fronting Oak Lane, allotments to the north, and, what appears to be an open storage and cultivation area to the west. These areas and the appeal site form part of the ILCG.
11. The appeal site forms a significant proportion of the ILCG. By virtue of its size, undeveloped, and verdant character, it makes an important contribution to the ILCG and countryside. This is clearly discernible from parts of Oak Lane, the playing field, and No 92 Oak Lane. Given its character, appearance, condition and location, the site is not determined as being appropriate for development, under Policy CP3 of the LP.
12. The indicative layout shows 7 dwellings with off-road and visitor parking spaces within a cul-de-sac layout accessed from Oak Lane necessitating the removal of much of the hedgerow. The proposals would result in a significant amount of new built development and residential use occupying most of the appeal site, with an associated intensity of vehicular and householder activity, vehicle parking, boundary treatments and residential paraphernalia. Therefore, the development would result in a significant urbanisation of the appeal site and significantly detrimental incursion of development into the ILCG.
13. The development would effectively be viewed as infilling and reducing the ILCG. It would amount to a significant encroachment and erosion by built development, significantly harming its rural open character and would not safeguard the open and undeveloped character of the ILCG. Therefore, it would undermine one or more aims of the ILCG, in conflict with Policy DM25.

14. The Aboricultural Tree Survey states the groups of trees to be removed are of low amenity value. However, their loss including for the access and visibility splays would contribute significantly to the harm. The development would be readily discernible including from parts of Oak Lane, parts of the surrounding playing field and allotments, and a limited number of residential properties to the south. Reserve matters submissions could secure an arrangement of dwellings in keeping with those in the wider area and further landscaping. However, the scale, nature and location of the development would be such that it would be inherently harmful to the ILCG and countryside, so such submissions could not overcome the significant harm I have found.
15. While the development might be supported by some aspects of national policy, it would conflict with the aim of protecting the intrinsic value, landscape setting, tranquillity, and beauty of the countryside, of Policy ST3. The wording of ST3 is such that the development must meet all the criteria for compliance.
16. For the reasons set out above the development would not be in a suitable location and would be significantly harmful to the open countryside and ILCG, in conflict with Policies ST1, ST3, ST5, CP3, DM14, DM24 and DM25 of the LP. Amongst other things, these seek to direct development to within built-up limits, protect the intrinsic value, landscape setting, tranquillity, and beauty of the countryside, and safeguard the open and undeveloped character of the ILCG. It would also conflict with paragraph 174b) of the Framework insofar as it expects development to contribute to and enhance the local environment by recognising the intrinsic character and beauty of the countryside.

Services and facilities

17. Within Upchurch the services and facilities include a post office, convenience store, a pub, takeaway, church, village hall, nursery, and primary school. There is also a public playing field and allotment nearby. Much of the approximately 400m – 650m route to many services is by an adequate and lit footway. Therefore, walking and cycling would be a relatively attractive and convenient option for most future occupiers. However, given the range of facilities, trips to other service centres are likely to be frequently required.
18. Facilities in the towns of Rainham, Gillingham and Sittingbourne would require trips of between approximately 2km – 6km. The facilities include larger supermarkets, various retail, professional and financial services, medical facilities, secondary education, employment opportunities, and the railway network. Given the distance, sections of national speed limit roads, absence of lighting, walking to these settlements would be not be attractive or convenient.
19. The car-free cycle routes would be adequate for some cycle journeys. The locations of bus stops and the routes of the 327, 328 and 372 are as accessible as the Upchurch facilities. Combined they are of a moderate frequency, suggesting they would be used for some journeys to services and facilities. Therefore, given the likely number of trips and distance to services and facilities, the number of vehicular miles generated per year by future occupiers would be relatively limited, resulting in limited harm.
20. The Council has referred to the conclusions of Inspector for an appeal nearby at Jubilee Fields¹, although the full evidence before that Inspector is not before

¹ APP/V2255/W/20/3246265

me. Furthermore, as a significantly larger development its transportation implications would not be the same as for this appeal proposal. Therefore, it does not persuade me to depart from my findings in relation to this main issue.

21. Future occupiers of the development would have opportunities for travel by means other than private car. However, it would still be likely to result in a limited number of private car journeys. Therefore, the development would result in a conflict with paragraphs 8, 85 and 105 of the Framework which seek to use natural resources prudently, minimise pollution, focus development toward locations that limit the need to travel, offer genuine transport choice through developments that encourage walking and cycling. However, given the potential for walking, cycling and use of bus services, and the distance to services and facilities, the harm would be limited.

Other Matters

22. The appeal site is within 6km of the Medway Estuary and Marshes Special Protection Area (the SPA). The Conservation of Habitats and Species Regulations 2017 (as amended) requires where a project is likely to result in a significant effect on a European site, the competent authority is required to make an Appropriate Assessment of the implications on the integrity of the site. If constructed, this appeal scheme would create seven additional dwellings within a short journey of the SPA.
23. I am advised a contribution has been made to the Council towards the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) to mitigate the effects upon the SPA. Even if I were to assume the mitigation would be in place, the evidence suggests contributions towards the SAMM are necessary to mitigate the impacts of this development. As such it is not put to me that the contributions would result in an overall net benefit to the SPA and its conservation objectives, that would weigh in favour of the development. Therefore, as I am dismissing this appeal for other substantive reasons, it is not necessary for me to consider this matter in detail.

Planning Balance

24. The Council advises it can demonstrate a 4.6 year housing land supply (HLS). Paragraph 11d) of the Framework states in such circumstances the policies most important for determining the application are considered out of date, and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. However, it does not mean this site is in principle acceptable for the development of housing.
25. The reference to and quotes from appeal Refs APP/V2215/W/15/3135783 and APP/V2255/W/17/3177790 are noted, although the full details, circumstances, and evidence before the Inspectors, are not before me, so a fully reasoned comparison with this proposal is not possible. Ref 3135783 both pre-dates the adoption of the LP and the current iteration of the Framework. The Inspector found that proposal would protect the countryside with no adverse impacts arising. Therefore, it is not directly comparable to this proposal. Given the limited reference to and details provided by the appellant in respect of 3177790, in-light of my findings above, the decision does not justify allowing this appeal before me.

26. The proposal would result in a modest economic benefit during construction, once complete some small on-going spend in the local economy and a modest contribution to the vitality of rural communities and services. This windfall site would more efficiently use the land. As a small to medium sized site, it could be built out relatively quickly. Although it does not constitute a suitable site within an existing settlement referred to in paragraph 69c) of the Framework.
27. The appellant's figures show a significant under delivery of housing in previous years, and on the future delivery of housing. Even if I were to agree with the appellant's figures which suggest the HLS position is relatively acute, the social benefits and contribution to supply from seven dwellings is a moderate benefit. Subject to the imposition of suitably worded planning conditions, overall, the development could deliver a modest ecological enhancement around the site in the longer-term. However, the benefit is likely to be small. Overall, the benefits of the development attract moderate weight in favour of the scheme.
28. The Highway Authority sought further information to ensure the development could take place acceptably, including in respect of demonstrating pedestrian visibility splays would allow those crossing from the bus stop to do so in a safe manner. I have not been provided with the necessary information in this regard. Therefore, based upon the evidence before me, I cannot conclude the development would result in an overall benefit. If I were to take the view the development could be made compliant with policies in respect of highway safety, access, and parking these would be neutral matters attracting neutral weight. Compliance with policies in respect of matters such as energy and resource efficiency, character and appearance of the wider area and detailed design matters, would also be neutral matters in the planning balance.
29. There would be limited harm from the development to sustainable transport objectives of the Framework, for which the conflict attracts limited weight. However, it would have a significantly harmful effect upon the open countryside and ILCG. The harm from this and the conflict with the policies is such that it attracts significant weight against the development. Therefore, the harm from the development significantly and demonstrably outweighs the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the appeal should not succeed.

Conclusion

30. The development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR