



Appeal Decision

Site visit made on 4 January 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2022

Appeal Ref: APP/V2255/W/21/3274003

45 Keycol Hill, Bobbing ME9 8LZ

- 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 Jonathan Sait against the decision of Swale Borough Council.
 - The application Ref 20/505458/OUT, dated 29 December 2020, was refused by notice dated 1 March 2021.
 - The development proposed is New 4 bedroom dwelling with garage.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is made in outline with all matters reserved for future consideration. The plans show the scale and layout of the dwelling, outbuilding and appeal site. Paragraph ID: 21b-021-20190723 of the Planning Practice Guidance advises where details are submitted as part of an outline application, they must be treated as forming part of the development, unless the applicant has made it clear the details have been submitted for illustration purposes only. The Council's delegated report refers to the plans as being indicative. The appellant has stated the plans are considered illustrative. Therefore, I have regarded them as illustrative only.

Main Issues

3. The main issues are:
 - whether or not the proposed development would be compliant with policies for the location of new housing; and,
 - the effect of the proposed development upon the character and appearance of the countryside.

Reasons

4. Policy ST3 of the Swale Borough Local Plan (2017) (the LP) states that by use of previously developed land within defined built up area boundaries and on sites allocated by the Local Plan, development proposals will be permitted in accordance with the settlement strategy. The appeal site is not an allocated site and is approximately 400m from the built-up area boundary of Sittingbourne. Therefore, even if I agree the site constitutes previously developed land, it does not comply with the first part of Policy ST3.

5. The settlement hierarchy directs development to 5 tiers of settlements reflecting their roles, based on matters such as infrastructure, services and facilities. Having regard to paragraph 4.3.14 of the LP, the position rear of the established row of dwellings, and largely open and undeveloped nature of the appeal site, the appeal site is within the countryside. Therefore, it is within the lowest tier 6 of the hierarchy, where development is only permitted where supported by national planning policy and can demonstrate it would contribute to protecting and where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, and the vitality of rural communities.
6. Paragraph 79 of the National Planning Policy Framework (2019) (the Framework) states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Paragraph 4.3.17 of the LP provides further advice on this matter. It explains that development intended to support the vitality of existing communities should be accompanied by evidence to show how it will support the viability of existing services and/or demonstrate how its scale will bring new services to the community. Even if I agree the development is relatively well located in relation to Sittingbourne, there is no substantive evidence provided demonstrating this development will meet the requirements of paragraph 4.3.17 of the LP.
7. While a dwelling would be within the countryside, the proximity to the dwellings fronting the A2, footways and accessibility to Sittingbourne suggests it would not be remote from a settlement resulting in an isolated home in the terms of paragraph 80 of the Framework. However, this matter does not overcome the conflicts I have set out above, in respect of paragraph 79 of the Framework and ST3 of the LP.
8. Therefore, for the reasons set out above the proposed development is not supported by paragraph 79 of the Framework in the way envisaged in paragraph 4.3.17. It would also not be compliant with Policy ST3 of the LP in respect of its location, the relevant provisions of which I have set out above. It would also conflict with Policies ST1 and CP3 insofar as these require development is located in accordance with the settlement hierarchy.

Character and appearance

9. The appeal site comprises part of the rear garden area of No 45 Keycol Hill. No 45 forms part of an established row of dwellings. While these vary in terms of design and appearance, most are along a similar linear alignment, addressing and with front gardens adjoining the A2 or parallel spurs. To the rear most benefit from generously sized rear gardens following the field boundary.
10. The alignment of the dwellings and verdant rear gardens with limited ancillary buildings forms a distinctive positive characteristic of the area. No 45 differs from those nearby due to its large triangular shaped rear garden space, being considerably wider and deeper than others in the row. The garden is grassed maturely landscaped and largely undeveloped rising up from the A2 above the land levels of many of the dwellings. Its size, depth, large grassed open area, and landscaping makes a positive contribution to the character and appearance of the countryside and area, appreciable from part of the neighbouring fields, rights of way and some neighbouring properties. For this reason, the site is

not an appropriate windfall site under Policy CP3 of the LP by reason of its character, local context, or environmental value.

11. The proposal would introduce a detached dwelling, access drive, parking, and an associated increase in intensity of use and paraphernalia. A new dwelling would result in a harmful urbanisation of the appeal site. The plot being behind and set back significantly from the established row of dwellings, means the proposal would differ markedly from the predominant development pattern. It would result in a significant incursion into the countryside. It would significantly jar, relate poorly to and be significantly at odds with the established pattern of residential development, resulting in significant harm to the character and appearance of the countryside and the area. While not directly visible from the A2, the harm would be discernible from some nearby properties, parts of fields, and rights of way.
12. Allowing this appeal might not set a precedent in this location given the uniqueness of this plot. However, the position and nature of the development would be inherently harmful, and the appellant's submissions have not demonstrated my concerns could be overcome by a sensitive design or reserved matters. Therefore, the proposal conflicts with Policy ST3 of the LP insofar as it requires development contributes to protecting and where appropriate, enhancing the intrinsic value, landscape setting, tranquillity, and beauty of the countryside. Compliance with some of the other criteria and objectives of Policies ST1, ST3 and CP3 would not overcome this harm.
13. The approved dwelling at No 48¹ would replace a triple garage between and in broad alignment with No 48 and dwellings to its east. Although an Inspector found it was not within what is termed open countryside, they also recognised it was not within the built-up limits set out in a previous development plan. The 5 dwellings off Rooks Lane² are within the building line and established pattern of development to its north and west. The proposal at 6 Ellen's Place³ would have had greater visibility from the A2 and affected the setting of a heritage asset. Therefore, these other decisions are not directly comparable to this appeal proposal, which I have considered on its own merits and impacts.
14. For the reasons set out above the proposal would be significantly harmful to the character and appearance of the countryside, in conflict with Policies ST3, CP3 and DM14 of the LP. Amongst other things, these require development is in keeping with the character and appearance of the area, and protects the intrinsic value, landscape setting and beauty of the countryside.
15. Policy CP2 of the LP referenced in the Council's first reason for refusal sets out objectives in relation to sustainable transport, so is less relevant to this main issue than the policies referred to above. Policy DM9 of the LP refers to criteria in relation to proposals for rural exception sites for affordable housing, and Policy ST6 appears to relate to development only on the Isle of Sheppey. Therefore, based upon the evidence before me, these do not appear to be directly relevant to this proposal.

¹ Appeal decision Ref. APP/V2255/W/15/3137042 and permission Ref 18/506035/FULL.

² Planning permission Ref 17/502156/FULL.

³ Appeal decision Ref. APP/V2255/W/20/3250073.

Other Matters

16. The Council's second reason for refusal advises the appeal site is within 6km of the Swale 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 an additional dwelling within a short journey of the SPA.
17. I am advised a contribution towards the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS) is required to mitigate the effects upon the SPA, which the appellant does not dispute. The appellant has offered to contribute to the SAMMS if permission is granted. However, as the competent authority in determining this appeal, I do not have a planning obligation before me securing a financial contribution to SAMMS or other alternative measures to mitigate the impact of the appeal proposal.
18. Even if I were to assume satisfactory mitigation would be in place, the evidence suggests the contribution towards the SAMMS are necessary to mitigate the impacts of this development. It is not put to me the contribution would result in an overall net benefit to the SPA and its conservation objectives, weighing 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 & Conclusion

19. The Council advises its housing land supply is 4.6 years. 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 significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole.
20. The proposal would result in a small economic benefit during construction and once complete a small on-going spend in the local economy. The benefits and contribution to supply from this single dwelling on previously developed land would be small. The evidence suggests that any overall ecological or landscaping enhancements secured by any reserved matters submissions would be small. Overall, the benefits of the development are attributed limited weight in favour of the scheme.
21. If I were to agree the proposal would or could be made compliant with policies in respect of matters such as the living conditions of neighbouring occupiers, accessibility, parking, and highway safety, these would be neutral matters in the balance. Compliance with policies in respect of design and materials, and resource and energy efficiency, would also be neutral matters.
22. However, the location of the development conflicts with development plan policies for the location of new housing, and the development would be significantly harmful to the character and appearance of the countryside. This harm is such that these matters attract significant weight against the scheme, significantly and demonstrably outweighing the benefits of the development when assessed against the policies in the Framework taken as a whole. Therefore, the appeal should not succeed.

23. The proposed 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