



Appeal Decision

Hearing held on 11 July 2023

Site visit made on 11 July 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/V2255/W/22/3313783

Pandora, and land to the north east of Nelson Avenue, Minster-On-Sea, Kent ME12 3SF

- 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 Michael Piper against Swale Borough Council.
 - The application Ref 21/502256/OUT, is dated 21 April 2021.
 - The development proposed is a residential development of up to 64 No 3 and 4 bedroom dwellings of 1 storey, 1 and half storey, 2 storey, and 2 and half storey dwellings with all associated parking, infrastructure and landscape amenity spaces.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. I have modified the site address by including reference to 'Pandora', which would be demolished to provide the main access to the development.
3. The application was made in outline with all matters reserved. Specific details are however provided within the description. Insofar as detailed plans have also been submitted in response to landscape concerns, it appears likely that a scheme of very similar nature would be presented at a later stage. I therefore place significant weight on the details of layout and scale shown.
4. The Council failed to determine the application within the required timeframe. I have however been provided with a report which was presented to the Council's Committee, which sets out draft reasons for refusal. I have taken this into account in defining the main issues below.

Main Issue

5. The main issue is whether the site is a suitable location for the proposed development having regard to its effect on the character and appearance of the area, including whether the development would preserve the settings of two Grade I listed buildings.

Reasons

Background

6. Policy ST 3 of The Swale Borough Local Plan 2017 (the Local Plan) sets out the Council's settlement strategy. This directs development to settlements based

on their position within a hierarchy, and to locations within defined built up area boundaries, outside of which development is restricted. Within this context the supporting text identifies Minster-on-Sea (Minster) as a third tier 'other urban local centre' within the 'West Sheppey Triangle', within which growth is planned on a collective basis between the settlements, but not at the expense of their individuality or character.

7. Pandora and part of the proposed secondary access onto Scocles Road each fall within the built-up area boundary of Minster, however the rest of the site falls outside. In these circumstances bullet 5 of Policy ST 3 states that development will not be permitted unless it is 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. The latter itself broadly reflects similar considerations set out within paragraph 174 of the National Planning Policy Framework (the Framework). In this regard the Council's concern is the effect that the development would have on the landscape, and the role that this plays in the setting of Minster.

Assessment

(a) Landscape

8. The appeal site chiefly consists of a large field with a pronounced slope. This forms part of the southern side of the ridge upon which Minster Abbey was historically founded, and the settlement of Minster grew. This is in turn located within an expansive low-lying coastal landscape characterised by its flatness, within which the ridge is a distinctive feature. It is therefore a key means by which Minster is identified, as is apparent within elevated views provided towards it from the Sheppey Crossing, and from which the site is clearly visible.
9. Minster's built-up area boundary closely corresponds with the plot boundaries of existing dwellings to the north, south and west of the site. Viewed on the ground these provide a reasonably regular edge to the built-up area, which is readily distinguished from open space beyond. This is exemplified by the existing relationship between the site and the ribbon of dwellings which line Nelson Avenue immediately to the south, particularly insofar as these both lie at a distinctly lower level and turn their backs on the site.
10. The site is otherwise separated from existing housing towards the north and west by other open spaces, and other similarly sloping fields adjoin towards the east. The latter help to provide both a physical and visual link between the site and the broader landscape setting of the settlement; a relationship which is reinforced within a variety of local views where perspective and topography combine to limit or obscure the visibility of existing development to the north and south of the site. These notably include views from footpath ZS7 and Lower Road to the south. For this and the above reasons, the site, excluding the proposed access points, is perceived to both fall outside the established built-up area of the settlement, and to form a component of its landscape setting.
11. The site, together with adjoining open space, additionally plays an important role in providing a vestigial link between the historic core of Minster and the wider open landscape. In this regard it helps to recall a time when Minster was a more rural settlement. Whilst this is particularly apparent in views which feature both the site and the tower of the Abbey Church, it is also directly

experienced in walking footpath ZS8, from which the site is clearly visible. This crosses the field to the east, skirts the north edge of the site, and, via other adjoining open space, ultimately leads to the Abbey Church itself. In so doing it passes between only a small group of buildings close to the churchyard. For all the above reasons the site makes a strongly positive contribution to the character and appearance of the area.

12. This contribution is not diminished in any significant way by the fact that the site is currently in equestrian use for horse grazing, nor by a broad characterisation of the landscape surrounding Minster as being in 'poor' condition. Though equestrian use of land is often a feature of the urban fringe, it is similarly a feature within rural areas. Indeed, there is nothing inherently 'suburban' in the character of such use. Other open spaces within the vicinity are similarly used, and associated paraphernalia and management varies. In this regard there is little paraphernalia currently on site, and the wildflower rich pasture which covers it had not been subject to overgrazing at the time of my visit. There was as such little to differentiate it from the character of adjoining open land to the east. Even if the nature of equestrian activity on site were to change, the essential characteristics and value of the site would remain much the same.
13. The development would see most of the site covered by a small housing estate. Given the slope, this would be highly exposed within views to the south, and would require terracing, thus significantly altering the existing topography. Though a narrow strip of open space could be retained toward the top of the slope, this would inevitably form a suburbanised component of the overall layout. The development would see the last meaningful link between the historic core of the settlement and the landscape beyond wholly compromised, and the positive role that the site plays within the visual and physical setting of Minster would be almost entirely lost. Given that the value of the site stems from its openness, the adverse effects could not be successfully alleviated or masked by design or landscaping.
14. The development has been promoted as a 'natural extension' and as 'rounding off' of the settlement. However, based on my assessment of the relationship between the site and existing development above, its attributes do not lend support to either claim. Consequently, the indicative plans depict a development lacking direct integration, and largely isolated within space to the rear of Nelson Avenue. As if the emphasise the point the plans furthermore show a moat-like swale between the proposed housing and rear gardens of dwellings on Nelson Avenue. Given topographical considerations, it is unlikely that this could be relocated.
15. Policy ST 3 was prepared on the basis of now outdated housing figures. Whilst this may therefore indicate a need to develop sites outside the built up area boundaries, this does not in itself indicate that the site is a suitable location for the proposed development. Though the appellant further claims that were the appeal to be dismissed a site of greater landscape value would be developed in its place, I have been provided with no supporting evidence. I therefore attach little weight to this claim.
16. My findings above indicate that the development would cause significant harm to the character and appearance of the area. In these circumstances Policy DM 24 of the Local Plan, which seeks to protect and enhance non-designated

landscapes, requires harm to be weighed against social and economic benefits. This is something that I shall return to below.

(b) *Heritage*

17. The Abbey Church of St Mary and St Sexburga, and the associated Abbey Gatehouse are both Grade I listed buildings, and therefore designated heritage assets of the highest significance. Here the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the desirability of preserving the setting of listed buildings. Paragraph 199 of the Framework further makes clear that great weight should be given to the conservation of designated heritage assets, and that the more important the asset, the greater the weight should be.
18. The submissions of both parties are inconsistent in their consideration of the above matters. Though both the Council and the appellant identified 'less than substantial harm' within their assessments at application stage, at appeal the appellant's assessment shifted to 'no harm'. This was therefore the position the appellant took during the Hearing, and it was also presented as agreed within the Statement of Common Ground (SOCG).
19. The Council was however unable to provide a sound explanation for its position during the Hearing. Indeed, though its Conservation Officer had identified harm, and this was reported within the Council's Committee Report, the latter contained no explicit consideration of the balance required by paragraph 202 of the Framework. The report's finding that harm 'would not be of sufficient magnitude to sustain a heritage-related reason for refusal', consequently lacked proper foundation. It was also obviously inconsistent with the position then taken within the SOCG. The Vice Chair of the Council's Committee additionally stated at the Hearing that the Committee did not conclude that heritage harm would be outweighed. The minutes of the meeting however provide little further clarification of how the issue was addressed. Against this background, it remains my statutory duty to consider the matter in further detail.
20. Insofar as it is relevant to this appeal the special interest and significance of the listed buildings resides in their historic association as surviving fragments of Minster Abbey, their fabric and architecture, which is substantially medieval but includes Saxon material, the continuing role they play as landmarks, and the ongoing function of the church as a place of worship. As outlined above, the buildings lie at the historic core of the settlement, and within the context of their ridge top location, provide a key source of local identity.
21. Set within the context of the surrounding landscape it is apparent that the Abbey was purposely founded in a highly prominent location. But though the prominence of the ridge remains appreciable from within the broader landscape, appreciation of the landmark quality and historic context of the surviving Abbey buildings is much obscured by later development. I have already established above that the site provides a vestigial link between the historic core of Minster and the open landscape beyond. Whilst I have also established the value that this holds in relation to the broader character and appearance of the area, it additionally enables continued appreciation of the historic rural and landscape context of the Abbey. Given both limited intervening development and the open foreground, this is clearly perceived in views from within the site, in views from gardens towards the south, and is again directly experienced in use of footpath ZS8. The openness and

undeveloped character of the site therefore makes a positive contribution to the setting of the listed buildings, and this in turn makes a modest contribution to their significance.

22. I have again already considered the impact that the development would have in relation to the landscape. On that basis the development would clearly not preserve the positive role that the site plays in the setting of the listed buildings, or the contribution that this in turn makes to their significance. The adverse effects would be amplified by the fact that the role played by the site is not directly duplicated anywhere else within the setting of the listed buildings.
23. Designed, publicly accessible viewpoints towards the listed buildings could be provided within the layout of the development, and some views might continue to exist from the retained strip of open space which would remain abutting footpath ZS8. However, all such views would exist within a much-suburbanised context, consequently lacking the positive attributes and integrity of the current setting.
24. A dismissed appeal relating to the field adjoining the site to the east (the Elm Lane appeal) has been brought to my attention. In that case the Inspector found that a housing development on that site would not have 'an unduly harmful effect' in relation to the listed buildings. Whilst this was a somewhat ambiguous finding, the sites in any case occupy different positions relative to the listed buildings, the level of intervisibility differs, and the way in which the significance of the listed buildings is experienced through use of footpath ZS8 did not form part of the Inspector's assessment. The Inspector's findings within the Elm Lane appeal do not therefore alter my own assessment above.
25. I therefore find that the development would fail to preserve the positive contribution that the site makes to the settings of the listed buildings, in turn failing to conserve the positive contribution that this makes to their significance. The adverse effects would be modest, and the harm less than substantial. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.

(c) *Balance*

26. The development would provide a net increase of up to 63 market dwellings within a location well served by a range of facilities and services. This would help to meet a general need for additional housing, and, assuming its deliverability, would also help to address a minor shortfall in the Council's demonstrable 5-year supply of deliverable housing sites (5YHLS). This is acknowledged by the Council to lie at 4.83 years, and was not a position disputed at the Hearing, despite speculation that the figure should be lower. The development mix would however fail to fully reflect local needs as identified within the Strategic Housing Market Assessment, and this could not be remedied by condition. Moreover, though the development would additionally generate short and long term economic activity during the construction and occupation phases, such benefits would be unremarkable in context. The above being so I attach limited weight to the social and economic benefits of the scheme's provision of housing.
27. Insofar as benefits in relation to the landscape have been claimed, these clearly do not attract weight in favour of the scheme. This is because I have

established both that the scheme would cause significant harm to the landscape, and because this forms the basis of the heritage harm identified above. Further claims that the development would enhance biodiversity also fail to weigh in favour of the scheme. This is given that greater value could be derived from simple improvements in the way the existing site is managed.

28. Insofar as the development would provide accessible open space, this would be primarily required to service the needs of its occupants. Whilst improved pedestrian linkages across the site between Nelson Avenue and Scocles Road have also been identified, it is unlikely that these would be any more convenient for use by existing residents than current routes. Improvements to footpath ZS8 have also been noted, however, whilst it remains unclear what form these would take, formalisation of the path would simply amplify the adverse effects of suburbanisation identified above. As such, these considerations attract negligible weight at most.
29. I therefore find that the public benefits of the development would not outweigh the harm that it would cause. This provides a clear reason for refusing planning permission.
30. The same range of benefits are relevant in relation to the balance required by Policy DM 24 of the Local Plan as noted above. Here I am again satisfied that the social and economic benefits of the development would not outweigh the harm caused.
31. I am mindful of the fact that heritage was not identified as a contested matter prior to the Hearing. Nonetheless, given the background to the appeal, and in view of the fact that both parties had the opportunity to address the matter at the Hearing, I am satisfied that no prejudice arises from my findings.

Conclusion

32. For the reasons outlined above I conclude that the site would be an unsuitable location for the proposed development given the unacceptable harm it would cause to the character and appearance of the area, including by its failure to preserve the settings of Grade I listed buildings. The development would therefore conflict with Policies ST 3 and DM 24 of the Local Plan as set out above, Policy DM 14 of the Local Plan, which amongst other things seeks to secure development that reflects the positive characteristics and features of the site and locality, taking into account the desirability of sustaining and enhancing the significance of heritage assets; and Policy CP 4 of the Local Plan, which amongst other things seeks the retention and enhancement of features which contribute to local character and distinctiveness.

Other considerations

33. The scheme would conflict with the development plan taken as a whole. In the absence of a 5YHLS, the Framework however indicates that for the purposes of decision making the policies most important for determining the application are deemed 'out-of-date'. I have otherwise already established this in relation to Policy ST 3. Even so, I am satisfied that its concern with landscape protection is broadly consistent with similar considerations set out within the Framework, as are other policies with which I have identified conflict. When assessed against the Framework itself, my findings in relation to heritage in any case provide a

clear reason for refusing planning permission. Insofar as it has been referenced, the 'tilted balance' is not therefore applicable.

34. A Section 106 agreement has been provided which secures a wide range of financial contributions covering education, libraries, social care, waste, highways, recreation, healthcare and the mitigation of likely significant effects on the Swale Special Protection Area. Had I been minded to allow the appeal, and the conditions thus existed for me to grant planning permission, it would have been necessary for me to consider these matters in greater detail. However, as I am dismissing it for other reasons no further consideration is necessary.

Conclusion

35. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

David Allen	Allen and Allen Partnership
John Collins	DHA Planning
Thomas Copp	RPS
Daisy Noble	Counsel for the appellant, FTB

For the Council

William Allwood	Interim Major Team Lead
Stuart Watson	Principal Policy Planner

Interested parties

Any Booth	Borough and County Councillor
Stuart Brown	Local resident
Chris Clarke	Local resident
Julie Clarke	Local resident
Lee Jarmain	Local resident
Trish Hamilton	Parish Council
Elliot Jayes	Borough and Parish Councillor
Tom Nundy	Borough and Parish Councillor
Chester Partington	Local resident
Steve Silk	Local resident
Dolley White	Parish Councillor

Documents presented at the Hearing

Annotated photos illustrating landscape views

Final draft S106

Footpath map

Photos illustrating local parking

S106 correspondence from Kent County Council