



Appeal Decision

Site visit made on 15 August 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/V2255/W/22/3301524

Fairview, Lower Road, Tonge ME9 9BT

- 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 Mr & Mrs Attree against the decision of Swale Borough Council.
 - The application Ref 22/500680, dated 9 February 2022, was refused by notice dated 19 May 2022.
 - The development proposed is the erection of three x 4 bed detached dwellings with associated parking and amenity space; with new vehicular highway access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the site is a suitable location for housing, having particular regard to the accessibility of services and facilities;
 - the effect of the proposed development on the character and appearance of the countryside; and
 - the effect of the proposed development on highway safety.

Reasons

Appropriateness of location

3. The appeal site forms a parcel of land positioned adjacent to the established residential property known as Fairview. In that context the site cannot reasonably be described as 'isolated' within the terms of National Planning Policy Framework (the Framework) paragraph 80. Nevertheless, the appeal site undisputedly falls outside of any defined settlement boundaries and therefore within the open countryside.
4. The nearest settlement is Teynham, which provides some services including local shops, public houses and a community hall. Bapchild and Sittingbourne lie further afield, providing a greater number of services and facilities.
5. I accept that the distance between the appeal site and Teynham is similar to that of Fairview, at approximately 500m away from the site, although many of the services within the village would be further away than this. To reach services in Teynham, individuals would need to proceed along Lower Road by foot or bicycle, which is narrow, does not have a dedicated footway, substantial verge or street lighting. This would be particularly undesirable in winter

months, after dusk or during inclement weather conditions. I also acknowledge that there are public rights of way in the area, including next to the appeal site, which could in part be used to reach services and facilities. However, these routes are not sufficient to rely on, particularly as they are unlit and of an uneven terrain. Moreover, the nearest bus stop and railway station are located some distance away from the site, accessed along those same unsatisfactory routes.

6. Paragraph 105 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural locations. However, in this location, the occupants of the proposed dwellings would be highly reliant on the use of private vehicles to access most services and facilities due to a lack of satisfactory cycling and walking routes and a lack of public transport facilities within a reasonable distance of the site.
7. My attention is drawn to an approved barn conversion at nearby Frogmal Farm. However, I have only very limited information before me in this regard, including the site's planning history or context. Nevertheless, as an existing building, that site's context and circumstances are not directly comparable with those before me. Accordingly, I have considered this appeal on its own individual circumstances. Similarly, I noted during my site visit the existence of several recent housing developments and construction sites within the surrounding area. By reason of their location, these are not subject to the same site circumstances as the scheme before me, and have not led me to an alternative conclusion on this main issue.
8. For the above reasons, I conclude that the appeal site forms an inappropriate location for the development, contrary to the relevant provisions of Policies ST1, ST3, CP3, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan (LP, adopted 2017). These policies, when taken as a whole, seek to deliver sustainable development in appropriate places and to minimise the need to travel, as well as to facilitate sustainable transport. This is in a similar vein to the objectives of the Framework insofar as sustainable transport is concerned.

Character and appearance

9. Despite some scattered buildings, the area that immediately surrounds the appeal site is verdant and rural in character, made up of open fields and mature landscaping. The appeal site, predominantly formed of a mature orchard, is highly visible from Lower Road and contributes to this rural and verdant character. Lower Road itself retains the appearance of a rural lane, narrow and lined by mature hedgerows.
10. I accept that the appeal site is fairly self-contained, accessed from Lower Road and separated from surrounding fields by mature boundary landscaping. Nevertheless, and irrespective of the site's current association with Fairview, its features do not in my view give it a domestic or traditional garden character.
11. Although positioned to the rear of Fairview, the proposed development would be visible, at least in part, from Lower Road and from within the surrounding countryside. The scheme would introduce three domestic buildings in a clearly countryside location, eroding the rural character of the site and surrounding area. Even if landscaping were to be retained or enhanced on the site and some areas left over for garden space, the site's currently open appearance

would be lost to development, including the inevitable hard surfacing and paraphernalia typical of domestic properties. Moreover, landscaping cannot be relied upon in perpetuity to provide the same level of screening as at present. The proposed development would have a harmful urbanising effect on the countryside and on the rural lane character of Lower Road.

12. I note the appellant's reference to the site forming previously developed land. The Framework sets out, in its glossary, a definition of previously developed land. This includes land which is or was last occupied by a permanent structure, including the curtilage of the developed land. Even were I to accept that the site could reasonably be defined as previously developed land, the Framework is clear that it should not be assumed that the whole of the curtilage should be developed. Moreover, the relevant provisions of the development plan, including in respect of design, do not fall away in the case of previously developed land and must still be taken into consideration.
13. For the reasons above, I conclude that the proposed development would cause significant harm to the character and appearance of the countryside, contrary to the relevant provisions of LP Policies ST1, ST3, CP3, DM14, DM24, DM26 and DM29. These policies, in summary, seek to direct development towards existing settlements, protect the intrinsic character and beauty of the countryside and ensure that new development is of a high quality. This is in a similar vein to the objectives of the Framework insofar as good design and the protection of landscape is concerned.

Highway safety

14. Vehicular access to the proposed development would be provided off Lower Road, leading to a shared driveway serving the three new properties. Parking spaces are indicated in front of the dwellings.
15. The Council sets out concerns in respect of the ability for service vehicles to access and turn within the site. Although the appellant sets out that service vehicles could manoeuvre within the site, no clear evidence, such a swept path analysis, has been provided to allow me to conclude on this matter.
16. The Council also sets out concerns relating to visibility splays at the newly proposed site access. Such details do not form part of the appellant's submission. Lower Road is a narrow but relatively fast (60MPH) road with two-way traffic. High hedges exist on both sides near the proposed site entrance and the road curves slightly in this location, limiting visibility. There would undoubtedly be an increase in comings and goings in this part of Lower Road as a result of the proposed development. There is insufficient evidence before me to demonstrate that vehicles entering and exiting the proposed development could do so without harming highway safety.
17. Consequently, I conclude that there is insufficient evidence before me to demonstrate that the proposal would have an acceptable effect on highway safety, contrary to the relevant provisions of LP Policy DM6. This policy, in summary, seeks to ensure that development proposals avoid negative impacts on highway and pedestrian safety.

Other Matters

18. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. As such, and noting the Government's objective of

significantly boosting the supply of homes, the provisions of Framework paragraph 11.d are engaged. This sets out that where the policies which are most important for determining the application are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or (ii) 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.

19. Following assessment, there are no policies in the Framework relevant to the site which protect areas or assets of particular importance, and which provide a clear reason for refusal. As such, it is necessary to apply Framework paragraph 11.d(ii).
20. The proposed development would represent a contribution of three extra dwellings to housing supply in an area with an acknowledged lack of future provision. There, too, would be some other social and economic benefits of the proposed development, including in supporting employment during construction and the bringing about of trade to nearby services and facilities. However, these benefits would inevitably be limited given the scale and nature of the development proposed. Accordingly, and given the significant harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
21. The appellant has made reference to a future Teynham Area of Opportunity, which forms part of the emerging local plan. They set out that the appeal site would fall outside this area, and would become isolated within an area safeguarded for agriculture. However, I have no evidence before me of that emerging opportunity area or the status of the emerging policy more generally. In any event, it is not for me to review, or question, that emerging policy in the context of this scheme. Ultimately this matter has not led me to an alternative conclusion on the main issues.
22. I note the position of the site near to Grade II¹ and Grade II*² listed buildings. Frognaal Farmhouse forms a 16th Century, part timber framed, property. The barn is a large red brick building which originates from 1548 with 19th Century alterations. The significance of both buildings lies in their traditional form and historic value, best experienced from Lower Road.
23. There is no dispute between the Council and appellant that either the significance or setting of the listed buildings would be harmed by the proposed development. In exercising my duty to have special regard to the desirability of preserving that heritage asset, I have no reason to disagree with those findings. The listed buildings are perceived as a relatively discrete entities, separate and functionally and visually removed from the appeal site.
24. Although there would be some change to the relationship between the appeal site and the listed buildings through the site's redevelopment, the mitigating factors of the scheme, including the separation distance between the sites, intervening fields and mature landscaping, means that this change would be limited. For this reason, I find that the proposal would have a neutral effect on,

¹ List Entry Number: 1121138

² List Entry Number: 1069261

and would therefore preserve, the special historic interest and setting of the listed buildings. In the absence of any harm to these designated heritage assets, I conclude that the appeal proposal does not conflict with the development plan or the Framework's heritage policies in this regard.

25. I note the appellant's comments in respect of the scheme making an efficient use of the site, the standard of accommodation proposed, parking provision and the lack of alleged harm to neighbours' living conditions. Nevertheless, these matters are not in dispute between the Council and appellant and do not change my conclusion on the main issue.

Conclusion

26. For the reasons above and having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR