



Appeal Decision

Site visit made on 3 October 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/V2255/W/22/3307907

Land to the rear of Former Ebenezer Chapel, Halstow Lane, Upchurch ME9 7AA

- 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 Western Undercliff Ltd against the decision of Swale Borough Council.
 - The application Ref 22/501429/FULL, dated 17 March 2022, was refused by notice dated 7 June 2022.
 - The development proposed is the use of land for open storage/builder's yard including the re-siting of a lawful storage container, siting of a storage cabin and the erection of palisade fencing.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development in the banner heading above, and the main parties' descriptions of the site as enclosed by post and rail fencing, I observed at my site visit that a green coloured palisade fence was in situ and that its alignment appeared to broadly correspond to that shown on the proposed drawings. I also saw that a storage container, finished in a grey colour, was present on the appeal site in a position broadly equivalent to that shown on the proposed drawings. However, I cannot be sure that the fencing and storage container match the proposed drawings. For the avoidance of doubt, I have therefore determined the appeal based on the submitted drawings.
3. The Council refers to the site being located within the Upchurch & Lower Halstow Fruit Belt character area, as set out by the adopted Swale Landscape Character and Biodiversity Appraisal (2011). However, this appraisal is not before me in this appeal and therefore it has not influenced my assessment of the proposal, which is based upon the evidence before me and my experiences at the site visit.

Main Issues

4. The main issues are the effects of the proposed development on:
 - the character and appearance of the area,
 - the living conditions of nearby occupiers, with particular regard to noise and disturbance to the occupiers of Chapel House and the future occupiers of the former Ebenezer Chapel, and

- the public footpaths.

Reasons

Character and appearance

5. The appeal site is situated behind Chapel House and the former Ebenezer Chapel (the former Chapel) and is accessed via a stone surfaced track that also serves several nearby residential mobile homes. Together, these buildings and mobile homes form a small group in the countryside that are generally set within a framework of hedgerows and trees, and amongst open fields. Although there are hardstandings and brick walls to the front of several mobile homes, the space around the mobile homes, the existing trees and hedgerows, and the open fields beyond, combine to give the area a spacious and rural character and appearance.
6. Whilst generally well screened in views from the road by the existing buildings and planting, the appeal site is clearly visible from the access track, the public footpaths that cross the site, and from several nearby mobile homes. Were it not for the presence on the appeal site of the green palisade fence and storage container, the appeal site would otherwise be devoid of buildings and structures, and its open state would contribute positively to the character and appearance of the area. Even if the storage container was lawful as asserted, it covers a relatively small part of the site and does not alter this conclusion.
7. The proposed open storage/builder's yard use could potentially include outside storage of building materials, equipment, machinery, plant, and other paraphernalia intrinsic to that use. The precise visual effects of any combination of these elements are largely unknowable, but could include elements like stacked bricks, scaffolding, plant and machinery, and parked vehicles. The combination of these elements could also change over time. Whilst I recognise that the size of the site is relatively modest, the appearance of the proposed open storage/builder's yard would nonetheless represent a significant change to the appearance of the site. In views from the access track, public footpaths and nearby properties, the appearance of the proposed open storage/builder's yard would be visually intrusive and inharmonious with the character and appearance of the area.
8. Whilst the proposed palisade fence could be coloured green, its height and design, with spiked tops for security, would nonetheless have a harsh appearance and an industrial aesthetic. Although its permeable design would allow views through it, those views would likely be of the stored items associated with an open storage/builder's yard use, which I have identified would cause visual harm. The appellant asserts that a fence could be erected as a permitted development, however I have seen nothing to demonstrate that those rights would allow the erection of a fence of a similar or greater visual impact than the fence proposed in this appeal. As such, it is a matter of limited relevance to my considerations.
9. Together, the proposed fence and the industrial appearances of the proposed container and storage cabin, the latter with its external jacking legs, would emphasise the inharmonious appearance of the proposal in the context of the prevailing rural character and appearance of the area.

10. The evidence suggests the appeal site has been used for vehicle parking associated with the previous industrial use of the former Chapel for the storage and cutting of partitioning materials (described by the Council as carpentry), which was granted permission in the early 1980s. However, use of the former Chapel ceased several years ago, and the photographs submitted indicate a lesser degree of outside storage than that which would be likely to be associated with the proposed use. The past use of the site does not outweigh the identified harm or justify harmful development.
11. Taking all of the above into account, I conclude that the appeal proposal would harm the character and appearance of the area. As such, it would be contrary to Policies ST3, CP4, DM3 and DM14 of The Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) (the LP), insofar as they seek to ensure that development is of high quality design that is appropriate and sympathetic to its surroundings, and contributes to protecting and, where appropriate, enhancing the intrinsic value, tranquillity and beauty of the countryside.
12. The appeal site is not described as located within a designated landscape. Nonetheless, Paragraph 174.b) of the National Planning Policy Framework (the Framework), is clear that planning policies and decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside. The aforementioned policies are consistent with the Framework in these respects.

Living conditions

13. At my site visit I noted that there was relatively little background noise in the area, with the occasional and relatively infrequent passing car being the only notable noise source. Whilst my site visit was only a snapshot in time, I have no substantive evidence that the noise conditions I experienced were abnormal.
14. I have very little information regarding the previous planning permissions for commercial uses on the site. Even if I were to accept that the lawful use of the land is light industry and could operate without restriction, the evidence before me does not demonstrate that the appeal proposal could operate under a light industrial use planning permission. Furthermore, even if the appeal proposal was to generate fewer vehicle movements than previous uses, those vehicle movements would nonetheless pass close-by the side wall of the former Chapel, which now has permission for conversion to residential use.
15. A proposed floor plan of the former Chapel, showing 3 residential units, is contained within the appellant's Flood Risk Assessment. Although these units would be separated from the appeal site by the private parking area, the proposed open storage/builder's yard use would nonetheless be carried out within close proximity to the former Chapel, the dwelling at Chapel House, the public footpaths and the nearby mobile homes. The vehicles associated with the proposal would travel along the track near to the former Chapel's side wall, and the evidence indicates that windows which would serve the residential use of the former Chapel would face the appeal site.
16. The appeal was not supported by a technical noise assessment. However, to my mind the nature of the use would primarily involve the transport of materials, plant/machinery and equipment to and from the appeal site, and

their handling and loading/unloading in the open at the site, including by mechanical lifting equipment.

17. In the absence of evidence to the contrary, I would expect the proposal to involve relatively sharp and sudden noises as items are loaded/unloaded from vehicles, and impact with the handling equipment, the vehicle's loading area and/or other items on the appeal site. These noises would likely be accompanied by the noise of vehicle engines running and vehicles being manoeuvred around the appeal site and driven along the stone surfaced access track close to the former Chapel.
18. Given the nature of a builder's yard use involving construction projects off-site, the activities on the site are likely to be intermittent. However, they could occur at any time within the hours specified by the appellant and at multiple times during a day, including Saturdays when nearby occupiers may be more likely to be enjoying their properties. The pattern of the noise effects could therefore be somewhat random and unpredictable, adding to a sense of disturbance to nearby occupiers and the future occupiers of the former Chapel.
19. Planning conditions could control the hours of use and prevent the use of reversing beepers on vehicles. However, the evidence before me does not clearly demonstrate that planning conditions requiring non-audible forklift trucks, details of the site layout and a complaints process, and the setting of a noise limit would effectively control the noise effects that would be intrinsic to the proposed use. The evidence does not demonstrate that a noise limit would be achievable. A noise limit and/or restrictive operating hours could also nullify the benefit of a planning permission were it to be granted.
20. Although the former Chapel has yet to be converted to flats or occupied, it would not be acceptable to rely on prospective occupiers to satisfy themselves whether the noise effects of the open storage/builder's yard use would be harmful to their living conditions. The evidence does not demonstrate that the relocated storage container would form a more defensible boundary to Chapel House in respect of noise.
21. For these reasons, I conclude that the noise effects generated by the appeal proposal would harm the living conditions of the occupiers of Chapel House and the future occupiers of the former Chapel, contrary to Policies CP4 and DM14 of the LP, which, amongst other requirements, seek to ensure that development is appropriate to its surroundings and would cause no significant harm to amenity.

Public footpaths

22. The evidence before me, including an extract from the Definitive Map of Public Rights of Way, indicates that public footpaths extend through the appeal site. At my site visit I observed an upstanding concrete marker post bearing the inscription 'Public Footpath' as marking the route of one of the footpaths as it extends south eastwards across nearby fields.
23. I note the appellant's contention that the alignment of the proposed fencing would naturally divert the route of the public footpaths around the appeal site and that an alternative diversion route could be secured by the planning condition recommended by the County Council. However, the evidence

indicates that the alignment of the proposed fencing would have the effect of diverting users of the footpath to land not shown as in the appellant's control.

24. For these reasons, I have serious doubts over whether a condition securing diversion of the public footpaths and ensuring that an unobstructed route remains available for walkers, would be reasonable and enforceable. Had I been minded to allow the appeal, I would have raised this matter with the relevant parties to seek their views.
25. For these reasons, the appeal proposal would harm the usability of the Public Footpaths, contrary to Policy DM6 of the LP, insofar as it seeks to ensure that development proposals demonstrate that existing public rights of way are retained, or exceptionally diverted.

Other Matters

26. The appellant contends that sites for open storage/builder's yards are in short supply and only 1 other suitable site for rent was available within 5 miles of Sittingbourne. However, I have limited evidence of the appellant's search process. I acknowledge that the appeal proposal would make use of previously developed land (PDL) and support a prosperous rural economy, which are objectives of planning policies at national and local levels. However, even taking account of a potential lack of suitable sites for the proposed open storage/builder's yard use, I find that the reuse of PDL and the support provided to the rural economy would not outweigh the harms and policy conflicts that I have identified above.
27. I have very little evidence that the appeal site has been affected by a persistent problem of fly-tipping or is vulnerable to misuse that would harm the area. Therefore, such concerns do not outweigh the harm I have identified above. In any case, I am not persuaded that the appeal proposal would be the only means of dealing with such concerns.

Conclusion

28. For the reasons given above and having considered all matters raised, I conclude that the proposal conflicts with the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding and indicate a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

G Sylvester

INSPECTOR