



Appeal Decision

Site visit made on 16 October 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th December 2024

Appeal Ref: APP/V2255/W/24/3340696

Land adjacent 113 Chaffes Lane, Upchurch, Sittingbourne ME9 7BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by C&M Capital Ltd against the decision of Swale Borough Council.
 - The application Ref is 23/502056/OUT.
 - The development proposed is the erection of 5no. detached and 2no. semi-detached residential dwellings.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 22 November 2024.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 5no. detached and 2no. semi-detached residential dwellings at Land adjacent 113 Chaffes Lane, Upchurch, Sittingbourne ME9 7BB in accordance with the terms of the application, Ref 23/502056/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application is submitted in outline with matters of access and layout to be considered at this stage. I have dealt with the appeal on this basis treating any details of other matters shown on the plans as illustrative.
3. I have taken the description of development from the Council's decision notice and appellant's appeal form as this more accurately describes the development that is sought.

Main Issue

4. The main issue is whether the appeal site is an appropriate location for the proposed development having regard to local and national policies for the distribution of housing and the character and appearance of the area.

Reasons

5. The Council's spatial strategy seeks to focus development within the borough's main settlements, whilst allowing more limited growth in smaller rural centres and villages. This approach is designed, amongst other things, to ensure that development occurs close to existing services and facilities, which in turn reduces the need to travel and also protects the open countryside from inappropriate sporadic development.

6. The appeal site comprises an existing field adjacent to, but outside, the defined settlement boundary of Upchurch. The Local Plan recognises that villages such as Upchurch may have some services and facilities to meet some day-to-day needs but that travel to other centres for more major shopping, leisure and employment needs will occur. Nevertheless, it acknowledges that some windfall development within the built-up boundaries can help to improve the viability of existing services and deliver a more sustainable approach towards development and the use of private transport.
7. The site is sufficiently close to the facilities within the village to enable them to be accessed by most people without needing to use a private motor vehicle. The village can offer some facilities including a primary school, village shop and public house. The nearest bus stop is walkable to the site and these routes are served by footpaths with street lighting.
8. Future occupants would need to travel to larger centres for more major needs, and this would, in the vast majority of cases, be done by private car. However, this does not appear to conflict with how the Local Plan sees the role of Upchurch in meeting only some of the needs of residents. Furthermore, the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. It would therefore be unrealistic to expect occupiers of more rural sites to rely completely on walking, cycling or public transport journeys to access normal day-to-day services and facilities.
9. The proposed development would represent a continuation of the housing on the southern side of Chaffes Lane, up to its junction with Oak Lane. The proposed dwellings would be laid out to follow a similar building line to the existing houses, with their proposed number and spacing generally being reflective of the prevailing pattern of development.
10. The site would have a single vehicular point of access, to which there is no highway safety objection. The approach would minimise gaps within the front boundary of the site, enabling a more substantial landscaping scheme to be provided. By virtue of the parking areas then being to the rear of the dwellings, the buildings and structures would be contained closer to Chaffes Lane, thereby avoiding a sprawl of buildings further into the site. The boundary planting to the rear of the site could be sufficiently specified to reflect its edge of village location.
11. The proposed dwelling closest to the junction of Chaffes Lane and Oak Lane could, if considered necessary, be designed in such a way to address both roads and avoid a blank elevation at the entrance to the village. There is existing housing on the opposite side of Chaffes Lane such that the development would have a limited visual effect upon the wider area and would in effect round off the village in this location.
12. However, despite all of the above, the site is in planning policy terms within the open countryside and its development would be contrary to the Council's strategy of avoiding development of such sites. Therefore, the proposal would conflict with Policies ST3, ST5, DM14 and DM24 of the Swale Borough Local Plan 2017 insofar as they seek to ensure development is located within settlement confines and that the countryside is protected from inappropriate development.

13. It would also conflict with the Framework insofar as it supports the plan led system for the provision of development and seeks to control development in the open countryside.

Other Matters

14. The site is within the zone of influence of the Medway Estuary and Marshes Special Protection Area (SPA) which provide wetland and important habitat that is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). These areas are easily disturbed by recreational activity from people and their pets and there is a reasonable likelihood that they would be accessed for recreational purposes by future occupiers of the development. Whilst the effects of the development alone would be limited, additional recreational visitors to the protected area would be likely to have significant effects when considered in combination with other proposals.
15. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. Natural England concurs with this approach.
16. Such payments would normally be secured by means of a planning obligation. However, the money has already been paid directly to the Council by the appellant. A direct payment may not always provide certainty that the intended mitigation will take place. However, the Council is a responsible public body given specific powers and competencies and as part of the North Kent Environmental Planning Group is committed to mitigating disturbance to birds, caused by recreational visits to the north Kent coast. Furthermore, given that how the money should be spent has clearly been documented in the Officer Report, I am satisfied that there is sufficient certainty, and that the mitigation would be effective. As a result, following an appropriate assessment, the proposal would not adversely affect the integrity of the SPA.
17. I have noted the concerns of interested parties that some services and facilities in the area are already under pressure. However, the Council raises no such concerns and I see no reason to disagree.
18. The scheme would retain and improve a historical access to the field to the rear of the site. From my site visit it was evident that the access has not been used for some time. However, there is no substantive evidence before me to indicate that the rights to the access have in some way been extinguished or that there are highway safety reasons as to why it should not be retained or improved as part of this proposal.
19. It was suggested by interested parties that this is the first phase in a larger plan to redevelop the area. However, I must have regard to the scheme before me and consider its planning merits in the light of the prevailing planning policies. I am unable to take into account conjecture or speculation about possible future development.

Planning Balance

20. As part of this appeal the Council has confirmed that it has a housing land supply of 4.1 years. As such, the spatial strategy is not achieving the level of

housing growth expected by national policy, and Paragraph 11(d)(ii) of the Framework is therefore engaged.

21. The Framework's policies seek to boost the supply of housing from a variety of sources, including windfall sites. The Framework acknowledges that small-scale developments can make an important contribution to meeting housing requirements and be built out quickly.
22. The scheme would deliver 7 new houses on the edge of Upchurch. In the context of the current under provision of housing this would be an important contribution. Future residents would be able to access the village and contribute to the local economy and to the vitality of the community. In the shorter term, the proposed development would also bring associated economic benefits such as construction expenditure and jobs. There would be some social benefits from the additional housing. When considered collectively, the above represent significant benefits of the proposal.
23. Overall, the limited adverse impacts associated with the conflict with the development plan due to the site's location outside the planning boundaries do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development, and this indicates that permission should be granted.

Conditions

24. I have had regard to the conditions set out in the Committee Report and relevant guidance on the imposition of conditions. Both parties have had the opportunity to comment on the conditions. I have obtained the appellant's written agreement where it has been necessary to impose pre-commencement conditions.
25. In addition to the standard conditions governing the reserved matters and time limits, a condition specifying the approved plans is required in the interests of certainty.
26. Given the location of the site and the adjoining road network and dwellings, a Construction Method Statement is reasonably required prior to the commencement of development.
27. To protect the living conditions of nearby residents, it is necessary for there to be the submission of a Construction Management Plan prior to commencement of development. For similar reasons, conditions governing the hours of working and the use of pile driving are also reasonable.
28. To minimise the impact of the development on the character and appearance of the area, it is reasonable to remove permitted development rights for the construction of new accesses onto the highway and means of enclosure along the site frontages.
29. To ensure the development functions as intended, conditions governing the following matters are necessary: energy and water efficiency measures, reinstatement of the site access and footpath adjacent to Chaffes Lane, provision of visibility splays, cycle parking, bin storage, retention of vehicle parking areas, surfacing of the site access and landscape management.

30. With regard to ecology and habitat, protection measures covering wildlife, the provision of a Biodiversity Enhancement and Management Plan and a lighting plan are necessary given the site's character. I note that the scheme was initially assessed against the biodiversity net gain metric 4.0. At that stage there was no statutory requirement to use the metric. Despite some pre-application site clearance, I am satisfied that the habitat creation recommendations in the Biodiversity Net Gain Assessment: Feasibility Stage report would be reasonably related and proportionate to the development.
31. Given that electric vehicle charging points now fall under building regulations, and in the absence of evidence to the contrary, there is not a planning reason to secure such matters through this decision.

Conclusion

32. The proposal would not accord with the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal is allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping and scale, "the reserved matters" shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans and documents listed below:

Site Plan & Location Plan	- 1542 P001B
Site Layout	- 1542 P002E
Arbtech Ecological Impact Assessment	- 12 October 2023
Native Ecology Biodiversity Net Gain Assessment Feasibility Stage	- 14 November 2023
- 5) No development shall take place until details of protection measures for hedgerows and trees to be retained within the proposed development have been submitted to and approved in writing by the Local Planning Authority. Such details shall be in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction'. The approved details shall be installed on site before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those area shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
- 6) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - (a) Routing of construction and delivery vehicles to / from the site
 - (b) Parking and turning areas for construction and delivery vehicles and site personnel
 - (c) Timing of deliveries
 - (d) Provision of wheel washing facilities
 - (e) Temporary traffic management / signage
- 7) Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Institute of Air Quality Management (IAQM) Guidance on the Assessment of Dust from

Demolition & Construction. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

- 8) The dwellings hereby permitted shall be constructed to achieve at least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended)

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 9) Throughout the site clearance and construction period, precautionary mitigation for reptiles, amphibians, bats, badger, breeding birds and hedgehog shall be implemented strictly in accordance with the Ecological Impact Assessment by Arbtech dated October 2023.
- 10) No development above ground level shall take place until a Biodiversity Enhancement and Management Plan illustrating details of biodiversity enhancement measures for the site and details of ongoing management has been submitted to and approved in writing by the Local Planning Authority. Enhancement measures will include those recommended in Table 4 of the Biodiversity Net Gain Assessment: Feasibility Stage by Native Ecology dated November 2023. The Plan will include a habitat management schedule and details of persons responsible to evidence how enhancement will be achieved and maintained in the long term. The approved measures will be implemented prior to first occupation of the development and retained thereafter.
- 11) No demolition or construction activities shall take place, other than between 0800 to 1800 hours (Monday to Friday) and 0800 to 1300 hours (Saturday) with no working activities on Sunday, Public or Bank Holiday.
- 12) Notwithstanding condition 11, any impact pile driving in connection with the construction of the development hereby permitted shall only take place on the site between Monday to Friday 0900 - 1700 hours, but not on any Saturday, Sunday, Public or Bank Holiday, unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 13) No dwelling hereby permitted shall be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with for that dwelling.
- 14) Prior to the occupation of any dwelling hereby permitted, a lighting plan for biodiversity shall be submitted to, and approved in writing by, the local planning authority. Lighting will be designed in accordance with the Bat Conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23'. The Plan will show the type and locations of proposed external lighting, as well as the expected vertical and horizontal light spill in lux levels, to demonstrate that areas to be lit will not adversely impact biodiversity. All lighting will be installed in accordance with the specifications and locations set out in the Plan and will be retained thereafter.
- 15) Prior to the occupation of any dwelling hereby permitted, the site access and the footpath adjacent to Chaffes Lane shall be completed in accordance with approved plan 1542 P00E and made available for use. The access and

- footpath shall thereafter be retained for the life of the development hereby permitted.
- 16) Prior to the occupation of any dwelling hereby permitted, the visibility splays shown on the approved plan 1542 P00E shall be fully installed. The visibility splays shall be free of any obstruction exceeding 0.9m in height and shall be retained as such thereafter.
 - 17) No dwelling shall be occupied until space has been laid out within the site in accordance with approved plan 1542 P002E for bicycles to be stored and that space shall thereafter be kept available for the storage of bicycles.
 - 18) No dwelling shall be occupied until the refuse storage facilities as shown on the approved plans have been provided. They shall be retained for such purposes thereafter.
 - 19) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with approved plan 1542 P002E. Thereafter those spaces shall be retained for the parking of vehicles only.
 - 20) Prior to the occupation of any dwelling hereby permitted, details of the access surface material for the first 5 metres of the access from the edge of the highway, and drainage measures to prevent the discharge of surface water onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully installed and thereafter retained.
 - 21) Prior to the occupation of any dwelling hereby permitted, all approved hard and soft landscape works shall be fully implemented unless it is in accordance with a programme of implementation agreed in writing with the Local Planning Authority.
 - 22) Prior to the occupation of any dwelling hereby permitted, a landscape management and maintenance plan for the ongoing management and maintenance of all landscaped areas beyond individual plot boundaries as shown on the site layout plan, shall be submitted to and approved in writing by the local planning authority. The landscaped areas shall thereafter be managed and maintained in accordance with the approved details.
 - 23) Any of the trees or plants specified within the approved landscaping details which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Class B of Part 2 of Schedule 2 to the Order shall be undertaken.
 - 25) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.

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