



Appeal Decision

Site visit made on 28 June 2022

by **Martin Small BA(Hons) BPI DipCM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/V2255/W/21/3287464

Read's Orchard, Parsonage Chase, Minster-On-Sea, ME12 3JX

- 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 Mrs J Read, Mrs J Newman, Mr J Read & Mr J H Read against the decision of Swale Borough Council.
 - The application Ref 20/506107/OUT, dated 21 December 2020, was refused by notice dated 21 October 2021.
 - The development proposed is formation of access road, erection of nine dwellings with associated parking, landscaping and provision of Orchard.
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Decision

1. The appeal is allowed and outline planning permission is granted for the formation of access road, erection of nine dwellings with associated parking, landscaping and provision of Orchard at Read's Orchard, Parsonage Chase, Minster-On-Sea, ME12 3JX in accordance with the details of the application Ref 20/506107/OUT, dated 21 December 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was submitted in outline form with all matters of detail except access to Parsonage Chase reserved for subsequent approval. The application was accompanied by a sketch layout plan showing how 9 dwellings could be accommodated on the site and sketch floor plans. These are titled "Indicative" and I have considered them as such in my determination.
3. The appeal site lies within 6km of the Swale Special Protection Area (SPA) and Ramsar site. The Council's third reason for refusal related to the absence of a legal agreement to secure mitigation against harm to the integrity of this designated habitat site. However, during the course of the appeal, the appellants submitted a unilateral undertaking (UU) with an obligation for a contribution towards mitigation measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). The Council has raised concerns with the UU. I return to this matter below.

Main Issues

4. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) whether the proposed development would preserve the setting of the Grade II listed Parsonage Farm; and
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- iii) the effect of the proposed development on the integrity of the Swale Special Protection Area.

Reasons

Background

5. The appeal site forms part of a much larger area of land allocated for a minimum of 620 dwellings under Policy A12 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 (the Local Plan). Clause 1 c. of the policy requires the retention and positive management of the site, an overgrown traditional orchard, as part of any proposals for the development of the allocated site. However, planning permission has been granted on appeal for up to 700 houses on a site including a large part of the allocated site but excluding the current appeal site (APP/V2255/W/19/3238171). I have no evidence that this scheme will not be implemented.

Character and appearance

6. Parsonage Chase is an established residential street primarily comprising detached bungalows, chalet bungalows and 2-storey dwellings of various ages and styles facing the road with hardstandings and gardens / planting to the frontages. The southern end is a cul-de-sac and more recent but maintains the mixture of dwelling styles and frontages with the limited gaps between the dwellings resulting in a generally enclosed, inward-looking feel.
7. The appeal site is located behind the properties on the south side of this newer southern section with the access to the site via a gap between Nos 79 and 81 Parsonage Chase across an existing grass verge. Access to the eastern edge of the site is possible through a gap between Nos 71 and 73 Parsonage Chase, which is indicated in the approved appeal scheme as a pedestrian and cycle link between the housing / open space to the south and Parsonage Chase. The proposed development would therefore represent backland development but other than through the proposed access, similar to that to a parking area on the north side of this end of Parsonage Chase, it would not be prominent in the street scene nor harmful to the character of the road.
8. The current proposal follows the previous refusal of outline planning permission for 15 bungalows and seeks to address the Council's previous concerns. Layout is a reserved matter and I see no reason why it would not be possible to provide a high quality design that would relate satisfactorily to the existing dwellings on Parsonage Chase. The Site Parameters Plan for the development approved on appeal shows areas of housing to the south and west of the appeal site before me, separated by areas of open green space and retained planting. Again, there is no evidence that it would not be possible for these two appeal schemes to relate satisfactorily to each other.
9. The gaps between Nos 71 and 73 and Nos 79 and 81 afford views of the site but these are otherwise limited to glimpses between the dwellings on the south side of the road. The vegetation on the site therefore makes a limited contribution to the character and appearance of Parsonage Chase. Moreover, the Arboricultural Survey (PJC Consultancy October 2019) found that those trees on the site that could be surveyed were of low quality and value. The indicative layout demonstrates that there would be adequate room to retain or

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provide planting as part of a detailed landscaping scheme to be submitted and approved as a reserved matter.

10. I therefore conclude that the proposed development would not be unduly harmful to the character and appearance of Parsonage Chase or wider area. Accordingly, in this respect, it would comply with Policies ST 6, CP 4 and DM 14 of the Local Plan which, in combination and amongst other things, require high quality design appropriate to the location and surroundings, including landscape character.

Parsonage Farm

11. The appeal site is within the setting of the Grade II listed Parsonage Farm. In determining this appeal I must have special regard to the desirability of preserving the setting of this listed building. The National Planning Policy Framework (the Framework) sets out that great weight should be given to the conservation of a designated heritage asset and that any harm to the significance of such an asset should require clear and convincing justification. The Framework recognises that development within the setting of heritage assets can affect their significance.
12. The National Heritage List for England entry for Parsonage Farm describes it as comprising two parallel ranges dating from the early-mid 17th century and 18th century, although the Heritage Assessment submitted with the application (Heritage Collective October 2020) suggests that it may have earlier origins. The property's significance therefore lies in its architectural and historic interest. It is set back from Parsonage Chase behind the newer properties at the southern end of the road. There are views of Parsonage Farm from the eastern edge of the appeal site and of the site from the listed building. The site is therefore within the setting of this heritage asset, although there is currently little opportunity to appreciate its significance from the appeal site.
13. The original agricultural setting of Parsonage Farm has been eroded significantly in relatively recent years with the encroachment of the development at the southern end of Parsonage Chase to the north and Leigh Court to the east. The Site Parameters Plan for the development approved on appeal indicates the current agricultural land to the south immediately beyond the property's extensive garden as open space with housing beyond and further housing to the west of the appeal site.
14. These developments have been deemed acceptable and have substantially changed and will change the setting of this designated heritage asset. Nevertheless, Historic England's *Good Practice Advice in Planning Note 3: The Setting of Heritage Assets* explains that consideration still needs to be given to whether additional change would further detract from or enhance the significance of the asset.
15. Historic maps indicate that the appeal site originally formed part of the open agricultural setting of the farmhouse and it first appears as an orchard on the Ordnance Survey map of 1933. It is not certain that there has been a connection between the farmhouse and the orchard for many years. The main aspect of the listed building is to the east, away from the appeal site, and the orchard is shown as physically separate from the curtilage of Parsonage Farm on these maps.

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16. The farmhouse is currently separated from the site by its curtilage and boundary planting and the perception of separation would be increased by the pedestrian and cycle link in the approved appeal scheme. The contribution of the appeal site to the significance of the listed building is therefore limited, and any link to the original agricultural setting of the farmhouse would be lost with the housing approved on appeal to the west.
17. The indicative layout demonstrates that there would be sufficient space on the site to accommodate the 9 dwellings proposed and parking / turning areas in an appropriate layout and planting, including a new orchard, between the new development and Parsonage Farm. Such planting would provide a further buffer between the proposed development and the listed building.
18. Furthermore, whilst clause e. of Policy A12 requires development on the allocated site to conserve the setting of Parsonage Farm, there is no indication in the policy or its supporting text that the retention and positive management of the appeal site is considered important in conserving that setting. The approved appeal scheme does not rely on the site remaining an orchard to preserve that setting.
19. There may be opportunities to retain the view of the farmhouse from the pedestrian and cycle link but that it is outside the scope of the appeal before me. Nevertheless, the proposed development would not significantly affect the ability to appreciate the special interest of the building.
20. I therefore conclude that the proposed development would not harm the setting of Parsonage Farm, resulting in a neutral effect on the significance of the listed building, and that the setting would thereby be preserved. Accordingly, in this respect, the proposals would comply with Policies CP 8, ST 6 and DM 32 of the Local Plan, which in combination and amongst other things, seek to protect heritage assets. The development would also generally comply with the heritage policies of the Framework.

The Swale SPA

21. The SPA is designated for its prevalence of rare and vulnerable birds and for regularly occurring migratory species which together comprise its qualifying features. The conservation objectives of the SPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend upon them. The Bird Wise North Kent Mitigation Strategy (the Strategy) notes that increased recreational disturbance associated with a net increase in residential accommodation within 6km is adversely affecting the integrity of the SPA.
22. The proposed development would result in 9 additional dwellings within 6km of the SPA. It would therefore be likely to have a significant effect on the integrity of the designated habitats site. In such circumstances, the Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an appropriate assessment (AA) before giving any permission. In doing so, I can have regard to mitigation measures.
23. Both the SAMMS and the Strategy set out a range of mitigation measures including a dog project, wardening / visitor engagement and site specific access and infrastructure enhancements. The Strategy has been endorsed by Natural England (NE) and I am satisfied therefore that the measures within the

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Strategy provide adequate mitigation for the recreational effects associated with the occupancy of new residential development. The measures are funded through contributions from developers within 6km of the SPA in accordance with Policies ST 6, CP 7 and DM 28 of the Local Plan.

24. The appellants have submitted a planning obligation to pay the requisite contribution towards these mitigation measures. The Council has commented that the obligation should require the contribution to be paid prior to commencement of development rather than the first implementation of the planning permission, which is not defined in the UU.
25. However, the ordinary meaning of 'first implementation' is clear; the undertaking of a material operation in accordance with Section 56 of the Town and Country Planning Act 1990 as set out in the definition of 'commencement of development' in the UU. I am satisfied that this is an appropriate trigger point for the payment of the contribution. The Council also requests the interest rate on overdue payments to be 4% above the base rate not 1% as stipulated in the UU but has not provided any justification for the higher figure.
26. I consider therefore that this obligation meets the tests of Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework. In its comments on the application, NE confirmed that if this contribution was secured, it would be satisfied that the potential recreational impacts of the scheme would be adequately mitigated.
27. I am therefore satisfied that the proposed development would not have an adverse effect on the integrity of the SPA. Accordingly, in this respect, the proposals would comply with Policies ST 1, DM 14 and DM 28 of the Local Plan which, in combination and amongst other things, promote sustainable development and seek to conserve and enhance the natural environment.

Other Matters

Biodiversity

28. The proposals attracted objections from local residents in which a common theme was the effect on wildlife. Traditional orchards are a Biodiversity Action Plan habitat that should be conserved under Section 41 (England) of the *Natural Environment and Rural Communities Act 2006*. This is noted in paragraph 6.5.38 of the supporting text to Policy A12 of the Local Plan and appears to be the purpose of clause 1 c. The proposed development would not retain all the site and is therefore in limited conflict with the clause.
29. A single Great Crested Newt (GCN) was surveyed at a pond in the south-east corner of the site and a good population of GCN has been recorded within a pond 60m from the site. Reptiles are known to be present in the adjacent habitats. However, the amended Preliminary Ecology Appraisal Report (Corylus Ecology April 2021) (the PEAR) submitted during the course of the application sets out detailed mitigation strategies for these species. The PEAR also recommends other mitigation measures for the effect on other wildlife.
30. The Biodiversity Net Gain Report (Corylus Ecology April 2021) submitted during the course of the application indicates that the proposed development would result in biodiversity net gain of 0.14% for habitat units based on Biodiversity Metric 2.0. At the time of writing this decision there is no requirement in national or adopted local policy for a higher percentage increase.

31. I am satisfied therefore that, subject to the securing of biodiversity enhancement measures by condition, the proposed development would enhance biodiversity on the site, albeit to a very limited extent. I therefore give limited weight to the conflict with Policy A12. I note that the Council considers that the requirement of clause 1 c. is no longer critical given the allowing on appeal of the development of the majority of the allocated site.

Living conditions

32. The occupiers of Nos 79 and 85 Parsonage Chase objected to the proposals on the grounds, amongst others, of a loss of privacy and peace. As part of my site visit, I assessed the site from the rear gardens of these properties. The proposed access to the site would run between these properties but the vehicle movements associated with 9 dwellings would be unlikely to be excessive or cause undue disturbance from noise or headlights.
33. The indicative layout plan confirms that sufficient room on the appeal site exists to provide a good degree of separation from the rear elevations of the properties on the south side of Parsonage Chase and boundary landscaping. There is also scope for the layout and orientation of the proposed dwellings to reduce the potential for overlooking. I am therefore satisfied that reasonable levels of privacy could be achieved for existing occupiers of neighbouring properties.
34. Disturbance during construction would be inevitable but would be temporary and could be minimised through a Construction Method Statement and a restriction on hours of working, both of which could be secured through conditions. I therefore find that the proposed development would not be unduly harmful to the living conditions of the occupiers of existing dwellings on Parsonage Chase.

Other considerations

35. I am satisfied that concerns raised by local residents over parking and the access can be addressed by a condition and when the layout is submitted for approval. I have no evidence that local facilities and services would not be able to cope with the occupiers of an additional 9 houses or that drainage is inadequate. None of the other concerns raised, including property value and loss of views, have been determinative in this appeal.
36. I note that Kent County Council has requested infrastructure contributions but that Policy CP 6 of the Local Plan states that such contributions will only be sought on developments of 10 or more dwellings. There is therefore no policy basis for requiring these contributions and I do not find them necessary to make the development acceptable.

Planning Balance

37. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites. The shortfall is described by the appellants as 'significant' although I have no indication of its actual extent. Consequently, paragraph 11 d) of the Framework is engaged and the most important policies of the development plan for determining this application are deemed to be out of date.

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38. I have found above that the proposed development would preserve the setting of Parsonage Farm and would not harm the integrity of the Swale Special Protection Area. Accordingly, planning permission should be granted unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
39. Although the contribution of 9 dwellings would make only a modest contribution to the housing supply of the borough, their provision would accord with the Government's aim of significantly boosting the supply of homes as set out in the Framework. The Framework also supports the development of small-medium and windfall sites.
40. The Framework also requires development proposals to respect local character, to conserve and enhance heritage assets and biodiversity and to provide a high standard of amenity for existing and future users. The proposed development would satisfy each of these requirements. I therefore find that there would be no adverse effects of granting permission that would significantly and demonstrably outweigh the benefits. Consequently the proposals would represent sustainable development for which paragraph 11 of the Framework indicates a presumption in favour and planning permission should be granted.

Conditions

41. The Council has suggested a list of conditions in the event that the appeal is allowed in addition to the standard commencement conditions. I have considered these against paragraph 56 of the Framework and amended and reordered them slightly for consistency, precision, concision and logicity.
42. I have not imposed a condition regarding contaminated land as requested by the Council's Environmental Health adviser as I do not find this necessary given that the historic and current use of the site suggests that contamination is unlikely. However, I have added a condition regarding archaeological investigation as requested by Kent County Council which I consider necessary to ensure that features of archaeological interest are properly examined and recorded. I have also added a plans condition to provide certainty and a condition regarding mitigation measures for protected species during construction in the interests of biodiversity.
43. In addition, I have imposed conditions regarding the proposed access and parking provision / vehicle turning facilities in the interests of highway safety and, for cycles, to encourage travel other than by the private car. In addition to landscaping, appearance, layout and scale are also matters reserved for future approval and I have amended condition 1 accordingly. The appellants have confirmed their agreement to these additional and amended conditions (email dated 9 August 2022).
44. A Construction Method Statement (CMS) and a restriction on hours of working are necessary to protect the living conditions of the occupiers of nearby dwellings. Both the archaeological investigation and the CMS need to be pre-commencement conditions to ensure that the development is undertaken in a satisfactory manner.
45. The approval of materials, landscaping details and biodiversity enhancement measures are necessary in the interests of character and appearance and / or

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biodiversity. Sustainable design measures and electric vehicle charging points are necessary in the interests of addressing climate change, promoting energy efficiency, water conservation and air quality. Details of refuse and recycling proposals are required to ensure the satisfactory provision of these facilities.

Conclusion

46. Notwithstanding the limited conflict with Policy A12, for the reasons given above, the proposed development would comply with the development plan taken as a whole. There are no considerations, including the representations from interested parties, that indicate that a decision should be made other than in accordance with the development plan.
47. For this reason, the appeal is allowed.

Martin Small

INSPECTOR

Schedule of Conditions

1. Details of appearance, landscaping, layout and scale (hereinafter called 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 the approval of reserved matters referred to in Condition 1 shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development to which this permission relates shall take place not later than 2 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 Site Location Plan.
5. No development shall take place until the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority has been secured.
6. No development shall take place, including any works of site clearance, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The Statement shall provide for matters including:

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- i. details of the parking and turning areas for construction and delivery vehicles and site personnel, including loading and unloading of plant and materials;
- ii. storage of plant and materials used in constructing the development;
- iii. measures to control the emission of dust and dirt during construction;
- iv. wheel washing facilities; and
- v. a scheme for recycling/disposing of waste arising from construction works.

The approved Statement shall be adhered to throughout the construction period for the development.

7. No site clearance or construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: - Monday to Friday 0730 - 1800 hours, Saturdays 0800 - 1300 hours, unless in association with an emergency or with the prior written approval of the local planning authority.
8. All works of site clearance and construction shall be in accordance with the detailed mitigation strategies for protected species contained within the Amended Preliminary Ecology Appraisal Report (Corylus Ecology April 2021) unless otherwise agreed, in writing, with the local planning authority.
9. No development beyond the construction of foundations shall take place until details of the external finishing materials, including samples or sample panels, to be used on the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be constructed and retained for the lifetime of the development in full accordance with the approved details.
10. No development beyond the construction of foundations shall take place until details setting out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency measures have been submitted to the local planning authority and approved in writing. The approved details shall be incorporated into the development prior to the first occupation of any dwelling hereby permitted.
11. The dwellings hereby permitted shall be constructed and tested 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 beyond the construction of foundations shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in

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writing by the local planning authority. The development shall be carried out in accordance with the approved details.

12. The development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings hereby permitted shall not be first occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).
13. No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNO_x/kWh. No dwellings hereby permitted shall be first occupied until details of the boilers to be installed have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.
14. Electric vehicle charging points (EVCP) shall be installed in full prior to the first occupation of the dwellings hereby permitted and they shall be retained thereafter.
15. Details of the proposed access, including the use of a bound surface for the first 5 metres of the access from the edge of the highway, measures to prevent the discharge of surface water onto the highway and pedestrian visibility splays with no obstructions over 0.9 metres above carriageway level within the splays, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the dwellings hereby permitted. The development shall be carried out in accordance with such details and thereafter retained.
16. The details submitted for the approval of reserved matters shall include details of vehicle and cycle parking spaces and/or garages for each dwelling in accordance with Swale Borough Parking Standards and vehicle turning facilities. The spaces and turning facilities shall be provided prior to the first occupation of the dwellings hereby permitted and thereafter retained.
17. The details submitted for landscaping pursuant to condition 1 shall include an orchard and provisions for its management, an arboricultural impact assessment and tree protection measures for any trees to be retained. All hard and soft landscape works shall be carried out in accordance with the approved details submitted pursuant to condition 1. The works shall be carried out prior to the first occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. Any trees or shrubs that are removed, die, are severely damaged or become seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.

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18. Prior to the first occupation of the dwellings hereby permitted, a scheme of biodiversity enhancements including to the existing pond on the site shall be submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall be completed in accordance with the approved details prior to the first occupation of the dwellings hereby permitted and retained thereafter.
19. The details submitted pursuant to condition 1 shall include further elevational details of the storage proposals for refuse and recycling purposes. Such facilities shall be provided prior to first occupation of the dwellings hereby permitted and retained for such use thereafter.

End of Schedule