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## Appeal Decision

Site visit made on 19 January 2024

**by G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 11<sup>th</sup> March 2024**

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**Appeal Ref: APP/V2255/W/23/3319145**

**Bounds Farm, Land to rear of 142-146, The Street, Boughton under Blean, Faversham ME13 9AP**

- 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 N Tillings (NST Kent Ltd) against the decision of Swale Borough Council.
  - The application Ref 22/504144/FULL, dated 23 August 2022, was refused by notice dated 13 October 2022.
  - The development proposed is the conversion of an agricultural unit into a 1 x 3 bedroom dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Boughton and Dunkirk Neighbourhood Plan 2022-2031 'Made version: February 2023' ("the NP") is now part of the development plan. The main parties have provided comments on the relevance of the NP to this appeal. Therefore, I am satisfied that they would not be unfairly prejudiced by me taking account of the NP in determining this appeal.
3. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. There are no material changes relevant to the substance of this appeal and therefore I am satisfied that no one will be prejudiced by the changes to the national policy context. All references to the Framework in this decision relate to the revised document.

### Main Issues

4. The Officer Report states that the appeal site lies within the 6-kilometre (km) zone of influence of The Swale Special Protection Area ("the SPA"), which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the regulations").
5. The appeal proposal has the potential to adversely affect the nature conservation interests of the SPA and I, as competent authority as set out in the regulations, must consider this as part of my decision. Therefore, I have included this amongst my main issues, which are:
  - Whether the proposed development would affect the integrity of the SPA as a protected European site of nature conservation importance.

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- The effect of the proposal on employment provision and community facilities within the area.
- The effect on the character and appearance of the area, and whether it would preserve or enhance the character or appearance of the Boughton Street Conservation Area (“the CA”) and whether it would preserve the settings of the grade II listed buildings at Numbers 128 and 130, 132 and 134, and 142 The Street.
- Whether the proposed dwelling would be in an appropriate location for new housing with particular regard to the Council’s settlement strategy and the accessibility of services and facilities.
- Whether parking provision would be adequate.

### Reasons

*Protected European site of nature conservation importance.*

6. The Bird Wise North Kent Mitigation Strategy, January 2018 (“the BWNKMS”), identifies the SPA as one of three SPAs on this part of the Kent coast. These consist of mudflats, reedbeds, saltmarsh and grazing marsh, which are rich and diverse ecosystems that provide food and high tide roosts for waders and wildfowl. The SPA is internationally significant for supporting large numbers of birds - wildfowl, waders and terns - that overwinter or breed there.
7. The main threat to the nature conservation interests of the SPA, and thus its integrity is the disturbance of birds by the presence of people, particularly recreational walkers and when dogs are walked off the lead. Disturbance to the bird species reduces their ability to feed and rest, decreasing energy levels and harming their chances of migrating and surviving. In the specific case of terns, disturbance reduces the incubation period, lowering the probability of successful breeding. Due to disturbance, the number of birds using the three SPAs has declined markedly.
8. The evidence indicates that development within 6km of the access points to the SPA is particularly likely to increase the number of visitors using it for recreation. Future residents of the proposed development therefore have the potential to contribute to the negative effects of recreational disturbance to the qualifying bird species in the SPA, and the resultant decline in their numbers, thus threatening the SPA’s integrity.
9. The appeal proposal is therefore likely to have a significant adverse effect on the integrity of the SPA, both in isolation and cumulatively with other housing development. As the competent authority, I must undertake an Appropriate Assessment (AA) and consider whether measures could be put in place to avoid or mitigate its likely adverse effect on the SPA, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPA.
10. To mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within the SPA, the BWNKMS requires new residential development to make payment of a tariff-based financial contribution towards the delivery of a Strategic Access Management and Monitoring Strategy (“the SAMMS”).

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11. The measures in the SAMMS that will be implemented to mitigate the potential in-combination effects of new housing development in the vicinity of the SPAs, include raising awareness of the issue of disturbance to the qualifying bird species through a range of methods, including a website, printed materials, and face-to-face contact through the employment of a seasonal Ranger. Access and infrastructure enhancements are also proposed, including improved signage and interpretation boards, screening of sensitive areas, footpath diversions, reviewing parking facilities and potentially dedicated dog exercise areas. The success of the SAMMS will be monitored and deemed successful if the level of bird disturbance is not increased.
12. There is no mechanism before me to secure payment of the requisite financial contribution towards mitigating the recreational impacts of the proposed development on the SPA. The Planning Practice Guidance<sup>1</sup>, states that in exceptional circumstances a negatively worded condition could be imposed requiring a planning obligation to be entered into before certain development can commence. However, the evidence before me does not demonstrate any exceptional circumstances that would justify imposing such a planning condition.
13. Consequently, I conclude through my AA that the appeal proposal would have a significant adverse effect on the integrity of the SPA. No alternative solutions, imperative reasons of overriding public interest and no other compensatory measures have been put forward. As a result, the proposal is contrary to Policy CP7 of the Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) (“the LP”). This Policy states that residential development within 6km of an access point to any of the North Kent Marshes, must contribute to its SAMMS and ensure there is no adverse effect on the integrity of a SPA.

*Employment provision and community facilities*

14. LP Policy DM3 states that planning permission will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The Policy therefore gives priority to these uses over residential use in the first instance, and the Policy’s supporting text states that evidence of demand should include the results of efforts made to market the building as available for employment use, normally with a planning permission. There is no evidence to suggest the appeal building has been marketed for the purposes in LP Policy DM3.
15. The appeal building is relatively modest in size and floor space. It shares a party wall with an existing dwelling, which is likely to preclude its reuse for purposes generating relatively high levels of noise and disturbance, and may be expected to narrow the range of suitable uses. However, the extant use of the appeal building would have generated a level of noise and disturbance commensurate with that use, and it establishes a baseline from which to assess the effects of alternative uses of the building.
16. In this context, I have limited substantive evidence that many or all the uses prioritised by LP Policy DM3, would be harmful to the living conditions of nearby residential occupiers. As such, I am not convinced that the potential effects on nearby residential occupiers would necessarily preclude use of the

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<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20190723

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building for those uses prioritised by Policy DM3, such that they would be undesirable or unsuitable.

17. There can be no certainty that marketing would find an occupier of the building for the purposes prioritised by LP Policy DM3. Nonetheless, marketing would establish whether market demand exists based on factors including the specific attributes and constraints of the building and its site, which would include its surroundings and the attached dwelling.
18. Taking all these factors into consideration, in the absence of marketing evidence, I conclude that the loss of a relatively small amount of floor space for the uses prioritised by LP Policy DM3, would have a limited but negative effect on the rural economy and community vitality. As such, it would be contrary to the elements of Policies ST1 and DM3, which support a prosperous rural economy and prioritise re-use of rural buildings for rural employment and/or community facilities.

*Character and appearance, the CA and listed buildings*

19. Based on my observations at my site visit and the Boughton Street Conservation Area Character Appraisal and Management Strategy, Adoption Version June 2019 ("the CACA"), the character, appearance and significance of the CA is derived from the tight-knit rows of buildings, mostly of some age and of varied architectural styles, that are set close to the historic road as it runs through the village. This relatively narrow and generally linear pattern of settlement, combined with the topography of the area and the views out towards the countryside that it provides, gives a sense of the village being imbedded within a wider rural landscape.
20. The appeal property was formerly a poultry shed and remains in agricultural use. It is contained within a low-rise single storey building, the remainder of which has now been converted to residential dwellings under Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, with the insertion of window and door openings in its walls, parking areas and rear gardens enclosed by fencing.
21. This building is set on elevated ground behind the row of dwellings that front The Street. The openness of the land around the appeal building, and between it and the buildings fronting The Street, is appreciable in relatively localised views from the nearby public footpath, nearby properties and potentially in glimpse views from The Street through gaps between buildings. It contributes positively to the character and appearance of the countryside and to the rural setting of the village and the setting of the CA. Although not located within a designated area of high landscape value in the LP, the Council's evidence indicates that the appeal site is in a highly sensitive landscape.
22. The insertion of windows and doors into the walls of the appeal building and the accumulation of domestic paraphernalia in the garden, and parked vehicles to the front, would reflect the established residential character and appearance of the building converted to dwellings. The proposed fencing around the garden would replicate the alignment of those adjacent residential gardens which are enclosed by fencing. The use of the garden would not, in relation to those nearby gardens, materially harm the relative tranquillity of the environment.

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23. Experienced in this context, the appeal proposal would not be visually incongruous or intrusive, and its garden would constitute a very modest encroachment into the large and open field in those aforementioned views. Set well back from the closest buildings fronting The Street, and separated from them and the CA by the large open field, I find that the landscape setting of the village, and views into and out of the CA, and the setting of the CA, would not be harmed by the appeal proposal. For these reasons, the appeal proposal would comply with the objectives of the CACA, which seek to protect the landscape around the CA and its visual relationship between the historic built environment and its rural setting.
24. A number of listed buildings front The Street in the area of the appeal site. List descriptions for the Grade II listed building (Number 142), which is the closest to the appeal site, and for the Grade II listed buildings (Numbers 128-130, and 132-134) which are set further away to the east have been provided. The special heritage interest and significance of these listed buildings would appear to be derived principally from their respective ages and their architectural qualities and traditional materials in the historic street scene.
25. Number 142 is a substantial high status period house with a formal symmetry to its façade, elaborate door casement and front garden enclosed by railings. There is evidence of a historic relationship between it and the farm on the appeal land, which were subdivided many years ago. Numbers 128-130 and 132-134 have group value as a row of modest houses dating back to the sixteenth and eighteenth centuries, the former built from a timber frame with a plain tiled and pantile roof, which has architectural and historic interest. I am required by s66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 ("the Act"), to pay special attention, and have regard to, the desirability of preserving the setting of listed buildings.
26. There would be intervisibility between the appeal proposal and the listed buildings. This would be experienced in private views from those buildings and in public views from the nearby footpaths. In these views the building containing the proposed dwelling, its rear garden fence and any accumulated paraphernalia, would be seen in the context of the backs of the tight-knit rows of buildings fronting The Street, including the aforementioned listed buildings.
27. However, the proposed development would not change the scale and form of the appeal building, and the garden fencing, paraphernalia, and domestication would be modest in scale. Moreover, these elements would be seen in the context of the existing residential dwellings within the former poultry building, including their gardens, and would be separated from the listed buildings at Numbers 142, 132-134 and 128-130, by generous distances with significant open land in between. As such, I find that the appeal proposal would not harmfully impinge on the settings of the listed buildings. As such, their significance as designated heritage assets would be preserved and not harmed.
28. The appeal property is not an existing dwelling and therefore it has no garden of its own to extend. As such, LP Policy DM13, which seeks to ensure that proposals to extend gardens do not cause harm is not determinative to my consideration of this main issue.
29. I therefore conclude on this issue that the appeal proposal would not harm the character and appearance of the area, or views into or out of the CA, or its setting, and it would preserve the settings of the aforementioned listed

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buildings. The appeal proposal would therefore accord with the Act and Policies ST1, ST3, CP8, DM14, DM32 and DM33 of the LP, and Policies H5, E1 and E2 of the NP, insofar as they seek to ensure that development reflects the positive characteristics and features of the site and locality, and protects the intrinsic character and beauty of the countryside, the setting of, or views into and out of a Conservation Area, and preserves the significance of designated heritage assets, including the settings of listed buildings.

30. In terms of the Framework, the proposal would cause no visual harm and would be sympathetic to the surrounding built environment and landscape setting, and would protect the intrinsic character and beauty of the countryside, consistent with Paragraphs 135 and 180. There would be no conflict with the Framework Chapter 16 insofar as the significance of the designated heritage assets would not be harmed.

*Whether an appropriate location for housing*

31. The building lies outside of the defined built-up boundary of the village and in the open countryside for planning purposes. The settlement strategy in LP Policy ST3 does not permit development in the open countryside unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. LP Policies ST1 and CP3, and NP Policies H1 and T2 require compliance with the settlement strategy for the Borough in LP Policy ST3, and therefore have a circular relationship with this Policy.
32. For the reasons given above, the appeal proposal would protect the intrinsic value and beauty of the countryside, and the landscape character and setting of the village. Along with the recently completed houses within the converted agricultural building of which it forms part, the proposed dwelling would be set in relatively close proximity to the defined built-up area of the settlement and nearby buildings. As such, it would not be physically separate or remote from the settlement, and therefore it would not constitute an isolated home in the countryside for the purposes of Framework Paragraph 84.
33. Despite the acknowledged (in LP Policy ST3) need to travel to other larger settlements for major shopping, leisure and employment needs, and also to reach secondary education, the appeal site is within a reasonable walking distance of most of the village's services. There is a village shop, public house, primary school, pre-school and Church within a relatively short walk of the appeal site. The evidence suggests there is a frequent bus service that reaches the nearby towns of Faversham and Canterbury in 20-25 minutes from the bus stops along 'The Street'. Future residents would therefore have reasonable access to the facilities and services within the village that are likely to be visited frequently, and to public transport provision to larger settlements. As such, they would have a choice of travel modes and would not be solely dependent on the private car to meet normal everyday needs.
34. The proposal would make a modest contribution towards meeting housing needs within the Borough for which there is currently a shortfall against the housing requirement. Future occupiers would use facilities and services within the village, thus benefiting the social and economic health of the community. The appeal proposal would therefore be supported by Framework Paragraphs 82 and 83, which require planning decisions to support housing in rural areas

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that reflects local needs and locate housing where it will enhance or maintain the vitality of rural communities. Furthermore, it would protect the intrinsic character and beauty of the countryside, and landscape setting of the village, consistent with Framework Paragraph 180.

35. Whilst situated beyond the defined built-up area boundary of the village, the appeal proposal would be supported by national planning policy as required by LP Policy ST3 and it would accord with certain elements of LP Policies ST1 and ST3, insofar as they seek to steer housing to defined settlements, including Rural Local Service Centres, where homes could support rural services and keep vitality within rural communities, including on windfall sites.
36. Taking all the above into account, I conclude on this issue that the proposed dwelling would be in an appropriate location for new housing with particular regard to the Council's settlement strategy and the accessibility of services and facilities. As such, it would be consistent with LP Policies ST1, ST3 and CP3, and NP Policies H1 and T2 insofar as they require compliance with the settlement strategy for the Borough.

#### *Parking provision*

37. The Swale Borough Council Parking Standards, May 2020, recommend that 3 parking spaces are provided for the proposed development given its rural location. However, there is limited substantive evidence before me that the provision of 2 spaces would cause any adverse effects and there would likely be land available on the site access to accommodate for overspill parking. Furthermore, facilities and services in the village would be reasonably accessible from the site by walking and cycling. For these reasons, parking provision for the proposed development would be adequate and as such the proposal would be consistent with LP Policy DM7 and NP Policies T3 and H8, which incorporate the Borough's Parking Standards and require dedicated on-site parking.

#### **Other Matters**

38. It is indicated that the Council's assessment of the appeal site as part of its wider Housing Land Availability Assessment (HLAA) found it to be suitable for housing delivery and in a sustainable location. Given that I have also found the appeal building to be in a suitable location for housing, as a matter of principle, the HLAA would not alter my conclusions on the main issues.
39. The proposed conversion to a dwelling and its occupation would generate short-term employment opportunities and economic activity, together with long-term economic and social benefits through the new resident household supporting businesses and services within the area. The dwelling could be delivered quickly given the extent of the proposed conversion works. A net gain in biodiversity could be secured on-site by a planning condition. These benefits weigh modestly in its favour. An absence of harm to the character and appearance of the area and to the significance of the designated heritage assets is neutral and weighs neither in favour nor against the development.

#### **Planning Balance**

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

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41. In the context of the development plan, I have found through my AA that the proposal would conflict with LP Policy CP7, insofar as it would have a significant adverse effect on the integrity of the SPA as a designated European site. Having regard to my duties under the regulations, I attach substantial weight to this policy conflict. There would also be conflict with LP Policy DM3 as the proposal would result in the loss of a building that could otherwise have been used for the purposes prioritised by this Policy. This would result in a potentially limited but negative effect on the rural economy and community vitality, contrary to the part of LP Policy ST1 which supports a prosperous rural economy.
42. The proposal would be in an appropriate location for new housing, and it would deliver economic, social and environmental benefits. As such, it would be consistent with LP Policies ST1, ST3 and CP3, and NP Policies H1 and T2, insofar as it would be supported by national planning policy in locational terms, and would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
43. The Council cannot currently demonstrate a 5-year supply of deliverable housing sites and the proposal would make a modest but valuable contribution to boosting housing supply in the Borough and meeting housing needs. The need for housing is immediate and the proposed conversion could be delivered quickly. However, even taking account of the shortfall against the housing requirement, the collective benefits of the appeal proposal attract moderate weight in its favour, insufficient to outweigh the conflict with LP Policies CP7, DM3 and ST1.
44. For these reasons, I find that the appeal proposal would conflict with the development plan when read as a whole and I give substantial weight to the totality of this conflict.
45. The Framework is a material consideration. Under Footnote 7 to Paragraph 11.d)i. of the Framework, the appeal proposal's adverse effect on the integrity of the SPA as a protected European site of nature conservation importance would provide a clear reason for refusing to grant planning permission to the appeal proposal. Therefore, the proposal does not benefit from the Framework's presumption in favour of sustainable development.

### **Conclusion**

46. For the reasons given above and having considered all matters raised, I conclude that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the benefits of the proposal and the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

*G Sylvester*

INSPECTOR