



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: 12th March 2024

Appeal Ref: APP/V2255/W/23/3321359

School Lane Farm, School Lane, Iwade, Kent ME9 8SG

- 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 and Mrs Gibbard against the decision of Swale Borough Council.
 - The application Ref 22/505438/FULL, dated 15 November 2022, was refused by notice dated 20 April 2023.
 - The development proposed is the conversion of a redundant agricultural building to one dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion of a redundant agricultural building to one dwelling at School Lane Farm, School Lane, Iwade, Kent ME9 8SG in accordance with the terms of the application, Ref 22/505438/FULL, dated 15 November 2022, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal site lies within the zone of influence of The Swale, Medway Estuary and Marshes, and Thames Estuary Special Protection Areas (SPAs) and Ramsar sites. These sites are protected as European sites of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the regulations"). The appellants have paid the requisite financial contribution to the Council to mitigate any adverse impacts of the appeal development on the European sites. Therefore, the Council has withdrawn its second reason for refusal. I will return to this matter later in my decision.
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 would 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 main issues are:
 - The effect of the proposal on employment provision and community facilities within the area.
 - The effect of the proposed dwelling on the character and appearance of the area.

Appeal Decision APP/V2255/W/23/3321359

- 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 the proposed development would affect the integrity of the SPAs as protected European sites of nature conservation importance.

Reasons

Employment provision and community facilities

5. Policy DM3 of the Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) ("the LP"), 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.
6. The Policy's supporting text identifies that the rural areas in Swale are generators of wealth, and that the development of the rural economy is affected by limited availability of land. The Employment Land Review dated 2018, indicates demand across the rural area for employment floor space.
7. LP Policy DM3 therefore gives priority to the re-use of rural buildings for employment and/or community facilities over residential use in the first instance. The Policy's supporting text states that evidence of demand for the prioritised uses should include the results of efforts made to market the building, normally with a planning permission.
8. The appeal building is reasonably large and stands within relatively spacious grounds close to residential properties. From my inspection and the evidence before me, it appeared to be in a good state of repair, save for some missing cladding, and eminently capable of reuse and conversion. It has not been marketed to test the demand for re-use for the purposes prioritised by LP Policy DM3.
9. The extant agricultural use of the appeal site would be expected to generate a level of noise and disturbance commensurate with that use. This could potentially have occurred during the early mornings and late evenings, and at the weekends when nearby occupiers of residential properties are most likely to be enjoying their dwellings and gardens. I have not been referred to any complaints to the Council that use of the appeal site has caused harm to the living conditions of those nearby occupiers.
10. Some uses of the appeal building, such as those generating high levels of noise and disturbance, would be likely to be unsuitable given the appeal site's proximity to residential properties. However, LP Policy DM3 does not define the term rural employment and envisages that it could include a variety of businesses that can be successfully accommodated within a rural area. As such, rural employment would not necessarily be limited to noisy uses, undesirable and unsuitable in an area close to housing. In this context, I am not convinced on the evidence before me that the potential effects of employment and/or community uses of the building would necessarily harm the living conditions of nearby occupiers.
11. In terms of accessibility, the hard-core access track to the property is straight in its alignment and flanked by grass strips on both sides for most of its length.

Appeal Decision APP/V2255/W/23/3321359

It appeared to be relatively wide, and I have no reasons to doubt that it would not have been sufficient to accommodate the machinery and vehicles associated with the extant use. I have no substantive evidence to demonstrate that the width of the access track, including its junction with the highway, would be so restricted as to prevent large vehicles, including commercial vehicles, from accessing the appeal site and building.

12. Taking account of all these factors, I conclude on this issue that in the absence of marketing evidence the appellant has failed to demonstrate that there is no demand for the building for the uses prioritised by LP Policy DM3, or that those uses of the building would be undesirable or unsuitable. Whilst there is no certainty that marketing the building would necessarily lead to its re-use for these purposes, its conversion to housing would nonetheless have a negative effect on the rural economy and community vitality, contrary to the elements of LP Policies ST1 and DM3, which support a prosperous rural economy.

Character and appearance

13. On the approach from School Lane, the edge of the built-up area of the village is defined by closely spaced dwellings set adjacent to open fields. The boundary between settlement and countryside is therefore clearly defined, with a somewhat sudden change of character between them. Although set outside of the defined built-up area boundary of the village, the appeal site, including the access track which is shared with a number of dwellings, adjoins the built-up area of the village. The appeal building, which is set well back into the site from the road, is viewed with several dwellings of varying sizes, styles and materials, and is visually well related to the built-up area of the village and reads as part of it. As such, there is a clear distinction between the appeal building and the open fields to the north and west, which are discernibly countryside in character with open fields devoid of buildings.
14. The appearance of the appeal proposal would blend the form of the agricultural building, featuring a shallow pitched roof and asymmetric roof form, with the domestic window and door openings necessary for habitation. As such, its appearance would be different to most of the nearby dwellings which tend to have steeply pitched roofs and smaller consistently sized window openings. However, the nearby dwellings are not of uniform appearances and vary in scale, form and materials. They include relatively large brick built two storey dwellings, with gabled and hipped roof forms, and a single storey bungalow with timber clad walls set close to the appeal site access, and arranged in an irregular pattern. In the context of this variety of buildings, the appearance of the proposed dwelling would relate satisfactorily to those nearby.
15. The appeal building is set back from the road by a considerable distance, with the rear garden area set further from the road and behind it. Seen in the context of the nearby dwellings and across these distances, neither the proposed dwelling nor the likely accumulation of domestic paraphernalia in the garden area, or to the front of the building, would be out of keeping with the character and appearance of the area. Furthermore, the appeal proposal would not encroach onto the adjacent open fields which are readily identifiable as open countryside.
16. I conclude on this issue that the proposal would not harm the character and appearance of the area. As such, it would accord with LP Policies ST1, ST3, CP3, CP4 and DM14, insofar as they seek to ensure that the design,

Appeal Decision APP/V2255/W/23/3321359

appearance and detail of a development is sympathetic and appropriate to the positive characteristics and features of the site and locality, protects the intrinsic character and beauty of the countryside.

17. The proposal would also be consistent with Framework Paragraphs 135 and 180, insofar as it would be sympathetic to the surrounding built environment and landscape setting, and would protect the intrinsic character and beauty of the countryside.

Whether an appropriate location for housing

18. The building lies outside of the defined built-up boundary of Iwade 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.
19. I have found that the appeal proposal would protect the intrinsic character and beauty of the countryside, and the setting of the village. Set close to the dwellings to the east, which are situated within the defined built-up area of Iwade, the proposed dwelling would be well related to the settlement and not physically separate or remote from it. As such, it would not constitute an isolated home in the countryside for the purposes of Framework Paragraph 84.
20. The evidence indicates that the proposed dwelling would be within a 10-minute walk of services and facilities, including a convenience store, doctors surgery and primary school. Although there is no footway along a short stretch of School Lane between the appeal site and the junction with Holly Blue Drive, this route is lit by streetlights and there are grass verges and hard surfaced driveways in places, along with traffic calming measures, to provide a refuge from passing vehicles. I observed low traffic flows along School Lane during my site visit. The absence of a relatively short length of footpath is unlikely, in this context, to deter most people from walking into the village. Future residents would therefore have reasonable access to a range of facilities and services within the village that are likely to be visited frequently, and would not be solely dependent on the private car.
21. The proposal would make a modest contribution towards meet 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 that reflects local needs and enhances or maintains the vitality of rural communities. Furthermore, it would protect the intrinsic character and beauty of the countryside, consistent with Framework Paragraph 180.
22. Although situated beyond defined built-up area boundary of the village, the appeal proposal would, for the reasons given above, be supported by national planning policy as required by LP Policy ST3 for locations in the open countryside. It would also accord with certain elements of LP Policies ST1 and ST3, insofar as they seek to steer housing to defined settlements, including

Appeal Decision APP/V2255/W/23/3321359

Rural Local Service Centres, where homes could support rural services and keep vitality within rural communities, including on windfall sites.

23. Taking all the above into account, I conclude on this issue that the proposed dwelling would be in an appropriate location for 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, insofar as they require compliance with the settlement strategy for the Borough.

Protected European sites of nature conservation importance.

24. The appeal site lies within the 6-kilometre (km) zone of influence of the SPAs, which are protected as European sites of nature conservation importance and subject to statutory protection under the regulations. The Bird Wise North Kent Mitigation Strategy January 2018 (the BWNKMS) identifies that the three SPAs include mudflats, reedbeds, saltmarsh and grazing marsh, which are rich and diverse ecosystems that provide food and high tide roosts for waders and wildfowl. The SPAs are internationally significant for supporting large numbers of wildfowl, waders and terns that overwinter or breed there.
25. The main threat to the integrity of the SPAs is the disturbance of birds by the presence of people, particularly walkers and when dogs are walked off the lead. Disturbance reduces their ability to feed and rest, and thus decreases their chances of migration and survival. It also reduces the incubation period for terns, lowering their breeding success. The number of birds using the three SPAs has declined markedly due to disturbance, and in particular on the Medway at locations with the highest levels of access. Development within 6km of access points to the SPAs is particularly likely to lead to increased recreational visitors.
26. Consequently, the appeal proposal would increase the number of households within 6km of the SPAs and is therefore likely to increase the negative effects of recreational disturbance to the qualifying bird species, resulting in the decline in their numbers and threatening the integrity of the SPAs. As such it is likely to have a significant adverse effect on the integrity of the SPAs, both in isolation and cumulatively with other housing development.
27. LP Policies CP7 and DM28, state that a project specific Habitats Regulations Assessment must be carried out to ensure there are no likely significant effects upon any European designated site. 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 SPAs, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPAs.
28. To mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within the SPAs, the BWNKMS requires new residential development to make a tariff-based financial contribution towards the delivery of a Strategic Access Management and Monitoring Strategy ("the SAMMS"). The measures in the SAMMS 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

Appeal Decision APP/V2255/W/23/3321359

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.

29. For smaller developments such as the appeal scheme, the Council has produced a SAMMS Mitigation Contribution Agreement in accordance with Section 111 of the Local Government Act 1972, Section 12 and Section 93 of the Local Government Act 2003, and Section 1 of the Localism Act 2011. The Council has confirmed that this agreement has been completed, signed and submitted by the appellants, and payment of the requisite tariff-based contribution towards the delivery of the SAMMS measures has been made.
30. Consultation with Natural England confirms that it is satisfied that the secured financial contribution would be effective in mitigating the recreational impacts of the development on the SPAs and avoiding adverse effects on their integrity. I conclude through my AA, that I am satisfied that delivery of the mitigation secured by the appellants' financial contribution, would ensure that the appeal proposal would not have an adverse effect on the integrity of the SPAs and Ramsar sites. Therefore, it would comply with LP Policies CP7 and DM28, the requirements of which are set out above.

Other Matters

31. On the evidence before me, I have no basis to consider that the proposal would not accord with the requirements set out in the letter from the Health and Safety Executive.

Planning Balance

32. 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.
33. In the absence of evidence of marketing the building for the uses prioritised by LP Policy DM3, I have found that the proposal would have a negative effect on the rural economy and community vitality, contrary to this Policy, and the part of LP Policy ST1 which supports a prosperous rural economy. This weighs moderately against the proposal.
34. The proposed dwelling would be consistent with LP Policies ST1, ST3 and CP3, insofar as it would be supported by national planning policy, and would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. It is in an appropriate location for new housing, and it would deliver economic, social and environmental benefits. The Council cannot currently demonstrate a 5-year supply of deliverable housing sites and the proposal would make a small but valuable contribution to boosting housing supply in the Borough and meeting housing needs. However, even taking account of the shortfall against the housing requirement, the collective benefits of the appeal proposal attract no more than moderate weight in its favour, given its scale.
35. In the scenario that the conflict with LP Policies DM3 and ST1 was to bring the proposal into conflict with the development plan as a whole, the presumption in favour of sustainable development in Paragraph 11.d) of the Framework would apply due to the housing land supply of 4.83 years in the Council's area. As a

Appeal Decision APP/V2255/W/23/3321359

consequence, planning permission for the proposed development should be granted unless, under Framework Paragraph 11.d)i., the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development or, under Framework Paragraph 11.d)ii., any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

36. I have concluded through my AA that the proposal would have no significant adverse effects on the integrity of protected European nature conservation sites and therefore this would not provide a clear reason for refusing the development proposed. As such, Framework Paragraph 11.d)ii. would apply and planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole.
37. Converting the appeal building to a dwelling would prevent its reuse for employment and community uses. Even though marketing would not necessarily lead to re-use for those purposes, the loss of a relatively modest amount of potential employment floor space would nevertheless result in a modest degree of conflict with the Framework's encouragement of achieving a prosperous rural economy and this weighs against the proposal.
38. There would be compliance with Framework Paragraphs 82 to 84, insofar as the location of the proposed dwelling would not constitute an isolated home in the countryside, and it would be well related to the village of Iwade and accessible to the services and facilities therein. Occupation of the proposed dwelling would support services and facilities within the village and bring some modest social and economic benefits to the area, supporting the vitality of the village and the rural economy. Construction works, although limited to the conversion of the building, would also bring short-term economic benefits weighing positively in its favour.
39. The Council's housing land supply shortfall is relatively modest. However, the housing need is current, and the proposed dwelling would make a valuable contribution to boosting housing supply on a small site, which could be delivered quickly. As such it would accord with Framework Paragraphs 60 and 70, which sets the Government's objective of significantly boosting the supply of homes where needed, including on small sites. Given the importance of boosting supply, this weighs strongly in its favour.
40. For these reasons, I find that the proposal's adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal constitutes the sustainable development for which the Framework indicates a presumption in favour of.
41. Although offered as a self-build dwelling, it would not be necessary to restrict the proposed dwelling in this way given the outcome of the planning balance referred to above.

Conditions

42. The Council has suggested the imposition of a number of planning conditions in the event of the appeal being allowed, which I have considered in accordance

Appeal Decision APP/V2255/W/23/3321359

with the tests for imposing conditions set out in the Framework and the Planning Practice Guidance. Where necessary I have amended the wording of the suggested conditions to ensure compliance with the tests. In the interests of certainty of the planning permission granted, conditions are imposed to necessarily indicate the time limit for implementation and specify the approved plans.

43. A pre-commencement condition is necessary in the interests of public health to ensure that the site is investigated for potential land contamination.
44. Landscaping details are necessary to ensure that the development respects the character and appearance of the area.
45. To meet the objectives of LP Policy ST1 which promotes sustainable design and construction, and the efficient use of natural resources to meet the challenge of climate change, it is necessary to impose conditions securing measures the sustainable construction of the development and securing an electric vehicle charging point. I have simplified the condition to give the parties flexibility over the precise measures to be agreed when discharging the condition.
46. A condition is necessary to ensure that provision is made for car parking on the site to avoid parking on the highway.
47. In the interests of safeguarding the living conditions of nearby occupiers, a condition is necessary to control construction working hours.
48. External materials are specified on the approved drawings and the appeal proposal would be acceptable in visual terms. As such, securing further details of materials would be unnecessary.
49. I have not been made aware of a specific policy requiring water consumption to not exceed 110 litres per person per day. Therefore, this condition has not been demonstrated as necessary to make the development acceptable and I have not imposed it.
50. The justification for restricting permitted development rights within several classes of the GPDO is expressed in broad terms and refers to the setting of a listed building for which no details have been provided. As such, it does not amount to the clear justification necessary to demonstrate why such national rights should be restricted and therefore I have not imposed the suggested conditions.

Conclusion

51. For the reasons given above and having considered all matters raised, I conclude that the material considerations are of sufficient weight to outweigh the conflict with LP Policies DM3 and ST1, and the development plan as a whole, and indicate that planning permission should be granted. As such, the appeal should be allowed.

G Sylvester

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 221132_004 Rev A Proposed Site and Location Plan; 221132_005 Rev A Proposed Floor Plan; 221132_006 Rev A Proposed Elevations Coloured.
- 3) The development hereby permitted shall not commence until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved in writing by the local planning authority:
 - (a) A preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site.
 - (b) A site investigation, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (c) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (b) giving full details of the remediation measures required and how they are to be undertaken. The RMS shall also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
 - (d) A Closure Report shall be submitted upon completion of the works including full verification details as set out in (c). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

Any changes to these components shall be agreed in writing by the local planning authority. The scheme shall thereafter be implemented as approved.
- 4) No development above ground floor slab level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details prior to the occupation of the dwelling or in accordance with an implementation programme to be submitted to and agreed in writing by the local planning authority. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming 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.

Appeal Decision APP/V2255/W/23/3321359

- 5) No development above ground floor slab level shall take place until details demonstrating how the development would incorporate sustainable design and construction measures have been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until the approved measures have been provided and thereafter retained.
- 6) Prior to the occupation of the dwelling hereby permitted, a scheme for the provision of an electric vehicle charging point shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development hereby approved and thereafter retained.
- 7) The vehicle parking and manoeuvring space, and access thereto shall be provided in accordance with the approved drawings before first occupation of the dwelling and thereafter kept available for the parking and manoeuvring of vehicles, and used for no other purpose.
- 8) No demolition or construction works shall take place on the site other than between the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturday, and not at all on Sundays, Public or Bank Holidays.

End of schedule