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## Appeal Decision

Site visit made on 5 November 2024

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 December 2024

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**Appeal Ref: APP/V2255/W/24/3339042**

**Callum Park, Basser Hill, Lower Halstow ME9 7TY**

- 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 Custom Build Homes against the decision of Swale Borough Council.
  - The application Ref is 23/503336/OUT.
  - The development proposed is an application for outline planning permission for the proposed development of two additional semi-detached self-build homes (Plot 10) on the land at Callum Park, Basser Hill, Lower Halstow ME9 7TY
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### Decision

1. The appeal is allowed, and planning permission is granted for outline planning permission for the proposed development of two additional semi-detached self-build homes (Plot 10) on the land at Callum Park, Basser Hill, Lower Halstow ME9 7TY in accordance with the terms of the application, Ref 23/503336/OUT, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The proposal seeks outline permission, with all matters reserved except for access. I have considered the appeal on this basis and have treated any plans in relation to other matters as illustrative only.
3. The Council have confirmed that following the submission of the Primary Ecological Assessment<sup>1</sup> the second reason for refusal has been addressed, subject to suitable conditions.
4. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description of development as contained in the application form for the purposes of the heading above and paragraph 1 of my Decision.
5. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.

### Main Issues

6. The main issues are:

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<sup>1</sup> Prepared by Arbtech dated 27/11/2023

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- whether the site is in a suitable location having regard to the Council's development strategy and national policy;
- the effect of the development on the character and appearance of the open countryside with specific regard to the Area of High Landscape Value (AHLV); and
- the integrity of the Swale and Medway Marshes Special Protection Area (SPA).

## Reasons

### *Location*

7. The Framework, amongst other things, advises that housing development in rural areas should be located where it will enhance or maintain the vitality of rural communities and identify opportunities for villages to grow and thrive, especially where this will support local services. The Framework also seeks to promote alternative forms of transport other than the private car. Policy CP2 of the Swale Borough Local Plan (SBLP), adopted July 2017 relates to sustainable development, which reflects the aims and objectives of the Framework in regard to sustainable transport.
8. Policy ST3 of the SBLP directs that development will not normally be permitted in the open countryside outside the built-up area boundaries. Policy ST5 identifies the main urban centre in the borough as Sittingbourne, which will provide the primary urban focus for growth and town centre regeneration with housing to be provided within urban confines, or extensions to the settlement, where indicated by proposed allocations.
9. Both parties agree that the site would be located outside any identified development boundary, with the closest settlement being Lower Halstow, a Tier 5 settlement, less than half a mile away. Lower Halstow provides basic services to meet some day to day needs for residents and includes a village hall, local shop, a primary school, a pub, playing fields and a church. As such, given the appeal site is outside of the defined limits of the settlement, there is a presumption against development in this location.
10. The main routes to access Lower Halstow would be via narrow country lanes which do not have pavements and are predominantly unlit. The lack of footpaths or streetlighting would make it less attractive for people to walk, especially for small children going to school. However, I would acknowledge that there are public footpaths which also lead to Lower Halstow providing alternative routes. Nevertheless, in terms of other alternative means of transport, the general condition of local infrastructure, together with the distance, is such that travel to this settlement by more sustainable means such as walking, and cycling would be highly unlikely particularly when carrying shopping, in the dark or during inclement weather conditions.
11. Whilst the principle of residential development in the area has been established given the extant planning permission<sup>2</sup> which has been commenced with servicing and foundations laid at the site, the scheme subject to this appeal is nevertheless outside of the defined limits of a settlement. Although the proposed development would contribute towards housing provision in

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<sup>2</sup> Swale Borough Council Planning Ref: 20/501002/OUT

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Swale Borough, it would nevertheless be in conflict with SBLP Policies CP2, ST3 and ST5. I will return to consider the weight to be given to this conflict in the planning balance section below.

12. Whilst the Council's refusal refers to a conflict with SBLP Policy DM6, I do not have any substantive evidence that the proposal would unacceptably effect traffic conditions, and subject to conditions a satisfactory means of access could be provided. Given that this is an outline application with all matters reserved, other than access, I find this policy largely irrelevant to this main issue.

#### *Character and appearance*

13. Paragraph 180 of the Framework requires amongst other things that valued sites be protected and enhanced in accordance with its identified quality in the development plan. Policy DM24 of the SBLP states that within the AHLV planning permission will be granted subject to the landscape being conserved and enhanced.
14. As well as the AGLV designation, the site is also part of the Upchurch and Lower Halstow Fruit Belt as designated in the Swale Landscape Character and Biodiversity Appraisal 2011 Supplementary Planning Document (SPD). The key characteristics of the area are small to medium-scale rural landscapes with a strong sense of enclosure and small nucleated villages with historic centres and modern urban expansion on the periphery, amongst others. The SPD notes that the landscape is in 'Moderate' condition and that it has 'Moderate' sensitivity.
15. Given that all matters other than access are reserved, the details of landscape and design would be secured at the reserved matters stage, therefore it is the principle of access and the dwellings in the existing landscape that I am considering here.
16. The appellant has submitted a Landscape Visual Assessment (LVA)<sup>3</sup> for the proposal. The LVA concludes that the proposal would result in small scale effects on the local landscape character within areas in close proximity to the site and to the site itself, which are judged to be moderate/slight adverse. However, the LVA highlights that mitigation planting would have a neutral effect on local landscape character from longer views. Furthermore, given there are existing farm buildings, the extant permission and access tracks which are all visible in the local landscape, the proposal would not be incongruous in this context.
17. I have not been provided with any substantive evidence from the Council to counter the findings of the LVA, however from my own observations on site I would concur that there would be minimal visibility of the appeal site from outside the appellant's private land. As such the outline proposal would at the very least conserve the valued landscape.
18. Criterion 2.b of Policy DM24 requires the avoidance, minimisation and mitigation of adverse landscape impacts, or that any significant remaining impacts should be balanced against the social and economic benefits. Given any harm to the AGLV would be negligible, the social and economic benefits of the proposal (set out in the planning balance) would significantly and

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<sup>3</sup> Landvision Landscape Architects Ref: 2024/CP/LHAL/010 dated 09/02/2024

demonstrably outweigh the harm to the landscape value of the AHLV. Therefore, the proposal would accord with the requirements of policy DM24 and, consequently, paragraph 180 of the Framework.

*Integrity of the Swale and Medway Marshes SPA*

19. The appeal site is located within 6km of The Medway Estuary and Marshes SPA which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the HRs). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.
20. The HRs require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPAs. The effects arising from the proposal need to be considered in combination with other development in the area, adopting a precautionary approach.
21. The proposal therefore has the potential to affect the site's features of interest, and I must undertake an Appropriate Assessment (AA) to establish the likely impacts of the development. As such, I have had regard to the AA provided by the Local Planning Authority, which includes advice provided by Natural England to the Council.
22. Since the development is relatively small, the number of additional recreational visitors would be limited and the likely effects on SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Natural England advice is that when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.
23. The planning application did not provide any mechanism for a financial contribution, but the Council indicated that, were such a mechanism to be provided, their concern on this matter, and their third reason for refusal, would fall away. As part of the appeal the appellant has submitted an appropriately worded and executed unilateral undertaking (UU), which would secure the necessary mitigation. Given the evidence before me, I am satisfied that the UU will secure the necessary mitigation measures, that the contributions would be used for their intended purpose, and that the intended mitigation would be effective to adequately overcome any adverse effects of the proposal. Consequently, the proposal would not adversely affect the integrity of the SPA sites.

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### Other Matters

24. In regard to housing land supply, since the determination of the application the Council has updated its position in respect to the five-year supply of deliverable housing sites (FYHS)<sup>4</sup>. This was further updated to reflect the Framework and removal of the 5% buffer, indicating that the FYHS was 5.13 years. However, the appellant highlights that this figure has recently been tested at Inquiry<sup>5</sup> where the Inspector found that the deliverable supply would equate to circa 4.1 years' worth. The Council have been given the opportunity to dispute this position but have provided no evidence to counter these findings. As such, from the evidence before me, the most up-to-date position is that currently there is a shortfall in the Swale Borough FYHS, and this carries significant weight.
25. From the evidence before me the updated self-build register highlights that there is an unmet demand for self-build custom housing within the district, for which there is strong Government support. The appeal proposal would provide an additional 2 self-build houses through a planning obligation. As such, this would provide weight in favour of the scheme.
26. I recognise that the proposal has generated public interest, with several consultation responses submitted in response to the planning application and appeal. I have taken into account all of the other matters and concerns raised in the submissions by the interested parties, which include but are not limited to, the impact on the Grade II listed building, living conditions of neighbours and pollution from noise and light.
27. The site is within the setting of Great Barksore Farmhouse which is designated as a Grade II listed building. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest.
28. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
29. The significance of Great Barksore Farmhouse is derived from its architectural interest as a rural dwelling, which includes a timber frame clad with painted weatherboard and a concrete tiled roof. Whilst located close to the site boundary, there would be a significant separation distance between the listed building and the proposal, including some screening between them, which is unlikely to affect the listed buildings setting. Furthermore, details of the appearance and scale would be subject to reserved matters to ensure an appropriate design in this context.
30. Therefore, the current proposal would not result in any harm to the setting of Great Barksore Farmhouse, which would accordingly preserve its significance.

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<sup>4</sup> Housing Land Supply Position Statement 2023/2024 published in November 2023

<sup>5</sup> PINS Ref: APP/V2255/W/23/3333811

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Consequently, as the proposal would preserve the significance of the identified listed building it would therefore accord with the Act, and this would be a neutral factor which would not weigh for or against the proposal.

31. In terms of the living conditions of surrounding existing residents, I have had regard to potential overlooking and loss of privacy. The current outline application does not seek approval of the detailed layout albeit that an indicative layout has been submitted. Nevertheless, the submitted plan shows how there is a significant degree of separation to existing houses. It is acknowledged that outlook from existing surrounding properties would inevitably change, however I have no substantive basis to consider that the proposed development could not be designed at the reserved matters stage to avoid unacceptable loss of privacy and outlook from existing neighbouring properties.
32. Whilst the proposed development would inevitably increase the noise and lighting levels associated with the site, it would be in the context of the prevailing residential use granted in the immediate vicinity subject to the extant permission. The levels concerned would therefore be unlikely to be unacceptably harmful in that context.

### **Planning Balance**

33. The Council cannot demonstrate a FYHS at present, consequently, because of the provisions of footnote 7, paragraph 11d) ii. of the Framework should be applied. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I have found that the proposed development would conflict with the Council's spatial strategy as set out in policies CP2, ST3 and ST5 of the SBLP in terms of its location outside of the defined limits of development, which is harm that attracts significant weight.
34. Having regard to the Government's objective of significantly boosting the supply of homes, the proposed development would have the benefit of contributing 2 additional self-build dwellings towards the supply of housing of which there is an identified need locally. Those combined benefits therefore attract significant weight. This is particularly relevant given that the Council is currently not able to demonstrate FYHS, with there being a deficit of 4.1 years.
35. There would also be economic benefits relating to the provision of construction related jobs during the construction phase, albeit on a temporary basis, and the subsequent local spending by prospective residents of the proposed development. The proposal would also have the potential benefit of delivering enhanced biodiversity. These social, economic and environmental benefits all attract substantial weight in favour of the proposal.
36. Although the proposal would result in a limited conflict with policies CP2, ST3 and ST5 of the SBLP, this would result in only limited environmental harm which does not demonstrably and significantly in this case outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies which points towards the grant of planning permission.

**Conditions and planning obligations**

37. The Framework states that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework state that planning obligations must only be sought where they meet all of the relevant tests.
38. Planning Obligations have been submitted within the UU, which make provision for the proposed dwellings to be on-site self-build custom houses in accordance with the Self-build and Custom Housebuilding Act 2015 (as amended) and the associated Self-build and Custom Housebuilding Regulations 2016. The UU also secures the necessary SPA mitigation measures through a SAMP contribution. I note that the UU is index linked, thus there is provision for any future increase in the required SAMP contributions.
39. The UU is therefore necessary to make the development policy compliant, is related directly to the development and provides a fair and reasonable contribution from the appellant related in scale and kind to the proposal. Consequently, in terms of my considerations this represents benefits of the development, weighing in its favour.
40. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance and have amended the wording of some without altering their fundamental aims.
41. The standard conditions are necessary, which relate to the timescale for commencement of development, to ensure the submission of details relating to the reserved matters, and the timescale for the latter. For certainty, a condition requiring the development to be carried out in accordance with the approved plans is also necessary.
42. In the interests of highway safety and neighbouring amenity I have imposed a requirement for a Construction Management Statement (CMS), which is necessary to be submitted prior to works commencing. However, I have not attached a specific condition relating to construction hours, as this can be included within the CMS.
43. To ensure that the proposal does not adversely impact on protected species and provides biodiversity enhancements it is necessary to impose a number of relevant conditions, including to control external lighting. The condition regarding the external lighting is also necessary to protect neighbouring amenity.
44. A condition securing on-site ecological enhancement is necessary in order to ensure the development protects and improves biodiversity features of the site. I have imposed conditions in respect to the landscaping which are necessary to secure the satisfactory appearance of the development in the interests of the surrounding character, neighbouring amenity and encouraging wildlife and biodiversity.
45. I have also imposed a condition relating to contaminated land which is necessary to mitigate the risks of contamination to construction workers,

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future users of the land, and offsite receptors including neighbouring occupiers and water and ecological systems.

46. A condition is necessary to ensure the development is energy efficient, to comply with the aims and objectives of SBLP policy DM19, however I have reduced the requirement to a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as it has not been adequately explained by the Council why a 50% reduction is required.
47. In regard to the wider sustainability requirements, a condition requiring enhanced water efficiency standards is necessary to ensure relevant compliance with technical standards. I have also added that electric charging points are delivered to enable the use of electric vehicles to further achieve sustainability objectives.
48. Finally, I also have imposed conditions to ensure that there are suitable access routes, appropriate vehicle and bicycle parking, and a suitable car parking layout is maintained in the interests of highway and pedestrian safety and the living conditions of future residents.

### **Conclusion**

49. The proposed development would conflict with the development plan, but material considerations indicate that a decision should be made other than in accordance with it. For the reasons give the appeal should be allowed.

*Robert Naylor*

INSPECTOR