



Appeal Decision

Site visit made on 18 March 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Appeal Ref: APP/V2255/W/24/3351745

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Dean Gibbard against the decision of Swale Borough Council.
 - The application Ref 24/501367/FULL was approved on 5 September 2024 and planning permission was granted subject to conditions.
 - The development permitted is demolition of agricultural building and erection of one self-build dwelling with associated landscaping.
 - The condition in dispute is No 4 which states that: The dwelling(s) hereby approved shall be constructed and test to achieve the following measure: At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended); No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
 - The reason given for the condition is: In the interest of promoting energy efficiency and sustainable development.
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Decision

1. The appeal is allowed and the planning permission Ref 24/501367/FULL for the demolition of the agricultural building and the erection of one self-build dwelling with associated landscaping at School Lane Farm, School Lane, Iwade, Kent ME9 8SG granted on 5 September 2024 by Swale Borough Council is varied by deleting condition 4.

Application for costs

2. An application for costs was made by Mr Dean Gibbard against the decision of Swale Borough Council. This is the subject of a separate decision.

Background and Main Issue

3. Planning permission was granted for the demolition of an agricultural building and the erection of one self-build dwelling with associated landscaping. The appellant is seeking the removal of condition 4 set out in the banner heading above. The condition was imposed 'in the interest of promoting energy efficiency and sustainable development'.
4. Therefore, the main issue in this appeal is whether condition 4 is necessary and reasonable with regard to promoting energy efficiency and sustainable development.

Reasons

5. The National Planning Policy Framework December 2024 states that the planning system should support the transition to net zero by 2050 and indicates that plans should take a proactive approach to mitigating and adapting to climate change.
6. Policy DM19 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017 (LP) requires proposals to include measures to address and adapt to climate change. This includes using materials and construction techniques which increase energy efficiency and designing buildings with features which enable energy efficient ways of living. It does not set out any specific carbon reduction requirements.
7. The Council declared a Climate and Ecological emergency in June 2019, committing it to several actions to reduce carbon emissions. This includes engaging with stakeholders to facilitate the action required to make the borough carbon neutral by 2030. The declaration was found to be a material consideration by an Inspector considering an appeal at Minster-on-sea in March 2020¹.
8. The Council's subsequent Climate and Ecological Emergency Action Plan April 2020 recognises that improving the energy efficiency of homes in the borough poses a major challenge. It states that as soon as possible, all new buildings in Swale should be built and tested to a zero carbon specification. In this respect, it includes an action that prior to the adoption of a new Local Plan, the Council can use a planning condition based on a 50% improvement over current building regulations, increasing in later years, as a basis for negotiation with developers through planning application negotiations.
9. The LP is currently being reviewed. In the interim, the Council has been imposing a planning condition based on the above action on all new build dwellings in the borough since 2019. The Council published guidance for complying with this climate change planning condition in June 2020. However, in a decision for a site in South West Sittingbourne in April 2021², the Secretary of State found that this guidance amounts to guidance only, which has not gone through a public examination process, rather than planning policy sufficient to justify the imposition of such a condition.
10. The Council considers that removal of the condition would mean that the proposal would fail to comply with Policy DM19 of the LP. Although Swale has an ambitious local target for achieving carbon neutrality, by setting a minimum reduction in the dwelling emission rate, condition 4 goes beyond the requirements of Policy DM19. Therefore, similar to the findings in the South West Sittingbourne case, there is no LP policy basis for this condition.
11. Even though a condition was imposed to address carbon emissions in the Minster-on-sea case, the Inspector found that the condition suggested by the Council was not supported by local policies. This is also the case for condition 4.

¹ Appeal Ref: APP/V2255/W/19/3238171 'the Minster-on-sea case'

² Ref: APP/V2255/W/19/3233606 'the South West Sittingbourne case'

Appeal Decision APP/V/2255/W/24/3351745

12. Consequently, I conclude that condition 4 is not necessary and reasonable with regard to promoting energy efficiency and sustainable development.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed and I shall vary the planning permission by deleting the disputed condition.

A Wright

INSPECTOR