



Appeal Decision

Site visit made on 2 July 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2025

Appeal Ref: APP/V2255/W/24/3356329

Units 1 & 2 Parsonage Farm, Seed Road, Newnham, Kent ME9 0NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Tom Allsworth of MediChem Properties Ltd against the decision of Swale Borough Council.
 - The application Ref is 23/501832/OUT.
 - The development proposed is described as Change of use to C3 residential, demolition of existing industrial units and construction of four houses.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The application is made in outline with all matters reserved for future consideration save for access. Plans indicating the layout, scale, appearance and potential for landscaping are marked as being indicative only. Therefore, layout, scale, appearance and landscaping are matters for future consideration in the event of permission being granted, so I have regarded them as indicative only.
3. The appeal is submitted due to the failure of the Council to give notice of its decision within the prescribed time-period. The Council subsequently advised it would have refused the application because it would have found the proposal outside a settlement and in conflict with policies, reliant upon car-borne journeys, resulted in the dilution of employment opportunities, harmful to the character and appearance of the area, harmful to designated habitats sites and that there was insufficient evidence it would not result in harm to protected species.
4. The above matters, in combination with the substantive reasoning in the Council's statement of case, including comments in respect of the setting of a listed building, having regard to my statutory duties, have informed the main issues below.

Main Issues

5. The main issues are:
 - the effect of the proposal upon designated habitats sites;
 - whether or not the proposal is compliant with development plan policy for the loss of rural employment sites;

- whether or not the proposal would be well-located for access by non-car modes of transport;
- the effect of the proposal upon the character and appearance of the area including the Kent Downs National Landscape;
- the effect of the proposal upon the setting and significance of the Grade II* Listed Church of St. Peter and St. Paul;
- whether or not the proposal is consistent with policies for the location of new residential development; and,
- the effect of the proposal upon protected species.

Reasons

Habitats sites

6. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a likely significant effect (LSE) on a designated habitats site, a competent authority is required to make an appropriate assessment of its implications on the integrity of the designated site, in view of its conservation objectives. Any LSEs need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
7. The appeal site is in proximity to the Swale Special Protection Area (SPA) and Ramsar site and the Medway Estuary and Marshes SPA and Ramsar site. The sites are designated because they provide important habitats for wintering, migratory and breeding waders, seabirds, and waterfowl (the qualifying features). Their conservation objectives are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of each of the qualifying features, and the distribution of the qualifying features within the site.
8. Studies have found that visits and recreational use by occupiers within proximity to the habitats sites, including activities such as walking, dog walking, cycling, and jogging, can disturb the qualifying features¹ constituting LSEs upon them. This scheme would result in new dwellings within a distance of the habitats sites where it is identified there would be likely to be increased visits by occupiers, with LSEs upon the qualifying features from recreational disturbance.
9. Strategic measures to mitigate LSEs from recreational disturbance are set out in the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy, based upon a costed per dwelling tariff to fund mitigation measures. To mitigate LSEs and be compliant with duties under the Regulations the contributions must be secured before permission can be granted.
10. The appellant does not dispute there would be LSEs and states a full willingness to enter a financial agreement. The Procedural Guide states an appellant must ensure that an Inspector receives an executed and certified copy of a planning

¹ Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy by Footprint Ecology (July 2014).

obligation at the time of making an appeal². However, even at the time of determining the appeal, no planning obligation or other agreement is before me.

11. Section 63(5) of the Regulations states the competent authority may agree to a plan or project, only after having ascertained that it will not adversely affect the integrity of Habitats sites. Therefore, this matter cannot be addressed by planning conditions. As the competent authority were I to allow this appeal currently, there would be no mitigation secured. In consequence the appeal scheme does not make adequate provision to mitigate the LSEs, and so maintain or restore the integrity upon designated habitats sites.
12. The scheme makes no other provision to mitigate the LSEs and maintain the integrity of the sites. So, in the absence of appropriate mitigation being secured the appeal scheme would have LSEs upon the habitats sites and fail to adhere to their conservation objectives. Imperative reasons of overriding public interest do not exist and it is not demonstrated there are no alternative solutions, or that other adequate measures will be provided. Given the requirements of Section 63(5) of the Regulations as outlined, this precludes the proposal from proceeding.
13. For the reasons set out, the proposal would have LSEs upon designated habitats sites, in conflict with Policies ST1, DM14 and DM28 of the Swale Borough Local Plan (2017) (the SBLP). These require proposals shall conserve the natural environment and apply international, national and local planning policy, and regulations for areas designated for their biodiversity importance. It would also conflict with paragraph 188 of the National Planning Policy Framework (2024) (the Framework), which has similar objectives.

Rural employment

14. Policy DM3 of the SBLP explains that permission will not be granted for the conversion of rural employment sites to residential use where it would reduce the potential for rural employment and/or community facilities, unless it can be demonstrated the site has no demand for continued employment use or as a community facility, or that such uses would be unsuitable or undesirable. The supporting text explains that to demonstrate a lack of demand, evidence should include the results of marketing efforts for employment use³.
15. The site includes a main building with hardstanding areas, once serving as a fermentation and bottling facility. From the evidence, it appears that at some point in the last few years it had a micro-brewery tenant, who moved out due to the presence of asbestos. I could see the building is of corrugated fibrous cladding over a concrete plinth, currently being in some degree of disrepair.
16. Marketing evidence includes a letter from an estate agent, stating the site was marketed on the company website, major UK portals and to potential matches since November 2020, but no suitable tenants were found. Enquiries have been made by a few types of business, however, due to condition and location, no offers were presented. Evidence refers to issues such as asbestos, lack of washrooms, WC's, insulation and heating, meaning significant investment is required to bring the site to an acceptable standard, as well as a general lack of demand for this type of building in such a rural location surrounded by dwellings.

² Paragraph 18.2.2 of the Procedural Guide: Planning appeals – England (2025).

³ Paragraph 7.1.13.

17. In principle, some findings seem rational and have no reason to doubt the experience of the estate agent. However, the level of investment to address some of the issues is unclear. Moreover, to have a reasonable level of assurance of appropriate marketing so policy is met, details such as copies of the adverts, marketing periods, terms, and asking rent, are necessary. In their absence, it is not possible to definitively conclude the site has been marketed at a reasonable value for a reasonable period, for market conditions at the time. Though I am referred to evidence for previous 2016 and 2018 applications nearby, these were for different premises and uses, some years ago. So, that the Council permitted the applications, does not give adequate assurance the policy is met for this scheme.
18. Therefore, for the reasons set out above, it has not been demonstrated the proposal is compliant with development plan policy for the loss and conversion of rural employment premises. This conflicts with Policy DM3 of the SBLP, the relevant provisions of which I have set out above.

Non-car modes

19. The supporting text to Policy ST3 of the SBLP sets out a settlement hierarchy, having regard to their role, services, facilities and sustainability for hosting development, including the need to travel. Policy ST3 sets out the acceptability of development based upon the hierarchy. The appeal site is in the countryside defined as generally having limited or non-existent services but is close to Newham which is an 'other village' with built-up area boundaries in the hierarchy.
20. Other villages can have varying degrees of sustainability depending upon their services, facilities and public transport connections. Services and facilities in Newham appear to be very limited, comprising a church, public house, village hall, and outdoor exercise area. Though the bus to main settlements might not be a long journey, the Council and interested parties inform me it is of very limited frequency. Therefore, Newham could be defined as 'currently less sustainable' and it would seem accurate that the population typically would need to travel to meet many day-to-day needs.
21. The nearest settlements I visited of Eastling and Doddington had few facilities. Teynham, Lenham and Harrietsham appeared to have railway links but still quite limited overall services and facilities. Faversham and Sittingbourne were large settlements with more full public transport options and a good range of services and facilities, including for retail and leisure, and employment opportunities. However, the highway routes I travelled were quite narrow, with generally no streetlighting, footways and limited verges for refuge from traffic. Based upon what I saw and the evidence before me, walking, cycling and taking the bus to many facilities would not be regarded as particularly attractive or convenient.
22. Framework paragraph 110 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. Nevertheless, and despite a greater tendency for home working and use of the internet, this scheme would be likely to result in occupiers being dependent upon private vehicle movements to meet most needs for day to day living, resulting in a significant number of private vehicle journeys and additional vehicular miles, which does weigh against the scheme.
23. Therefore, for the reasons set out, the proposal would not be well-located for access to services and facilities by non-car modes of transport. This conflicts with

the aims of Policy ST3 insofar it seeks to locate development in sustainable locations, as set out above. It would also conflict with the aims of Framework paragraph 8c) which seeks that proposals protect and enhance the environment through using natural resources prudently and minimising pollution.

Character and appearance

24. The site surrounds include the historic village area with historic and period buildings to the north and west, a converted taproom to the south, with planned more modern development to the east. Though primarily residential, the age, vernacular, and scale of buildings varies significantly within the visual context of the site. However, the generally spacious plot sizes, communal areas, and prevalence of trees and hedgerows result in a definable verdant and sylvan character, appearance and backdrop to the area.
25. This characterisation is to some degree referred to in the wider Doddington and Newnham Dry Valleys Character Area in the Kent Downs AONB (now National Landscape – KDNL) Landscape Character Assessment (2023) (LCA). It is described as including extensive mature oak and ash woodlands, a mixed land use of small to medium-scale orchards, widespread, and small-scale settlements with traditional vernacular building styles.
26. The site includes the concrete and corrugated building, a hardstanding apron and some vegetated features. Were the appeal site used for a commercial use again there may well be some parked vehicles, activity and vehicular movements. Though the site is reflective of that of a rural agricultural or commercial building, taking into consideration factors such as its scale, appearance, the surrounding character, landscaping, and its visibility, on-balance it makes a minor negative contribution to the character and appearance of the area and the KDNL.
27. The indicative plans indicate very generously proportioned dwellings, little building separation, strident plot ratios, buildings spanning most of the site width, a large car dominated and cluttered frontage, with little opportunity for landscaping. This would appear a formally set out car dominated, dense, dominant, and cramped development poorly related to its surrounds. It would be significantly and harmfully at odds with the character and appearance of the area and the KDNL.
28. I am mindful the submitted plans are indicative only and design related matters are reserved for future consideration, so there is scope for much reduced dwellings, some room for consequential layout changes and additional landscaping provision. Given the site as it exists, it may be designed so that four dwellings could be likely to, overall, constitute a limited intensification of development within the countryside and the use would not be at odds with the character of surrounding uses.
29. However, from the evidence before me, it is not explained or substantiated how four dwellings could be accommodated in a manner that could ensure a satisfactory layout, suitable plot ratios, pattern of development, or sufficient landscaping that would reflect the character and appearance of the surrounding area. Despite the site being quite well contained from the wider area, as a matter of planning judgement, while high quality schemes could reduce the adverse effects, the evidence leads me to the view the appeal scheme would still have some adverse effect upon the character and appearance of the area and the KDNL.

30. Given the elevated nature of the site relative to Seed Road, the effects of the appeal scheme would be visible from a limited length of Seed Road in the vicinity of the appeal site and from some neighbouring properties to the north, east and southwest of the site.
31. For the reasons set out above, the proposal would be harmful to the character and appearance of the area and the KDNL. This would conflict with Policies ST3, CP4, DM14, DM24 of the SBLP. In combination and amongst other things these require development is of a high-quality design that is appropriate and responds to its surroundings, that it protects, conserves and enhances the character of the area, the countryside and distinctive qualities of the KDNL.
32. The proposal conflicts with paragraphs 139 and 189 of the Framework insofar it states that development that is not well designed should be refused where it fails to reflect local design policies, and great weight should be given to conserving and enhancing landscape and scenic beauty in national landscapes. I cannot conclude it could be suitably designed to comply with Policies SD3, SD8, LLC1 and LLC5 of the KDNL Management Plan, which require proposals protect, conserve, enhance, and do not detract from the special character and qualities, natural beauty and landscape of the KDNL and reflects the guidelines for the Doddington and Newnham Dry Valleys Character Area in the LCA.

Church of St. Peter and St. Paul

33. The appeal site is within the setting of the Grade II* listed Church of St. Peter and St. Paul, a short distance to the north. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) requires that special regard is had to the desirability of preserving the setting of a listed building or any features of special architectural or historic interest it possesses. I note contrasting views of the Council's planning officer and conservation adviser in this regard, and that the effect upon the church did not form a putative reason for refusal. Though I sought further views from the Council in this regard, none were provided.
34. The church dates from circa 1200, extended in the 14th century and extensively restored in 1868. Its special architectural and historic interest and significance is in its long multistage construction, evolution, exhibition of techniques and craftsmanship from various periods, its architectural composition integrating a variety of historic and ornate features, and its appearance and visual prominence as a high-status building. It includes a two-stage tower, spire, 15th and 19th century windows, a 14th century arcade, north and south chapels, monuments, other decorative and ornate internal and external features, flint elevations and wall.
35. The church is a high value heritage asset and prominent local landmark, with the spire designed to be seen in the local landscape and glimpsed above and between settlement buildings. Its setting contributes to its significance because it incorporates a variety of historic, period and more recent buildings that reflect the historic settlement the church served, the community it has been at the centre over history and its evolution. Its setting contributes positively to its significance.
36. The appeal site building is quite a sizeable simple building of limited visual and architectural merit. However, the site and building is reflective of historic rural land uses that have grown and evolved with the settlement over time. Boundary landscaping, the building set-back from the frontage and away from the church, and open hardstanding, means the layout does not unduly encroach upon or inhibit

important views of the church. Therefore, the appeal site contributes in a limited and largely neutral way to the significance and setting of the church.

37. The indicative scheme would increase the amount of buildings across the site. They would be closer to the church, enclose the setting to a degree, incorporate a quite formal densely developed, strident, car dominated and intense development, reflective of suburban development patterns. This would adversely affect the setting and significance of the church, particularly visible from Seed Road.
38. At the reserved matters stage there is the scope for reduced dwellings, layout alterations, moving the bulk and massing of buildings away from the church, incorporating high quality local materials, and a significantly improved landscaping scheme. Were it designed appropriately, it may be possible for four dwellings to ensure an overall neutral effect upon the setting and significance of the church.
39. On the above basis of suitably high-quality reserved matters submissions, I consider the appeal scheme could preserve the setting and significance of the church and therefore, not conflict with the aims of section 66 (the LBCAA), which I have set out above.

Location

40. Though quite close to the settlement boundary, the site is part of more loosely knit development outside the boundary in the countryside. Policy ST3 states proposals will not be permitted in the countryside unless supported by national planning policy, and they are able to demonstrate they 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. Given my findings in respect of the character and appearance of the area and the KDNL, it fails against the policy as a whole.
41. In respect of support by the Framework, the ST3 supporting text explains that proposals at such villages is not required to meet the SBLP housing target. It goes on to explain however, that windfall development could help meet local needs, improve the viability of services, but opportunities are likely to be limited both within and, exceptionally, when required, at the edges of built-up area boundaries. Paragraph 4.3.17 of the SBLP explains that development intended to support the vitality of existing communities should be accompanied by evidence to show how it will support the viability of existing services and/or demonstrate how its scale will bring new services to the community.
42. I note Framework paragraph 83 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The appellant refers to Framework paragraph 73 which recognises small and medium sized sites can make an important contribution to meeting requirements and be built out relatively quickly, and some use of local facilities and reduction of out commuting is inferred.
43. While there is very limited other evidence advanced in respect of paragraph 4.3.17, to demonstrate the scheme will maintain or enhance the vitality of local rural communities, were to accept there would be some inherent use of local facilities by future occupiers, such as the pub and community hall, then it is possible the scheme could be regarded as meeting this aspect of the policy.

44. However, given my findings in respect of the character and appearance of the area and the KDNL, the proposal would conflict with policies for the location of new residential development taken as a whole, because it conflicts with Policy ST3 of the SBLP, the relevant provisions of which I have set out above.

Protected species

45. The Council's putative reason for refusal is specifically in respect of protected species, based upon an assertion of insufficient evidence to demonstrate the site does not provide a valuable habitat for them. In this regard SBLP Policy DM28 sets out an overarching objective that proposals conserve biodiversity and (Part B5) are accompanied by appropriate surveys to clarify constraints or requirements that may apply to development, especially where it is known or likely sites are used by species and/or contain habitats, that are subject to UK or European law.
46. The Council's objection also refers to the Framework, although no specific paragraph is mentioned. Paragraph 192, and footnote 68, refers to Circular 06/2005 in respect of statutory obligations for biodiversity. Paragraph 99 of the Circular explains that it is essential the presence or otherwise of protected species, and the extent that they may be affected is established before permission is granted, otherwise all relevant material considerations may not be addressed.
47. The site included a main building covered by some creeping flora, hardstandings, cypress and mixed hedgerows, some modest areas of ruderal vegetation, and generally younger trees and shrubs. I note the Council states the type of building is not known to be typically viable for habitat for bats and birds. The Council advances little to describe habitats of potential concern and the protected species it considers could be affected. I can see no reference to the Council having sought professional ecological advice to inform its view. Interested party representations refer in particular, Barn Owls, but I see no substantiating evidence the appeal site can provide a suitable nesting habitat for them.
48. In this context, from what is before me, there is very little evidence advanced by the Council to provide a clear understanding for the Council's objection, and it is not for me to speculate which ecological surveys may be appropriate. In consequence, I can only come to the view the Council has not made its case in this specific regard.
49. I conclude it has not substantiated that surveys are necessary, or that protected species are likely to be adversely affected by the development. Therefore, I find the proposal would not conflict with Policy DM28 of the SBLP, the relevant provisions of which I have set out above. In the absence of a specific policy reference, and my findings above, I do not find a conflict with the Framework.

Other Matters

50. The appeal site is within the setting of the Doddington and Newnham Conservation Area (DNCA). It is a large conservation area with a character, appearance and significance derived from the historic buildings and morphology of the settlements, the rural lane between the two, some large rural properties, parklands areas, mature trees, and the agricultural, well-vegetated rolling landscape.
51. The setting of the DNCA in the vicinity of the appeal site, contributes to its significance by virtue of providing a backdrop of generally quite low-key buildings on often generous plots with mature trees and hedgerows in the wider undulating

landscape, which is generally sympathetic to the DNCA. The appeal site is a small and quite enclosed part of the setting of the DNCA. Taking into consideration the scale and appearance of the site building, yard areas, vegetation, its rural appearance, and noting that it allows some limited visibility and appreciation of the DNCA, the appeal site contributes in a limited way to its setting and significance.

52. The extent of built development, its intensity, and layout shown on the indicative scheme, would be harmful to the setting and significance of the DNCA. However, with suitably high-quality schemes at the reserved matters stage, it appears to be possible the appeal scheme could, at best, ensure a neutral effect upon the setting and significance of the DNCA.
53. I have noted strongly held views in respect of issues such as, in particular, highway and access matters, parking, foul drainage, and the living conditions of neighbouring occupiers. However, as I am dismissing this appeal for other substantive reasons, I have not assessed these matters in further detail. Though some interested parties consider the appeal was made out of time, as an appeal against non-determination, I see no reason why this could be the case.
54. I note the appellant's frustration at some aspects of the application process including the length of time in which the Council did not ultimately determine the application. However, my consideration of this appeal scheme is upon its planning merits based upon the evidence before me.

Planning Balance

55. The appeal scheme would result in some moderate temporary economic benefits during construction. Upon completion there could potentially be some limited on-going spend in the local economy and support to services and facilities. The Council cannot demonstrate a 5-year housing land supply so the policies most important for determining the application are considered out of date, although the magnitude of the housing supply shortfall is unclear. Were it to be regarded as acute, the appeal scheme could be regarded as a significant benefit to supply.
56. It appears there is scope for an overall net gain in biodiversity, further landscaping provision, and some potential overall drainage benefits. However, there is no substantive evidence to suggest these would be anything other than limited benefits at best. There could be some benefits in terms of preventing anti-social behaviour. It is implied the dwellings would be carbon neutral and renewable energy generated, although were there to be a net benefit, it would appear likely to be a limited overall benefit. Overall, the benefits of the proposal are attributed significant weight in its favour.
57. The appeal scheme could result in an overall neutral effect upon setting and significance of a Grade II* listed building and the setting of the DNCA. These would be neutral matters in the balance. Were I to agree the proposal would, or subject to suitably worded planning conditions could, be made compliant with policies and standards in respect of matters such as, the living conditions of future and neighbouring occupiers, archaeological matters, asbestos removal, highway access and parking standards, refuse and recycling storage and collection, sustainable design and construction, remediation of contamination were it present, these would be neutral matters. An absence of harm to protected species is also a neutral matter in the balance.

58. I have found the appeal scheme would result in harm to the character and appearance of the area, and the KDNL. In particular great weight should be given to conserving and enhancing landscape and scenic beauty in national landscapes. The appeal scheme conflicts with development plan policy for the location of new development and has not demonstrated compliance with plan policies for the loss of rural employment sites. These attract significant weight against the scheme.
59. The appeal scheme would result a development that is dependent upon the use of private motor vehicles, which on-balance attracts moderate weight against the scheme. That the scheme would result in LSEs upon designated habitats sites attracts very substantial weight against it. In-light of the foregoing, in accordance with paragraph 11d) of the Framework, the application of policies that protect areas or assets of particular importance provide a strong reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the tilted balance does not apply.
60. Overall, the benefits of the development are significantly and demonstrably outweighed by the policy conflicts and harm that would result, and ultimately, section 63(5) of the Regulations precludes the scheme from proceeding.

Conclusion

61. The proposal would be contrary to the development plan read as a whole, the Framework read as a whole, and the Regulations. There are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR