



## Appeal Decision

Site visit made on 25 October 2017

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13<sup>th</sup> November 2017

**Appeal Ref: APP/V2255/W/17/3174106**

**Land adjoining and rear of Jubilee Fields, Oak Lane, Upchurch, Kent, ME9 7AQ**

- 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 Clarendon Homes Limited against the decision of Swale Borough Council.
- The application Ref 15/501944/FUL, dated 27 February 2015, was refused by notice dated 27 October 2016.
- The development proposed is a mixed residential development of 41 No – 2, 3, 4 and 5 bedroom houses together with all associated garaging, parking and infrastructure.

### Decision

1. The appeal is dismissed.

### Main Issues

2. These are whether the proposed dwellings would be in a suitable location having regard to local policies concerned with housing in rural areas and whether any harm arising is outweighed by other material considerations.

### Reasons

3. The appeal site comprises 1.7ha of gently sloping grazing land which lies towards the southern end of the village of Upchurch. It is bounded on two sides by housing and gardens along Jubilee Fields and Wallbridge Lane whilst there is largely open, undeveloped land on the other two.
4. The settlement strategy for Swale is hierarchical in that Sittingbourne provides the primary urban focus for growth and Faversham and Sheerness are the secondary urban focus with lesser aspirations for rural local service centres and other villages. The proposal would be on the edge of Upchurch but outside its built-up area boundaries. Policy ST3 of the Swale Borough Local Plan of 2017 provides that development will generally not be permitted at such locations.
5. Along with others, Upchurch is identified by the Local Plan as a settlement displaying "more sustainable characteristics" although this does not alter its Tier 5 village category. Paragraph 4.3.22 confirms that development at these villages is not required to meet the housing target but raises the possibility of some development in particular circumstances, mainly in order to meet local needs. Nevertheless, Policy ST3 only refers to minor infill and redevelopment sites within the built up area boundaries of these villages as permissible. As the proposal does not meet these policy criteria it would not accord with the overarching settlement strategy.

6. Policy ST5 sets out the Sittingbourne area strategy and reinforces the approach of Policy ST3. However, of itself, it does not preclude development taking place elsewhere and consequently the proposal would not be directly at odds with it. Nevertheless this does not affect the broad conflict that would occur with Policy ST3. Furthermore, to permit the proposal would undermine and dilute the settlement strategy which is part of delivering sustainable development in Swale according to Policy ST1.
7. There are no objections on the grounds of character and appearance as the site is well contained and a landscape buffer would be incorporated on the western side. There would be no coalescence with nearby settlements. However, by encroaching into undeveloped land the proposal would have a negative impact on the intrinsic value of the countryside. Protecting this is one of the purposes of the built-up area boundaries. New planting would be undertaken to provide additional habitats as well as improve visual amenity but these benefits do not override the general detrimental effect of building on the land.
8. Future residents would be a little way from the village core and there are no significant transport links to and from Upchurch although there is a bus service. The larger town of Rainham is a short distance to the west but future occupiers would inevitably place some reliance on the car. Although the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas this is not a location that would make the fullest possible use of public transport, walking and cycling. One of the Framework's core planning principles is to actively manage patterns of growth accordingly and the proposal would not sit well with that objective.
9. In this case the accessibility to services and facilities would not be poor and there would be some scope to do so by means other than by private transport. However, the scale to which this would be likely to occur would be limited and when judged against the wider ambitions of the Framework the appeal site is not a good location for housing as it would encourage car use. This is a further factor that counts against the proposal but only to a limited degree.
10. In conclusion on this issue the proposal would not be in a suitable location for housing when assessed against relevant local policies.

*Other material considerations*

11. The Inspector's Report of June 2017 on the Local Plan examination found the Council had demonstrated a 5 year supply of deliverable housing sites to meet the requirements of the Framework. This position is not 'fixed' for all time and the main evidence to the examination was the Statement of Housing Land Supply (SHLS) from November 2016. Nevertheless for the purposes of this decision that finding is authoritative and of considerable weight and has also settled the questions about dealing with the shortfall and the buffer. On the other hand, the conclusions reached in appeal decisions immediately prior to the issue of the report have been overtaken by events.
12. With reference to the SHLS the appellant points out that the supply of sites exceeds that required by 300 and contends that this is "marginal" and "tenuous". The company also questions the robustness of the 5 year supply for a number of reasons including the absence of information about Year 1 of the housing trajectory and the significant numbers expected in Years 4 and 5. Delay in sites coming forward is clearly possible but from the evidence given

there is no clear reason to think that those highlighted at Bobbing and Borden are not deliverable within 5 years. In any event, these sites account for 53 units which would not alter the overall picture in themselves.

13. According to the SHLS sites with planning permission are expected to deliver 1,745 units to 2020/21. Because of slow progress in schemes of over 50 units the appellant suggests that there may be a shortfall of 166 units. However, footnote 11 of the Framework confirms that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented. The information provided does not pass that test.
14. Three allocation sites which contribute to the 5 year supply are also referred to where either the submission of applications or the issuing of permission has not proceeded as expected. The Planning Practice Guidance indicates that deliverable sites could include those allocated for housing unless there is clear evidence that they will not be implemented within 5 years.
15. The bulk of the units at the three sites are due to be delivered in Years 4 and 5 of the Local Plan so there is scope for matters to 'quicken' and not jeopardise the overall supply position. In any case, the 5 year supply should be assessed from now rather than from the start of the plan period. It is nevertheless suggested that, at most, a deficiency of 276 units might occur but the level of detail about the circumstances and likely progress of these sites is thin. Consequently it has not been shown that these houses are not capable of being delivered within 5 years and hence the overall findings of the Local Plan Inspector should not be set aside.
16. The appellant refers to an appeal at Canterbury Road, Dunkirk where the figure of a 5.4 year supply has been challenged (APP/V2255/W/17/3172378). The outcome of that appeal is awaited and so the evidence provided in that case including the appellant's closing submissions can only be given limited weight. Whether or not Upchurch is more sustainable than Dunkirk is not a helpful comparison to make in determining this appeal since the site does not fit well with the broad strategy for the location of housing development.
17. The Local Plan is to be reviewed to resolve the details of the highway infrastructure required to support planned development beyond the first 5 years of the Local Plan period. As such, a full review is due to be completed for adoption by April 2022. However, this does not alter the present position in terms of housing supply or indicate a lack of confidence about delivery in the early stages of the plan period. Whilst the current Local Plan may be short-lived this does not change its status. The Council has already undertaken a further call for sites but this should be seen as pro-active plan-making rather than anything else.
18. The level of supply does not allow for much tolerance should housing sites fall away for any reason. However, national policy is predicated around achieving a 5 year supply including an additional buffer and nothing more than that. Notwithstanding the sites referred to by the appellant this is the current position in Swale for the purposes of deciding this appeal. As such, the Local Plan is not out-of-date and paragraph 14 of the Framework does not apply. There is no support in national policy for the notion that the presumption in favour of sustainable development should be applied for an interim period pending the Local Plan review.

19. It is also notable that, unlike in a recent appeal decision in Canterbury District (APP/J2210/W/16/156397), the examination Inspector specifically rejected arguments that additional sites should be allocated to give extra flexibility. This appears to be due to the strategic aim of concentrating a higher proportion of growth on Sittingbourne and Sheppey rather than more viable sites elsewhere. Furthermore, whilst the appeal site is adjacent to the settlement it was considered as an allocation through the local plan process but did not score highly enough as the village lacks key facilities. This reinforces the objections previously identified especially as one of the core planning principles in the Framework is that the system should be genuinely plan-led.
20. Nevertheless in providing 41 new units the proposal would respond to the aim of boosting significantly the supply of housing. This consideration could nonetheless be applied to all proposals for residential development wherever they are located and the level of supply in Swale is presently such that this is a matter of limited weight.
21. The scheme makes provision for affordable housing. Planning obligations have been submitted to secure either 14 or 16 units. The higher figure would accord with the expectations of Local Plan Policy DM8. National policy nevertheless emphasises the importance of delivering a wide choice of homes and paragraph 54 refers to rural exception sites. The development is not promoted as such and there is no evidence that needs in the vicinity of Upchurch are particularly acute. That said, the provision of affordable housing would be likely to be beneficial and this is a matter of moderate weight in support of the proposal.
22. The Planning Practice Guidance notes that rural housing is essential to ensure that local facilities are viable but there is limited evidence that these are under threat. Nonetheless it is reasonable to assume that in the long-run the development would contribute to the vitality of the village as future residents would be liable to support and bolster local services. The size of the local community would also be enlarged. This is also a matter of some positive weight for the proposed development.
23. As a result of it Council revenues would increase and the obligations would also ensure payments are made towards education, social and other services. In environmental terms appropriate mitigation for protected species has been put in hand and the houses would be built to the relevant construction standards. However, the weight to be given to these considerations is limited since they are largely adhering to relevant policy expectations.
24. Concerns are raised by others relating to infrastructure and the lack of spare places at nearby schools, the loss of green space and ecological impacts, highway safety, the absence of on-site open space provision, the relationship with surrounding properties and the proximity to potentially disruptive agricultural uses. However, the Council has no detailed or technical objections and there is nothing that causes me to reach a different view.

### **Final balancing**

25. The appeal site is said to be available now with a developer in place and housing could be delivered quickly as little new infrastructure would be required. However, it is outside the built-up area boundary of Upchurch and given that a 5 year housing land supply has been demonstrated the proposal is not supported by national policy. As such, the proposal conflicts with Policies

ST1 and ST3 of the Local Plan. The prime objection relates to the undermining of the settlement strategy but there would also be a negative impact on the intrinsic value of the countryside and car use would be encouraged. Whilst many Local Plan policies would be complied with the failure to follow the recently adopted approach to the location of housing is so fundamental that the proposal would not accord with the development plan as a whole.

26. Paragraph 12 of the Framework confirms that where there is conflict with an up-to-date Local Plan proposed development should be refused unless other material considerations indicate otherwise. A number of benefits are put forward which would also respond positively to the economic, social and environmental dimensions of sustainable development identified in the Framework. However, none of these attract significant weight. So at the end of the day, the factors that favour the proposal do not collectively outweigh that conflict or the harm identified.
27. Therefore, for the reasons, given the proposal is unacceptable and the appeal should not succeed.

*David Smith*

INSPECTOR

Richborough Estates