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## Appeal Decision

Site visit made on 1 July 2014

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 7 July 2014**

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**Appeal Ref: APP/V2255/A/14/2213016**

**9 Ashford Road, Faversham, ME13 8XL**

- 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 Troika Investment Co Ltd against the decision of Swale Borough Council.
  - The application Ref SW/13/0670, dated 24 May 2013, was refused by notice dated 22 November 2013.
  - The development proposed is 12 terraced, semi-detached and detached dwellings.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. I consider that the main issues are whether the proposal would preserve or enhance the character or appearance of the Faversham Conservation Area and whether it would preserve the setting of the listed buildings.

### Reasoning

3. The appeal site is outside the built-up area of Faversham but within the Conservation Area. The appeal site is located on the south side of London Road (A2) close to its junction with Ashford Road (A251). The site is about 0.5km from Faversham railway station. There are two listed buildings in the approximate centre of the northern part of the site. The appeal site was originally an orchard but there are few trees remaining and the land is mostly laid to grass. To the north of the appeal site, between it and the A2, there is a plot of open land<sup>1</sup> which was also formerly an orchard; it currently has a few sparsely planted fruit trees and what appeared to me to be a number of recently planted saplings in a variety of different species.
4. The proposed development would comprise seven detached, two semi-detached and three terraced houses of two or two and half storeys with accompanying open sided car ports and there would be additional parking spaces for visitors. There would be seven houses in the western part of the site and these would include the three terraced houses which would face Ashford Road; the remaining five houses would be located to the east of the listed cottages. The houses would have individual designs and they would be

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<sup>1</sup> With an area of about 0.8 hectares (2 acres)

built with traditional brick and tile exterior materials. The current vehicular access onto the A251 would be closed and all vehicular access would be from the existing access from the A2. There would be a 'Green' to the south of the listed cottages.

5. The appeal site and the surrounding area have a lengthy planning history. As long ago as the early 1990s Inspectors in two planning appeals<sup>2</sup> recognised the difference between the character and appearance of land to the north and south of the A2 and in the earlier decision the setting of the listed buildings was considered. Whilst I appreciate that there have been developments in the vicinity of the appeal site since that time and the proposals in those appeals were very different from the one in this appeal, the comments in respect of the differences between the two sides of the A2 seem to me to remain pertinent and the semi-rural open character of the land on the south side of the road remains. Also the statutory requirement contained in s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, that is, 'when considering whether to grant planning permission for development that affects a listed building or its setting [the decision maker] shall have special regard to the desirability of preserving its setting', remains in force.
6. The Inspector in the earlier appeal described the setting of the listed cottages as '... apart from the access area to the west, they are more or less surrounded by the trees and grazing areas of the orchard. They have small cultivated garden areas but do not possess any of the more 'urban' characteristics of 'Mindon' and its garden to the north west ... The overall impression of their setting, in my opinion, is that the cottages are seen as typically rural dwellings, well removed physically and visually from the predominantly built-up urban area of Faversham to the north. The cottages possess a rustic charm and are in a setting that is more typical of the more open countryside parts of Kent than of the built up area ... the surrounding orchard contributes positively to their setting, despite its rather wild and unkempt state and the condition of the scattered fruit trees'<sup>3</sup>.
7. Some years later, in 2004, the Council's Conservation Area Character Appraisal describes the listed buildings as follows: '... on the southern side of London Road close to the junction with Ashford Road two early C19 brick and weatherboarded cottages are still to be found set deep within a patch of old orchard at the end of an unmade track, so that their pegtiled roofs are viewed across the tops of old fruit trees. Just here, therefore, is a fragment of 'rural Kent' positioned right alongside the southern edge of the town. Despite the rather lacklustre appearance of the orchard (a collection of rather randomly spaced trees of varying sizes, varieties and vigour) the traditional Kentish character of the houses, the orchard setting and the position on the very edge of Faversham town are in combination such that this remains a rather special place'<sup>4</sup>.
8. Then in 2007 the appeal site was considered by a Local Plan Inspector who said that, on the south side of the A2 a sense of openness and space prevailed in contrast with the character of the land to the north. Coupling that with the special planning considerations applicable to the Conservation Area he concluded that the land was 'so important visually in its function as a foil to the

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<sup>2</sup> T/APP/V2255/A/90/173993/P7 and T/APP/V2255/A/92/206588/P8 - both appended to the Council's statement

<sup>3</sup> Paragraph 23 and 24 of T/APP/V2255/A/90/173993/P7

<sup>4</sup> Faversham conservation area character appraisal September 2004 paragraph 11.22

more heavily built up area of Faversham to the north of the A2 that, in conjunction with the predominantly open land adjacent to it, it should remain open and substantially undeveloped, as now<sup>5</sup>.

9. English Heritage, in its response to the current proposal note that the cottages are listed for the attractive use of Kentish vernacular forms and materials and their setting among fruit trees and also their functional relationship to the orchard which illustrates the fruit growing traditions of Faversham.
10. Whilst some aspects of the area around the site may have changed with recent developments, in particular the erection of the new laundry building and what appears to be the loss of some trees of the appeal site and the land to the north, it seems to me that the immediate setting of the listed cottages has not altered to any significant extent. They are still surrounded by open land in a countryside setting that is divorced from the urban nature of Faversham to the north of the A2.
11. The proposal would irrevocably alter this setting. Instead of orchard/open land there would be manicured gardens and domestic planting; there would be domestic paraphernalia around the dwellings; there would be significant amounts of hard surfaced areas for the driveways, parking and turning spaces; all of these elements would result in a sub-urban setting far removed from the current semi-rural one. There would be traffic immediately in front of the cottages, albeit on a narrowed section of the drive, and far from 'the area immediately to the south remaining intact in its direct relationship to those buildings' as suggested by the Appellant I consider that the driveway would cut the cottages off from the land to the south.
12. Although the proposed scheme would provide for some space around the cottages, the proposed dwellings would be considerably larger buildings than the cottages; there would also be twelve of them as well as the car ports and I consider that the total scheme would overwhelm the cottages and have an adverse impact on their setting.
13. The adjacent land to the north of the appeal site is within the control of the Appellant and it is included in the landscape masterplan<sup>6</sup>. The Appellant says it is, and always has been, their intention to retain and manage this area for the longer term<sup>7</sup>. There was a suggestion that the land could be retained as open land and safeguarded from future development by the Appellant entering into a s.106 obligation in this regard. The Parties questioned whether such an obligation was possible and, as no such obligation has been made, this is a matter outside the scope of this decision. There is therefore no guarantee that the land would remain open and I cannot speculate about the possibility or type of any future applications in respect of that land or what any decision would be. This land is, however, in my opinion an important element of the setting of the listed cottages.
14. The situation with regard to the Green is somewhat different because that areas of land would be within the appeal site and its retention as open land could be enforced by way of a planning condition. The driveway would,

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<sup>5</sup> Quoted on page 48 of the Report to the Planning Committee dated 29 August 2013

<sup>6</sup> Drawing 2460/D002C

<sup>7</sup> The Appellant's final comments

- however, cut the cottages off from this open land (as mentioned above) to the detriment of their setting.
15. The town of Faversham has developed to the north of the A2<sup>8</sup> unlike other towns and villages along it which tend to have developed on both sides. This results in the land to the south of the A2 being predominantly open with some sporadic development. In the immediate vicinity of the appeal site there is 'Mindon' on the corner of the A2/A251 which is a substantial detached house and garden and opposite it and the site there is a Fire Station and a small number of associated houses. The laundry is to the south of the appeal site on the A251 and beyond that there is some ribbon residential development.
  16. The appeal site is outside the built-up area boundary but, in view of the location of the listed buildings and the orchard the conservation area extends across the A2 to include 'Mindon', the appeal site and the land to the north of the appeal site. S.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas when considering applications such as this.
  17. The appeal site has a semi-rural quality and, at the time of my visit, was relatively peaceful and tranquil. I appreciate that when it is fully operational there may be some noise emanating from the adjoining commercial laundry but I consider that the proposal, as well as having an adverse visual impact, would have an adverse aural impact because of the noise of day-to-day living resulting from the residents, visitors and vehicles.
  18. For reasons similar to those relating to the setting of the listed cottages I consider that the introduction of a small housing estate onto previously open land would result in the urbanisation of this part of the conservation area which would neither preserve nor enhance its character or appearance.
  19. I note the Appellant's opinion that the cottages would not be listed today because they have no special features of architectural or historic interest but I have to determine this appeal on the basis that, as matters of fact, they are listed and that the appeal site is within a conservation area. Paragraph 132 of the Framework<sup>9</sup> advises that great weight should be given to a heritage asset's conservation and it has been established that considerable importance and weight should be attached to the desirability of preserving the setting of listed buildings and the character or appearance of a conservation area<sup>10</sup>.
  20. I also note that the orchard setting has been eroded over time by such things as the removal of trees and the sale of some land for the laundry site car park. But the fact that there has been some erosion of the size and quality of the orchard is not a reason to justify a grant of permission because if it was it could result in the owner of a heritage asset failing to maintain his property and land. I do not suggest at all that there has been any deliberate neglect or damage in this case but paragraph 130 of the Framework advises that where there has been such neglect or damage the deteriorated state of the heritage asset should not be taken into account in any decision. It therefore seems to me that by analogy the current condition of the orchard carries little weight.

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<sup>8</sup> Watling Street Roman Road

<sup>9</sup> The National Planning Policy Framework

<sup>10</sup> Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137

21. The Council does not have a five year supply of housing land and this means that housing supply policies in the local plan should not be considered up-to-date<sup>11</sup>. None of the Local Plan policies referred to on the notice of refusal are specifically housing supply policies although one of the aims of saved policies SP1, FAV1 and SH1 is to promote land within urban areas for housing. The proposal would provide twelve dwellings which would make a small contribution to the supply of housing in the area; the properties would be well designed; the proposal would offer prospective purchasers a choice of a range of differently sized houses; the location is sustainable in that the railway station is about 0.5km away and the town centre is a short distance beyond that. Whilst the proposal would therefore provide a degree of public benefit I do not consider that this would outweigh the desirability of preserving the setting of the listed buildings and the character or appearance of the Faversham Conservation Area.
22. The notice of refusal cites a number of saved policies in the Swale Borough Local Plan<sup>12</sup> which seek in the main to restrict development to inside the built-up area boundaries; to restrict development in the countryside, that is land, falling outside the built-up area boundaries, to specific types of development, none of which is applicable in this case; to preserve the setting of listed buildings; and to preserve or enhance all features that contribute positively to a conservation area's special character or appearance. Whilst I accept that the proposal would comply with some elements of these policies, such as, being located so as to promote the provision of transport choices other than the car and providing safe vehicular access, I find that as a whole the proposal would not be in compliance with these policies. For the reasons given above, I therefore conclude that the proposal would not preserve or enhance the character or appearance of the Faversham Conservation Area and that it would not preserve the setting of the listed buildings.

### **Other matters**

23. I consider that a number of other matters of concern to the Council in respect of the proposal, such as, the protection of the mature sycamore adjacent to the Ashford Road; noise mitigation measures arising from the close proximity of the laundry; a risk assessment for contamination; surface water drainage issues; and an archaeological survey could be overcome by the imposition of planning conditions.
24. The Appellant has provided a unilateral undertaking made pursuant to s.106 of the 1990 Act to pay infrastructure contributions towards such things as public open space, libraries and community learning. I understand that the terms of undertaking are acceptable to the Council. However, because the appeal is to be dismissed on the main issues I give no weight to the undertaking.
25. The Council is concerned that a grant of planning permission for this site would set a precedent for similar applications for sites south of the A2. I am aware that other sites have been proposed, and rejected, for housing development south of the A2 and it seems to me that this appeal site is likely to be different from any other site because of, for example, the listed buildings and its location within the conservation area. In any event, each application has to be determined on its own merits, which is the approach I have taken in my

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<sup>11</sup> Paragraph 49 of the Framework

<sup>12</sup> Policies SP1, FAV1, SH1, E1, E6, E14 and E15

determination of the appeal, and even if I had allowed the appeal I do not consider that any precedent would have been set.

**Conclusions**

26. I have found that some public benefit would be gained from the proposal, however, this and other positive factors do not outweigh the considerable weight I attach to the desirability of preserving the setting of the listed buildings and the character or appearance of the Faversham Conservation Area. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.

*Gloria McFarlane*

Inspector

Richborough Estates