



Appeal Decision

Site visit made on 5 November 2019

by Beverley Wilders BA (Hons) PgDurt MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/V2255/W/19/3234462

**Funton Brickworks, Raspberry Hill Lane/Sheerness Road, Lower Halstow
ME9 7EG**

- 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 Mr Martin Hill (McCulloch Homes) against the decision of Swale Borough Council.
 - The application Ref 18/504110/FULL, dated 2 August 2018, was refused by notice dated 1 February 2019.
 - The development proposed is demolition of all existing buildings and structures on site and erection of 35 dwellings together with associated infrastructure, open space, landscaping and access works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The address of the site is described in various documents as being on either Raspberry Hill Lane or Sheerness Road, with Sheerness Road referred to on the planning application form. However, it appears that Sheerness Road only runs west from the junction with Bassar Hill whereas the site is to the east of the junction. For the avoidance of doubt, I have used both road names in the heading for this Decision and Raspberry Hill Lane in the text.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the site is a suitable location for housing having regard to local and national policy;
 - whether or not the proposal would make adequate provision for affordable housing.

Reasons

Character and appearance

4. The appeal site comprises part of a former brickworks site largely surrounded by open countryside, with the exception of a pair of semi-detached dwellings

- adjacent to the site at 1 & 2 Funton Cottages. It is to the south of the estuary of the River Medway, close to Barksore Marshes and the tidal mudflats of Funton Creek. The site contains a number of large, disused and somewhat dilapidated buildings and structures together with large areas of hardstanding. The site is confined to the central area of the former brickworks and does not include the former finished brick stockyard area to the west of the site or the former brick earth field to the east. A lawful development certificate was granted for the existing use of land and all buildings thereon for B2 (General Industrial) purposes in 2010 (Ref SW/10/1073).
5. Raspberry Hill Lane runs to the front of the site providing access to it and there are a number of public footpaths nearby including ZR42 to the rear of the site which forms part of the Saxon Shore Way and the byway ZR98 to the east. The open, undeveloped nature and topography of land surrounding the site means that there are views of it from various vantage points along the road and nearby footpaths. The appeal site is within the Iwade, Newington and Iwade Area of High Landscape Value (Swale Level) and it adjoins the North Kent Marshes Area of High Landscape Value (Kent Level).
 6. This proposal follows an earlier scheme for housing on the site which was refused by the Council and dismissed at appeal, partly due to concerns regarding its effect on the character and appearance of the area (Ref APP/V2255/W/16/3146393). I have seen the previous Inspector's decision and in reaching my decision I have had regard to it where relevant. The revised proposal before me is an attempt to overcome previous concerns and is supported by a Landscape and Visual Impact Assessment dated July 2018 (LVIA). The LVIA concludes that there would be adverse effects resulting from the proposal on character and views but that the mitigation included within the design combined with the beneficial effects of removing detracting features and replacing them with appropriately designed residential development would reduce these adverse effects in the medium to long term to an acceptable level of minor-moderate adverse or below. The conclusions of the LVIA are not accepted by the Council's appointed landscape consultant who questions some aspects of its methodology and considers that it has underestimated the landscape harm that would result from the proposal.
 7. Policy DM24 of Bearing Fruits 2031: The Swale Borough Local Plan adopted July 2017 (SBLP) states that planning permission will be granted in Areas of High Landscape Value (AHLV) subject to, amongst other things, avoidance, minimisation and mitigation of adverse landscape impacts as appropriate and, when significant adverse impacts remain, that the social or economic benefits of the proposal significantly and demonstrably outweigh harm to the AHLV. Paragraph 170 of the National Planning Policy Framework (the Framework) states that planning decisions should, amongst other things, protect and enhance valued landscapes; recognise the intrinsic character and beauty of the countryside and maintain the character of the undeveloped coast.
 8. There is no doubt that the current dilapidated appearance of the site is harmful to the character and appearance of the area and that the industrial and utilitarian appearance of the buildings and structures on site, some of which are large in scale, are somewhat at odds with the largely rural character and appearance of the surrounding area. However, I note that the Council considers existing development on site to be of some merit in that it reflects its industrial history, something that was also recognised by the previous

Inspector. Consequently, the Council considers the proposal to involve the loss of non-designated heritage assets.

9. The proposal offers some visual benefits when compared with the previous scheme in that it is for fewer dwellings on the smaller, central part of the site, it incorporates a greater setback from Raspberry Hill Lane and incorporates improved landscaping proposals. However, unlike the previous proposal, it only relates to part of the former brickworks site and does not include the land to either side. In addition, none of buildings or structures on site, including the locally distinctive three kiln chimneys, are to be retained and the proposal sees the introduction of 2 replica oast houses of a height of 11 metres. Whilst such features may be locally distinctive, their height would make them prominent and they are not prevalent in the immediate surrounding area nor do they reflect the industrial heritage of the site.
10. Though it is clear that attempts have been made to address the shortcomings of the previous scheme and to respond to the sites former industrial use and to its rural location, it nevertheless remains a visually prominent proposal for a relatively large residential development wholly out of keeping with the established rural character of the area. Whilst an overall reduction in the amount and height of built form on this part of the former brickworks site and an increase in landscaping is welcomed, the proposal would still be prominent in the landscape from certain vantage points and in particular from users of the Saxon Shore Way footpath which runs very close to the south of the site and is sited at a higher level relative to it. Recreational walkers using the footpath are likely to be particularly sensitive receptors and the site lies between the footpath and the main view, which is towards the estuary and I consider that the impact of the proposal on this viewpoint has been underestimated in the LVIA.
11. Taking the above matters into consideration, though the proposal would provide some landscape benefits, the layout and appearance of the proposal would have a significant adverse effect on the character and appearance of the area. It would therefore be contrary to policies CP4, DM22 and DM24 of the SBLP and to paragraphs 127 and 170 of the Framework insofar as they relate to character and appearance. These policies seek, amongst other things, development proposals to be of a high quality design that is appropriate to its surroundings including the coast and AHLVs. I note that Policy DM24 states that when there would be significant adverse impacts on an AHLV, that proposals will only be permitted where the social or economic benefits of them significantly and demonstrably outweigh harm to the AHLV. These matters will be considered elsewhere in the decision.

Suitable location for housing

12. The appeal site is located in a relatively isolated position in the open countryside with the nearest settlement being Lower Halstow, approximately 1.5km away. Iwade is located approximately 2.5km away to the east.
13. Policy ST3 of the SBLP sets out the settlement strategy for the area and states that at locations in the open countryside, outside the built up area boundaries shown on the proposals map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it 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. Policy DM14 of the SBLP states, amongst other things, that development proposals should achieve convenient routes and facilities for pedestrians and cyclists. These policies aim to protect the intrinsic value and undeveloped nature of the countryside and to achieve sustainable design and they are consistent with policies in the Framework.

14. The proposal is contrary to the Council's adopted settlement strategy as set out within SBLP Policy ST3. The site is located some distance from the nearest settlements which provide a number of services and facilities. Although part of the pedestrian route to Lower Halstow comprises public footpaths, at least some of the journey would involve the use of narrow and unlit roads without pavements meaning that the proposal could not achieve convenient routes and facilities for pedestrians and cyclists as required by SBLP Policy DM14. The relative position of the site to nearby settlements means that the proposal would not protect or enhance the vitality of rural communities and I have found that it would be significantly harmful to the character and appearance of the area.
15. Taking the above matters into consideration, the proposal would not be a suitable location for housing having regard to local and national policy. It would therefore be contrary to policies ST1, ST3 and ST14 of the SBLP and to relevant paragraphs of the Framework insofar as they relate to development in the open countryside and to accessibility. These policies seek, amongst other things, development to protect the countryside and to be accessible by pedestrians and cyclists.

Affordable Housing

16. Policy DM8 of the SBLP relates to affordable housing and states that in rural areas 40% affordable housing is sought and that in exceptional circumstances, amongst other things, a reduced requirement may be considered where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable.
17. None of the proposed 35 dwellings would be for affordable housing. The appellant states that a viability statement was submitted with the application and that this showed that the site is incapable of delivering any affordable housing due to the abnormal costs of cleaning up contamination on the site. The Planning Statement submitted with the application states that the full details of the viability appraisal were provided to the Council on a private and confidential basis due to it containing commercially sensitive information. I have not been provided with a copy of the viability statement and note that the Council's statement of case suggests that when determining the application, the Council did not receive a copy of it either and that therefore no assessment of the viability statement was carried out.
18. Paragraph 57 of the Framework states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage and all assessments should reflect the recommended approach in national planning guidance and should be made publicly available. The weight to be given to a viability assessment is a matter for the decision maker and national planning guidance states that the assessment should be prepared on the basis that it will be made publicly

available other than in exceptional circumstances. Even in those circumstances an executive summary should be made publicly available.

19. In this case I have not been presented with any viability evidence other than what has been stated in the Planning Statement submitted with the application. In the absence of this and having regard to advice on viability in the Framework and in national planning guidance, the appellant has not demonstrated that providing the required affordable housing provision would result in the scheme being unviable. Consequently, the proposal would not make adequate provision for affordable housing.
20. Although a Unilateral Undertaking (UU) was submitted during the course of the appeal, this does not include any provision for affordable housing other than through a viability review mechanism. Whilst this mechanism would seek to ensure that the viability of the scheme was monitored at various points during construction allowing for a review of the provision of affordable housing, it remains the case that I have seen no evidence to justify the proposed starting point of no affordable housing.
21. Taking the above matters into consideration, I conclude that the proposal would not make adequate provision for affordable housing. It is therefore contrary to Policy DM8 of the SBLP and paragraph 62 of the Framework. These policies seek, amongst other things, adequate provision of affordable housing.

Other Matters

22. Both main parties agree that the Council cannot currently demonstrate a five year housing land supply. The Council considers the supply to be 4.6 years whereas the appellant considers it to be 4.3 years with evidence provided by both parties to support their respective positions.
23. Paragraph 11d of the Framework states that under such circumstances, the policies which are most important for determining the application are out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. The proposal would provide 35 additional dwellings and would make a moderate contribution to housing supply in the area at a time when the Council cannot demonstrate a five year supply. It would also provide economic benefits both in the short term through the provision of employment opportunities during construction and in the short to long term through spending in the local economy both during construction and afterwards. The proposal would result in the reuse and redevelopment of a brownfield site. I attach moderate weight to the social, economic and environmental benefits associated with the proposal.
25. Weighed against these benefits is the significant harm that I have identified to a valued landscape that is identified as a AHLV. Although the existing buildings on site are largely in a poor condition and generally large in scale, the visual harm resulting from the proposal would nevertheless be significant. In addition, future residents of the site would, as a result of its relatively isolated location and lack of access to public transport, be largely reliant on car travel as safe and convenient walking and cycling routes would not be available to

- them. Furthermore, the position of the site relative to nearby settlements means that it would not help to create a strong and healthy community and no affordable housing is being proposed.
26. Taking the above matters into consideration, even if I were to conclude there is a shortfall in the five year housing land supply on the scale suggested by the appellant, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including policies to boost the supply of housing and to meet the need for affordable housing (including (inc) paras 59, 61 & 62); to promote healthy and safe communities (inc para 91); promoting sustainable transport (inc para 102); achieving well-designed places (inc para 127) and protecting and enhancing valued landscapes (inc para 170). The proposal does not therefore benefit from the presumption in favour of sustainable development.
27. In reaching this conclusion I note that the main parties have identified a number of policies that are relevant to the determination of the proposal and that a number have been referred to in the reasons for refusal. Two of these policies ST1 and ST3, seek to control the location of development, including housing, and therefore could be said to have a direct effect on housing supply. In light of the Council's housing land supply position and having regard to paragraph 11 of the Framework I attach limited weight to the conflict with these policies. However, the remainder of the policies referred to in the reasons for refusal relate to more general matters such as design, landscape protection and access and to affordable housing and the coast. Such matters do not directly affect housing supply and as there is no apparent inconsistency between these policies and policies in the Framework, I attach full weight to the conflict with these policies.
28. The site is located near to The Medway Estuary and Marshes Special Protection Area, Ramsar Site and Site of Special Scientific Interest. There is therefore potential for the proposal have a significant effect on the designated site resulting from recreational pressure, increases in light, noise and dust and surface water run-off. The submitted UU includes financial contributions towards the Strategic Access Management and Monitoring Strategy in respect of the SPA as mitigation for any adverse effect on biodiversity resulting from the proposal. I note that in determining the application the Council also referred to the need for conditions to be attached to any permission granted controlling matters such as drainage, lighting, noise and dust. However, as I am dismissing the appeal there is no need for me to consider this matter further or to undertake an appropriate assessment having regard to the Habitat Regulations¹.
29. Similarly, there is no need for me to consider the form or content of the UU insofar as it relates to other matters as it would not alter the outcome of the appeal.

Planning Balance and Conclusion

30. As stated, the proposal is contrary to a number of development plan policies and although the Council's five year housing land supply position means that some of the policies cited in the refusal are considered to be out of date, the

¹ The Conservation of Habitats and Species Regulations 2017

proposal is nevertheless contrary to the development plan when taken as a whole. There are no material considerations that indicate that the proposal should be determined otherwise in accordance with the development plan.

31. Therefore, for the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR