



Appeal Decision

Site visit made on 26 May 2026

by **Andrew Owen MA BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2026

Appeal Ref: 6002253

Land East of Holywell Primary School, Forge Lane, Upchurch ME9 7AD

- 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 Cantium Land and Development Ltd against Swale Borough Council.
 - The application Ref is 24/504410/OUT.
 - The development proposed was originally described as the erection of 16 dwellings with associated parking and gardens and formation of additional dual purpose fenced and gated car park/ playground for Holywell Primary School, with creation of new access and egress points onto Forge Lane.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Cantium Land and Development Ltd against Swale Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline form with matters of access and layout to be considered at this stage, and matters of scale, appearance and landscaping reserved for later consideration. I have determined the appeal on the same basis and so I have considered any details on the plans relating to the reserved matters as indicative only.
4. During the consideration of the application, the description of the proposal was amended insofar as the reference to a fenced and gated car park/playground for Holywell Primary School, was changed to overflow community parking. This is a minor change and I have considered the proposal on this basis.

Main Issues

5. The appeal is against the failure of the Council to determine the application. However, in their appeal statement, the Council have provided a putative reason for refusal. Based on that, the main issues are:
 - i) whether the development would be acceptably located with regard to the Council's settlement strategy;
 - ii) the effect of the development on the character and appearance of the area;

- iii) whether there is an appropriate mechanism to secure affordable housing on site; and
- iv) whether the development would result in the loss of Best and Most Versatile (BMV) agricultural land.

Reasons

Spatial strategy

6. It is not disputed by the parties that the site lies outside the built-up area boundary of Upchurch. Policy ST 3 of the Swale Borough Local Plan (2017) states that development outside the built-up area boundaries in the open countryside will not be permitted unless, among other things, it is supported by national planning policy. The parties agree there is no five years supply of housing land. However, whilst there are national policies that support housing development in that scenario, notably paragraph 11 d) of the National Planning Policy Framework (the 'Framework'), I consider this provides broader support to housing generally rather than specifically to development beyond settlement boundaries. There is therefore no national planning policy that would necessarily support a different approach to policy ST 3, and therefore there would be conflict with that policy.
7. The site is a Tier 5 settlement, and the parties agree that the site provides good access to the services and facilities within Upchurch, which includes bus connections to larger towns nearby. Paragraphs 4.3.21 and 4.3.22 of the explanatory text to policy ST 3 relate to Tier 5 settlements and set out that some development in such settlements may be acceptable. However, these paragraphs are concerned with development in or at the edge of built-up area boundaries. By being separated from the Upchurch boundary by the adjacent primary school, the appeal site is not in or at the edge of the built-up area boundary. I recognise the reference to adopting a flexible approach, in paragraph 4.3.18, but given the substantial separation from the Upchurch boundary, that does not lead me to a different view.
8. Paragraph 4.3.14 of the explanatory text states that the line between consolidated areas of built development and open countryside may not always be clear cut, and that judgements on a case-by-case basis may need to be made. However, to my mind 'consolidated areas of built development' refer to areas of development beyond built up areas. Indeed, the next sentence reaffirms that land beyond built-up area boundaries is regarded as open countryside. In any event, in this case, it is clear cut that the appeal site is separated from the built-up boundary and from any other consolidated area of built development. In particular, when approaching the site from the public footpath to the south it is seen to be flanked to either side by undeveloped land.
9. Overall, there is nothing in the explanatory text that would lead me to consider the proposal would accord with the policy, notwithstanding that the policy itself carries more weight than the explanatory text. The development would therefore not be appropriately located, and the failure to comply with the settlement strategy in policy ST 3 means there is a consequential conflict with Local Plan policy ST 1, which requires development to accord with the settlement strategy.

Character and appearance

10. The appeal site currently comprises an undeveloped field, roughly triangular in shape. There is an arable field opposite the site, open grassed land to the south and east interspersed with a few dwellings, and the primary school to the east. A public footpath runs along the south east boundary of the site. This footpath is flanked by low post and wire fences and so the fields to either side are clearly visible from the footpath. The site is also clearly visible from another public footpath, which runs south east from Chaffes Lane across another field on slightly higher land, and is clearly visible in the Forge Lane street scene above the low hedge along the roadside. Due to this openness, the site is prominent in its setting and its undeveloped character makes a strong contribution to the open, rural character of the area on this eastern side of Upchurch.
11. The Swale Landscape Sensitivity Assessment specifically considers a large area of land to the east of Upchurch. It finds that the east settlement edge of Upchurch is not well defined, and that there is an opportunity to create a better settlement edge by small scale development not more than one or two fields to the east of the village. The development would provide such an opportunity, and the provision of landscaping alongside the public footpath on the south east boundary could reflect the use of shelterbelts elsewhere locally, including opposite the site.
12. Conversely, although matters of scale, landscaping and appearance are reserved, the development would inevitably result in the loss of this small field, which is characteristic of the local landscape. This would compromise the open character of the site and disrupt the openness of the wider area.
13. Visually, this effect would be most starkly apparent in close distance views from the footpaths to the south of the site, and also from Forges Lane. The appellant's Landscape and Visual Impact Assessment considers that there would be a significant impact on these viewpoints. However I consider there would also be a significant impact when seen from viewpoints 16, 17, 19 and 20. From 16 and 17 the row of dwellings proposed for the eastern part of the site would be visible, and from 19 and 20 all of the houses would be visible, albeit from a greater distance. From these positions, the open views across the site to the landscape and estuary beyond would be interrupted as, although the site is on lower land, the gradient is not so steep that views would be over the top of the houses, even if single storey. Moreover, landscaping would be unlikely to mitigate this fully. In addition, from closer positions, the boundary treatment which would be necessary along the southeast boundary of the site to separate and screen the gardens from the public footpath, would also disrupt the open views.
14. In addition, the density of the scheme, whilst less than the residential development on Church Farm Road, would represent a more intensive form of development than the primary school. At present the school and its playing field, provides a transition between the dwellings to the west and the undeveloped land at the appeal site to its east. The proposal would therefore disrupt the pattern of development locally.
15. The parking proposed at the front of the site would be fairly well contained by planting along the frontage. This aspect of the proposal would reflect the parking at the front of the school, which is itself behind mature vegetation. In that context the parking would not be incongruous. Furthermore, there would be room between

some of the parking spaces for additional planting to assist in breaking up the hardstanding.

16. The garden for plot one would be wholly behind that for plot two. However, whilst this arrangement differs from that elsewhere in the scheme, and most likely elsewhere locally, I do not consider this would have any material effect on the character or appearance of the area given the relatively small size of the gardens and their limited visibility in the wider context.
17. Nonetheless, notwithstanding the parking arrangement and the garden of plot one, the development would harm the character and appearance of the area. It would therefore conflict with Local Plan policies DM 24, DM 14 and CP 4 which together seek to protect the landscape and minimise adverse impacts on the landscape and the natural environment. Policy DM 24 adds that where significant adverse impacts remain, the social or economic benefits must significantly and demonstrably outweigh the harm. I consider this later as part of the planning balance.

Affordable housing

18. A completed Unilateral Undertaking (UU) dated 1 March 2026 has been provided. This purports to secure affordable housing, in addition to a number of other items including biodiversity net gain, the overflow parking and numerous other contributions. Both the Council and Kent County Council provided comments on that, and in response a Supplemental Unilateral Undertaking, dated 26 March 2026, was provided. This includes a supplemental agreement which contains within it a list of variations to the principal UU, i.e. that dated 1 March.
19. Under s106A(1), a planning obligation may only be modified or discharged by agreement between the enforcing authority and the person against whom the obligation is enforceable, or via an application or appeal if the authority refuses to agree. It could not be modified by a supplemental agreement. In addition, although clause 4 of the Supplementary Unilateral Undertaking requires the execution of the supplemental agreement, it is, itself, not a planning obligation as it does not constitute any of the forms an obligation can take as identified in s106(1). Moreover, whilst it may be binding on the interested party, a covenant of this nature would not be enforceable against successors in title. As such, I cannot take this Supplementary Unilateral Undertaking into account, and can only consider the principal UU.
20. Schedule 2 of the UU refers to the provision of affordable housing. Paragraph 2.1 of part one states that no development shall commence until an Affordable Housing Scheme has been approved in writing by the Council. There is no other part of the UU that states this requirement can be dispensed with. Furthermore, as the document is unilateral, the Council are not obliged to accept the affordable housing contribution set out in Part Two. If that were the case, it would still be necessary for an Affordable Housing Scheme to be agreed before development commenced. In either case, the UU provides the Council with the ability to decline to approve the Affordable Housing Scheme and so ensure that only development that they consider to be acceptable could be commenced.
21. Policy DM 8 of the Local Plan requires, on developments of this size in this location, that 40% of the units should be affordable. The parties agree the six affordable homes would represent a proportion of 37.5%. However, the policy also allows for a commuted financial contribution to be provided instead. I see no reason

why, if affordable housing is agreed to be unachievable on site, an equivalent commuted contribution could not be agreed; or if affordable units were provided on site, why a figure equivalent to the 2.5% shortfall could not be agreed. All final details could be secured by the Affordable Housing Scheme.

22. Ultimately, it is likely that an acceptable provision of affordable housing could be secured. The proposal would therefore not conflict with policy DM 8 as set out above, and Local Plan policy CP 3, which says affordable housing should be provided in accordance with policy DM 8.

BMV

23. There is disagreement between the parties over the classification of the land, with the Council considering it is Grade 1 agricultural land, and the appellant suggesting it is Grade 3b. Local Plan policy DM 31 states that the development of Grade 1, 2 and 3a agricultural land will not be permitted unless certain criteria apply, none of which, it is suggested, would apply here.
24. The Council acknowledge their assessment is high level and so accept it may not be truly reflective, but raise concerns with the methodology used in the appellant's Agricultural Quality (AQ) assessment. Natural England advise that every hectare, boreholes should be made 1.2m deep using an auger supported by 1m deep inspection pits. The AQ assessment demonstrates that over the 0.8ha site, four auger holes and an inspection pit were dug. Due to the stoniness of the soil, the auger holes were not 1.2m depth, but they ranged between 60 and 80cm. In any case as the inspection pit did reach 1.2m deep and as this would equate to one per hectare, the advice from Natural England was met.
25. Separate DEFRA guidance relates to how data should be interpreted, advising that for soil to be considered grade 3a, no more than 15% of the top 25cm should have stones larger than 2cm. At one investigation point, stoniness was 17%, the others being recorded as 15%. Although this could suggest part of the site is Grade 3a, the appellant confirms it is the droughtiness of the site that is the more significant factor. In this respect the assessment calculates that the moisture balance for potatoes would render the site Grade 3b, but for wheat would render it 3a. This is recognised by the Council. However as set out in the DEFRA guidance, both the minimum moisture balance values must be met. As they are not, the land could not be graded any higher than 3b.
26. As a result, I consider the land has been appropriately assessed and the conclusion that it is Grade 3b is robust. Consequently, in this regard, the development would not conflict with Local Plan policy DM 31 as set out above. There would also be no conflict with Local Plan policy DM 3, which seeks to ensure the potential for rural employment is not reduced.

Other Matters

27. It is not disputed that the Council cannot demonstrate a five years supply of housing. The appellant suggests it is just shy of four years, though may be even lower. I consider this to be a modest shortfall which carries modest weight. Nonetheless, this triggers the application of paragraph 11 d) of the Framework which states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Particular

regard should be had to policies relating to development in sustainable locations, making effective use of land, design and the provision of affordable homes.

28. Although the site is beyond the built-up area boundary, future residents would have reasonable access to the facilities in the village including bus stops served by buses accessing larger towns nearby. Also, as set out above, it is likely that an appropriate amount of affordable housing, or a suitable commuted sum, could be provided. These count in favour of the proposal, though not substantially, given all development should have good access to services and facilities and the affordable housing would be that required by policy.
29. In terms of making an effective use of land, the Framework highlights paragraph 129 which requires development to achieve appropriate densities taking into account an area's prevailing character. As set out earlier, I consider the development would not represent an appropriate density to reflect its position beyond the settlement boundary. Also, although the design of the individual houses is a reserved matter, the design of the development as a whole would not be sympathetic to local character or reflect the surrounding landscape setting as described in paragraph 135 of the Framework. I give these conflicts with the Framework substantial weight.
30. In terms of other policies of the Framework, the proposal would be supported by the need to boost the supply of housing, particularly at a time when the Council cannot demonstrate a sufficient supply. This benefit is of significant weight. The economic benefits of a development of this scale would be moderate. The provision of additional parking at the front of the site which could be available to the wider community, particularly during school drop off and collection times, would be a modest social benefit. The provision of the required Biodiversity Net Gain would be a modest environmental benefit.
31. Given the Council's spatial strategy is not achieving the necessary housing delivery, it is out of date and the development's conflict with it should be given limited weight. Nonetheless, the conflict with Local Plan policies relating to the character and appearance of the area can still be given substantial weight as they are consistent with the Framework.
32. Overall, it is considered the adverse effects resulting from the development, would significantly and demonstrably outweigh the benefits of the development.
33. The other obligations set out in the UU would mitigate the effects of the development. Therefore, I need not consider them further as such mitigation would only neutralise effects of the proposal and so would be of no positive benefit that would need to be accounted for in the planning balance.
34. I note the recent allowed appeal relating to a small development on Chaffes Lane. Whilst that site was also outside the built-up area boundary and provided housing at a time when the Council could not demonstrate a sufficient housing land supply, and indeed the supply is marginally worse now, it is markedly different from this current appeal. This is largely because in that case the Inspector found very little harm aside from its position in the open countryside. I have found greater and more significant harms in this appeal.

35. A number of other concerns have been raised by local residents. However as I am dismissing the appeal I need not give them further consideration as they could have no determinative effect on my decision.

Conclusion

36. Although I consider there would be no loss of BMV and the scheme would be likely to provide the appropriate amount of affordable housing, the proposal would harm the character and appearance of the area and would conflict with the Council's spatial strategy. It would therefore conflict with the development plan taken as a whole and there are no other considerations, including the provisions of the Framework, than indicate a decision other than in accordance with the development plan. Therefore the appeal is dismissed.

Andrew Owen

INSPECTOR

Richborough