

PLANNING APPEAL BY A.C. GOATHAM & SON

Outline planning permission for up to 1,250 residential units, a village green, a local centre including a 2FE primary school, a 60 bed extra care facility, a 80 bed care home, village centre, village green, and associated access

LAND OFF PUMP LANE, LOWER RAINHAM, KENT ME8 7TJ

Appeal Ref: APP/A2280/W/20/3259868
App. Ref. MC/19/1566

Inquiry opened: 15 February 2021

OPENING ON BEHALF OF THE APPELLANT

Introduction

1. The appeal proposal is for up to 1,250 residential units, a local centre including a 2FE primary school, a 60 bed extra care facility, a 80 bed care home, village centre and village green, and associated access (vehicular, pedestrian, cycle). The appeal is made for outline planning permission with all matters reserved other than access. The details of the related application, appeal site description, development plan policies and relevant national policy are all set out, across the statements of common ground, the respective proofs of evidence, and other sources.
2. The appeal proposal is in accordance with the development plan, considered as a whole, for the purposes of s.38(6) PCPA 2004 and is in accordance with national policy.
3. This appeal proposal will make a clear and highly important contribution to Medway Council's ("the Council") chronic housing shortage, at a time when even the Council unavoidably acknowledges having a "significant" housing land supply shortfall - well below 5 years. A very troubling shortfall in affordable housing provision further echoes the clear and ongoing strategic plan and development management failures of the Council to approve and deliver housing, district-wide. Viewed in the appropriate policy and human context,

claimed 'efforts' by the Council taken to boost the supply of housing are shown to have achieved negligible significance. There is also no plan-led resolution to this delivery crisis, within sight. Not least, the Council's (unrealistically) optimistic timetable for adopting the (emerging) local plan is within just shy of two years from now.

4. The appeal proposal also comes before the Inspector and Secretary of State at a unique time of the UK entering a (mid-pandemic) massive economic slump, one without near, modern-day comparison. The clear, significant economic (and social) gains that will be delivered through the appeal proposal, at local, regional and indeed national level, are the more striking ahead of and during what will prove to be a highly protracted period of downturn.
5. The appeal proposal is sustainably located, or can be made so. The Council itself is driven to appreciate the unavoidability of significant residential development coming forwards, outside of the 'settlement boundary', within the countryside.
6. What stand as today's objections held by the Council to the appeal proposal, reduced from origins of its decision notice, including on heritage matters (on which less than substantial harm in overall terms, at most, is agreed) and highways, are fully answered by a robust examination of the evidence and a correct application of development plan and national policy.
7. Whilst much of the appeal site is classified as BMV agricultural land, nonetheless, much mirroring the inevitability of significant residential development coming forward in the countryside within the district, the Council also accepts that agricultural land must unobjectionably be developed upon. Given the incredibly pressing housing need and infancy stage of local plan-making, this acceptance also cannot, with any realism, be possibly confined to using 'poorer quality agricultural land' alone.
8. Yet, moreover and separately, an expert examination of the appeal site itself discloses intrinsic agricultural shortcomings, not inconsistent amongst some BMV parcels. Its particular size and layout, that the majority of existing orchards are unviable (even when operating as a satellite farm - as it must), the requirement for new orchard replanting which will most likely prove unviable, and the capacity for any future profit from satellite use being limited (at best),

heavily contextualise the recognition to be given, here, to the ‘benefits’ of this particular BMV land – even before revisiting the ramifications of the Council’s housing land supply for future agricultural land development. That it will plainly prove financially unattractive to the few food (and non-food) growing uses, if hypothetically available, further reinforces this. The ‘loss’ of this BMV land will be imperceptible in local, regional and national (existing and future) productivity terms.

9. The appeal proposal will also adequately protect, in a manner commensurate with identified landscape quality, when properly viewed, the (non-statutory) Gillingham Riverside Area of Local Landscape Importance.
10. No other landscape impacts – not centred upon in the Council’s reason for refusal – will give rise to any objectionable harm. The appeal proposal will also protect the character and amenity value of the Riverside Country Park and Saxon Shore Way, as well as the nature conservation value of the Medway Estuary.
11. Substantial new areas of multifunction green and blue infrastructure are also embedded into the appeal proposal, incorporating new recreation routes and connectivity throughout the appeal site, and externally between the existing built environment and wider countryside. A village green and community orchards will form an integral part of a centre at the heart of the proposal, linking with new and existing publicly accessible green spaces, to compound benefits for new and existing local residents.

Housing Supply

12. The fundamental starting point then is the Council’s (understated) characterisation of a significant undersupply of housing land. The Council’s reported annualised requirement is 1,662 dpa. The Council’s track record on delivery is deeply concerning, as is the scale of shortfall and persistency of under-supply. Meeting the requirement figure has demonstrably posed an unmet challenge. Against this background, the scale of housing contribution from this appeal proposal holds tremendous importance in both economic and social terms, in answering the district-wide, regional and national need for housing – a pressing and urgent crisis.

13. In addition to open market housing, the affordable housing contribution presents another major social and economic benefit: any quantum of affordable housing is routinely accorded substantial weight in recovered appeal decision-taking, with a view to meeting a communities' assessed need, and reducing the backlog of households awaiting affordable housing in addition to newly forming households, as a central plank of national planning policy.
14. There is also real justification in scrutinising the Council's unfounded 'optimism' with the appellant's 'realism' regarding future housing delivery, given the Council's poor track record. The Council's notably broad reliance upon high-level AMR 'evidence', as opposed to any forensic analysis of supply, still less any site-specific evidence showing any actual assessment, in support of its (bald) claim of 3.03 years supply, offers a further clear signposting of approach, further to its historic over-estimation of forward supply. Supply is, in fact, shown to be significantly below what the Council now advances.

Local Plan

15. Remarkably, there is also no recognition by the Council that adoption of the emerging local plan - whichever strategy for significant housing delivery it may finally embody - is incredibly far off. On any case, it will inevitably face major opposition during Examination, including regarding development for Hoo Peninsula. Even if adopted within 2 years (the timetabling for which is altogether unrealistic), housing sites of any appreciable scale will not be delivered for many more years thereafter. Rightly, the Council does not begin to raise 'prematurity' in this appeal, yet invites an impression, pointing to pocket approvals, that there is 'movement in the right direction'. That claim is hopeless, ignores the clear thrust of national policy, the housing crisis, the economic trajectory and the social deprivation of those without homes.
16. There are also virtually no, notable, up-to-date housing allocations under the aged, adopted plan.
17. So, approval will present no undermining influence contrary to the emerging local plan process and eventual strategy, for an eventual and adequate, plan-led

delivery for the district. Approval will also have no conceivable impact upon any pipeline development.

18. Given the Council's housing supply position – and, separately, their HDT result for 2020, the “*most important*” development plan policies for determining this appeal are to be treated as “*out of date*” for the purposes of NPPF para 11. These encompass all policies against which the appeal was refused. The ‘tilted balance’ is engaged.

Location

19. The appeal site is sustainably located within accessible proximity to the centres of Rainham, Twydall and employment sites. It is not at all a remote location, as (say) the Council's own transportation department agrees. Rightly, no objection is taken in accessibility terms (in light of sustainable transport options, including good bus service links from the near surrounds of the appeal site, and improvements to local connectivity). This provides for significant, additional benefits, securing residential development near to existing sources of employment: providing homes for those already coming to the area, and others.

Objections

20. The Council's objections to the appeal proposal, are unfounded. The harms the Council maintain are either flawed in principle, are plainly overstated, or have been inappropriately weighed.
21. Regarding heritage, a full assessment of the harm to heritage significance, including to the setting of heritage assets, has been very carefully undertaken. The harm that would be caused by the appeal proposal, at its highest, with regard to certain individual assets, plainly amounts to less than substantial – and at the lowermost end (or lower end, with regard to other assets) of the spectrum. Cumulatively viewed, the harm is unobjectionable. In overall terms, the (modest) harm caused to heritage assets is very strongly outweighed by the benefits. The application of heritage policy therefore certainly presents no ‘clear reason’, for the purposes of paragraph 11 NPPF, for refusing the development.

The presumption in favour of sustainable development remains favouring the scheme.

22. Regarding transportation, the appeal proposal is supported by a Transport Assessment, underscored by a sound methodology, technical work, best available data, and sensitivity testing. It is robustly concluded that national policy and development plan transport policy is met. There are no objectionable highway safety or traffic impact issues. For example, the alleged queuing time/delays would not pass the threshold into severity for NPPF purposes.
23. There is also no outstanding objection from Highways England, subject to appropriate mitigation coming forwards in respect of M2 Junction 4, the principle of which is agreed, as are the mechanisms for securing this.
24. The acknowledgement of BMV land does not give rise to any actual conflict (still less any significant conflict – an agreed position) with national policy. Nor does any conflict arise with the development plan here: there has in fact been a mindful decision of the Council *not* to save policy providing for tailored protection of such land.
25. Regarding landscape, a comprehensive LVIA has been produced. A function of the ALLI, as a ‘green buffer’ to the Medway Estuary and areas of international importance for nature conservation and recreation, will not experience change giving rise to any significant harm. Other qualitative landscape visual and amenity impacts will not be objectionable, and are notably localised in extent. The appeal proposal will provide substantial amounts of connected publicly accessible green space including a village green, community orchards and areas containing recreation routes and green infrastructure for informal recreation with landscape, amenity, as well as wildlife benefits, etc. These green corridors throughout the scheme will provide improved connectivity between neighbourhoods and greater access to the wider countryside.
26. Detailed consideration has been given to the objections all third parties. The careful formulation of the appeal proposal demonstrates that none of the concerns ventilated by third parties, unsupported by the Council, are well founded.

Policy

27. The appeal proposal is in accordance with the development plan, as a whole.
28. Moreover, any conflict found with deemed or in substance out of date (or any other engaged) development plan policy would naturally not present any end-point in analysing the development plan for the purposes of considering 'accordance' for the purposes of s.38(6), or with regard to identifying and assessing the impressive wealth of material considerations arising in favour of the appeal proposal. The many, conspicuous and very/significant benefits presented by the appeal proposal heavily underscores this.
29. Planning permission should therefore be granted without delay for the appeal proposal.
30. The clear strength of the benefits demonstrated by the appeal proposal mean that even were it to be concluded that it conflicts with given policies, planning permission could and should properly be granted – indeed, whether applying the titled balance or not, in determining the appeal under s.38(6).
31. The Inspector will in due course be respectfully invited to recommend to the Secretary of State that planning permission be granted.

JUAN LOPEZ

39 Essex Chambers

15 February 2021