



## Appeal Decision

Site visit made on 2 January 2018

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 15 January 2018

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**Appeal Ref: APP/E2205/W/17/3181748**

**Badgeworthy, The Moat, Charing TN27 0JJ**

- 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 Mrs Jodie Chapman against the decision of Ashford Borough Council.
  - The application Ref 16/01189/AS, dated 4 August 2016, was refused by the Council by notice dated 4 August 2017.
  - The development proposed is two storey, three bedroom dwelling.
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### Decision

1. I dismiss the appeal.

### Main Issue

2. This is the effect of the proposed development on heritage assets.

### Reasons

3. Policy EN23 of the Ashford Borough Local Plan states that in exceptional circumstances, permission may be given for development affecting important archaeological sites of regional or local importance, if the applicant has demonstrated that the site will be satisfactorily preserved either in situ or by record. Any archaeological recording should be by an approved archaeological body and take place in advance of development in accordance with a specification and programme of work to be submitted to and approved by the Borough Council. Policy CS1 of the Local Development Framework Core Strategy (2008) states guiding principles that include the conservation and enhancement of the historic environment. There is emerging policy in the Ashford Local Plan to 2030 which at Policy ENV15 seeks the protection of known heritage assets and where there is potential for such an asset to exist, studies are to be carried out. The Council has also referred to the National Planning Policy Framework on heritage assets and to various Historic England publications and guidance as listed in the Reasons for Refusal.
4. There has been a previous Appeal Decision for a dwelling on the land (Ref APP/E2205/W/15/3135078 dated 31 March 2016) under much the same policy background, and the then Inspector found the proposal acceptable with regard to the effect on the conservation area, on trees and on the living conditions of neighbouring residential occupiers, but found against the proposal with regard to the level of information on the moat ditch.

5. The Inspector expressed difficulty in coming to a conclusion due to a lack of any assessment, expressing the view that a desk-based assessment may have provided the information required. She concluded on that issue with the words *'to allow the proposal under circumstances of such uncertainty would undermine the conservation objectives of the development plan and the NPPF. That is not to suggest that the issue is insurmountable, but without cogent evidence of the asset's level of significance or likely impacts, the effectiveness of measures for protecting or recording the archaeological remains cannot be properly considered'*. Clearly, having regard to her findings on the other issues, this was determinative in the decision to dismiss the appeal.
6. The application which is the subject of this appeal was accompanied by, among other documents, a desk-based assessment by Kent Archaeological Projects, a letter from Mason Navarro Pledge and a Heritage Statement by Heritage Matters; Historic Building Planning and Design Consultants. The Council state that in all other respects, the present proposal is the same as previously considered.
7. The inspection for this appeal did not reveal anything conclusive on the site, there being a depression of sorts among shrubbery, but localised, although having mind to the position of the moat ditch shown on plans, it was possible to understand how Badgeworthy and Dovedale have been developed to respect the line although Cedar Wood may have encroached somewhat.
8. From the findings of Kent Archaeological Projects it can be taken that the buried feature could have more than local significance and if so and if paragraph 139 of the Framework were to be triggered, should be considered to be subject to the policies governing a designated heritage asset. To be sure of this, some fieldwork would be required, entailing opening up to below ground level, the degree of intervention having to be determined as that investigatory work progresses. As accepted by the Kent County Council Senior Archaeological Officer, it is not possible to know what will be revealed, in terms of quantity or quality, or indeed exact location.
9. Another study was commissioned from Heritage Matters, and commented on by Kent County Council. From that and the submission by Mason Navarro Pledge structural engineers, the County accept the design of the foundations, but remain of the view that harm would occur to the significance of the moat ditch through the placement of the proposed building across its line.
10. Whilst the information available now is more than seen by the previous Inspector, there remain contradictions in the advice and real doubts as to the nature of the buried remains. Against that, the advice of the County Council has been consistent, that there is potential for more than local significance, and that aesthetic and communal value can be ascribed to the existence of the ditch as part of the larger site. The Heritage Matters report acknowledges doubt over the location, or width, of the moat ditch, although as they say, why there should be two differing locations shown on maps only 32 or so years apart may be explained merely as an error.
11. It is common ground that the moat ditch is a heritage asset although the applicability of paragraph 139 of the Framework has been queried. If the first assumption was true, that it is demonstrably of equivalent significance to a scheduled monument, then it should be considered a designated heritage asset. On the evidence to date, without fieldwork, it would be a step too far to

make that assumption. However, paragraph 128 applies to heritage assets, and not just designated ones, and states that where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. That was the point reached after the previous Inspector's Decision, where a desk-based assessment was advocated which *may* have provided the required information.

12. The Inspector's conclusions on that issue, as quoted above, were that cogent evidence was required of the asset's significance and the likely impacts, in order to assess the effectiveness of measures to protect or record the archaeological remains. Whilst further information has been produced on foundation design, and they appear practical depending on the load of the building, there is still too much doubt as to the nature of the asset, and whether recording would be sufficient, or whether mitigation and preservation *in-situ* would be the correct response, or whether total avoidance of the harm should be the aim, requiring relocation of the building or no development at all.
13. The Council states that they cannot now demonstrate a 5 year supply of housing land, although the previous Inspector did not need to reach a conclusion on that matter as it was not pursued. Nevertheless, even if this leads to paragraph 14 of the Framework being engaged, and heritage protection policies are most unlikely to be considered out-of-date, the list in footnote 9 is not a closed list. In this case the policies contained in section 12 of the Framework and paragraph 128 in particular, are clear as to how to approach sites with potential for archaeological interest.
14. To conclude, faced with the remaining doubt and the conflicting professional views a precautionary approach is indicated. The desk-based assessment points to the need for some investigatory works, and this is therefore a situation where the guidance in paragraph 128 applies, as a case where a field evaluation is necessary. For that reason it is not possible to conclude that the development should be permitted to proceed, and conditions requiring investigatory work and recording would not be sufficient.
15. As before, the problem may not be insurmountable, but the stage has not yet been reached where the conservation objectives of the Development Plan policies previously cited, national policy and Historic England guidance have been shown to have been fully met. For the reasons given above it is concluded that the appeal should be dismissed.

*S J Papworth*

INSPECTOR