
Appeal Decision

Site visit made on 26 September 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 11th October 2017

Appeal Ref: APP/X2220/W/17/3176895

Land to the west (beyond) Strathfleet, Victoria Road, Kingsdown, CT14 8DY

- 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 & Mrs Bunting against the decision of Dover District Council.
 - The application Ref DOV/16/01101, dated 22 September 2016, was refused by notice dated 30 March 2017.
 - The development proposed is erection of a detached single storey dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached single storey dwelling at Land to the west (beyond) Strathfleet, Victoria Road, Kingsdown, CT14 8DY in accordance with the terms of the application, Ref DOV/16/01101, dated 22 September 2016, subject to the conditions set out in Appendix A.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of the Kent Downs Area of Outstanding Natural Beauty, and;
 - whether any adverse impacts would significantly and demonstrably outweigh any benefits arising.

Reasons

Character and appearance

3. The appeal site is located on the edge of the village of Kingsdown. It is located just outside the settlement boundaries as defined by Policy DM1 of the *Dover District Council Core Strategy 2010* (CS). I saw during my site inspection that the appeal site itself a triangular piece of land wedged between two public Rights of Way (PROW). More specifically, the site is characterised by features such as palisade fencing, an area of hardstanding acting as a driveway to a small utility style structure, laid out lawned areas, and boundaries partially formed by a mixture of trees and hedges. Although it does not serve a specific residential property, it has the characteristics of a domestic garden.
4. This is in contrast with the open farmed fields to the south and west of the site. In this respect, the facts on the ground suggest that visually the site is a part

- of the settlement of Kingsdown; even though it is not within the defined settlement boundary.
5. Caselaw is clear in that settlement boundaries are not necessarily determinative in themselves, and should be informed by the facts on the ground. The facts on the ground here suggest that the appeal site would appear to the objective observer as part of the Kingsdown settlement rather than as 'countryside'.
 6. Nevertheless, the site still lies within the Kent Downs Area of Outstanding Natural Beauty (AONB). Both local and national policy is clear in that great weight should be given to conserving landscape and scenic beauty in AONBs. In particular, Policy DM15 of the CS requires that development which results in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if certain criteria is met.
 7. The proposal seeks the erection of a single storey two bedroom dwelling with the ground floor level partially dug into the ground. It is evident from the submitted drawings that the dwelling has been designed so as to reduce or minimise its visual impact on the surrounding area. For example, the proposal would see the use of flat roof areas together with being partially dug into the ground. These are factors which would reduce its prominence within the landscape as a building.
 8. The appellant has also sought to further mitigate any visual impact by locating the building to the northern end of the site. This means that in terms of a 'rule of thumb' building line, it would not project any further than the dwelling located on the corner of Bayview and Victoria Roads and not dissimilar to the nearby dwelling called Strathfleet.
 9. The combination of factors such as these results in a building that whilst changing the character of the area and this part of the AONB, would not do so in an adverse manner. I note the Council's comments in respect of landscaping and that this is unlikely to completely screen the proposed dwelling. However, the reality is that the appeal site is not only directly adjacent to the two storey residential dwelling at Strathfleet, which is visible from both close and long range views from the south, but also adjacent to the settlement of Kingsdown, which includes the dwellings on the western edge of Victoria Road which lie within the AONB. Again this lends support to the fact that this part of the AONB is characterised by residential dwellings laid out in a linear pattern along Victoria Road.
 10. What is more, the Council agrees with the findings of the Appellant's submitted Landscape and Visual Impact Assessment (LVIA), which found that the proposed would have no more than a neutral impact on long term views. Taking all of these factors in the round; the existing appearance of the site and how this differs from the agricultural fields found in the AONB to the west and south, the siting of the dwelling to the northern end of the site, the partial sinking into the topography of the site, the close relationship with existing residential buildings in Kingsdown, the ability to screen the site with landscaping in order to improve the aesthetics of the area for short range views, and the neutral impact on long range views; I find that the proposal whilst changing the character of the appeal site would not adversely affect the character or appearance of the appeal site.

11. I therefore conclude that the proposed development would not have an unacceptable impact on the character or appearance of the Kent Downs AONB. What is more, I do not find that the proposal would result in any harm to the landscape or scenic beauty of the AONB when considered as a whole. Accordingly, the proposal would accord with Policy DM15 of the CS, the aims of which I have aforesaid. It would also accord with the policies of the *National Planning Policy Framework* (the Framework), including protecting and enhancing distinctive landscapes.

The planning balance

12. The starting point for determining planning proposals is Section 38(6) of the PCPA, which requires that proposals are determined in accordance with the development plan unless material considerations indicate otherwise.
13. In this case, I have found that the proposal would accord with Policy DM15 of the CS relating to the impact on the countryside. However, Policies DM1 and CS1 of the CS restrict development outside of the settlement boundary. As such, the proposal would conflict with these policies of the adopted development plan.
14. The appellant has indicated that the appeal scheme would be constructed as a self- or custom-build dwelling. To this end, not only have they registered on the Council's self-build register, as set out in the Regulations, but they have submitted a certified legal agreement under Section 106 of the TCPA dated 30 August 2017, which would require that only the appellants could occupy the building upon completion for the first three years. With no substantive evidence suggesting anything to the contrary, I see no reason not to accept this position. In considering the CIL Regulations and Paragraph 204 of the Framework, I also find that the submitted S106 meets the requisite tests.
15. The issue of the Council's five year housing land supply position and how this triggers paragraph 14 of the Framework has been raised by the appellant. On its face, the issue is quite simple. The Council's own *Authority Monitoring Report 2015/16* (dated March 2017) indicates that the Council does not have a policy on the delivery of self-build plots nor any land allocated for such purposes. In this respect, the adopted development plan is silent on this matter for the purposes of this appeal. As such, Paragraph 14 of the Framework is thus engaged.
16. Paragraph 14 requires that where the development plan is silent decision-makers should grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. In terms of the latter, I have not found harm in respect of the AONB and no other policies of the Framework indicate that development should be restricted.
17. In terms of the former, the adverse impacts in this case include the fact that the appeal site lies outside, but adjacent to, the defined settlement boundary and would encroach into the countryside. The adverse impacts are principally related to the conflict with planning policy which seeks to direct development to inside development boundaries.

18. The benefits arising from the proposal include; the contribution of one self/custom build dwelling to the housing land supply in a district that has not yet planned for such developments, the location of the site directly adjacent to Kingsdown which the Council have identified as a sustainable location for additional housing in terms of Policy CS1, the ability to positively enhance the appearance of the site through landscaping, the neutral long-range impact on landscapes and the ability to mitigate short range views, and proposed biodiversity enhancements.
19. I find that the adverse impacts arising mainly from the conflict with Policies DM1 and CS1 of the CS, would not significantly and demonstrably outweigh the benefits of the proposal. Accordingly, and taking into account the Framework as a whole, Paragraph 14 of the Framework indicates that planning permission should be granted.

Other Matters

20. A number of comments and observations were submitted at both the application and appeal stages. I now consider these before coming to an overall decision.
21. Concerns have been raised in respect of badger runs, rare birds and the removal of trees. However, I have not been provided with any site specific evidence that supports these assertions. What is more, given the maintained appearance of the site, I do not consider it likely that there is a reasonable likelihood of such species being present on or near to the site. The proposal could reasonably be subject to a landscaping condition which could provide a net gain in biodiversity through the planting of indigenous trees and plants. Similarly, in terms of the pre-application removal of trees I note the concerns raised, but I can only assess the proposal on its planning merits and consider that a landscaping condition could ensure appropriate trees are planted within the site if necessary.
22. In terms of setting a precedent for further building outside of the village, I have considered this matter very carefully under the main issues. However, each proposal is and must be considered on its own merits. The situation in this case and the specific context of the site points towards the proposal being acceptable. However, it does not mean that any other development outside of the village would be acceptable. Put another way, permitting development here does not act as a precedent for development elsewhere.
23. With regard to the generation of further traffic movements, I acknowledge that during the construction phase this is likely to be intense with the delivery of materials, for example. This is likely to be for a short duration, after which the proposal would result in a two bedroom dwelling. This number of bedrooms is unlikely to create anything more than a minimal impact on traffic movements when considered in the context of the wider settlement of Kingsdown.
24. In terms of concerns raised regarding overshadowing and the overlooking of Strathfleet, I saw that Strathfleet has one first floor window facing the site and a roughly 2 metre high close boarded fence in the approximate area of the proposed dwelling. The proposal seeks a single storey structure. Given these factors I do not find that the proposal would result in anywhere near to materially harmful levels of overshadowing or overlooking.

25. I acknowledge the planning history of the site; including the fact that in 2003 a scheme for a dwelling was refused by the Council and subsequently dismissed at appeal (Ref: APP/X2220/A/03/1113348, LPA Ref: DOV/02/01126). I do not have the full details of that proposal before me. Nevertheless, it is clear that since 2003 both the national and local policy framework has changed. For example, the CS was adopted in 2010. What is more, I have assessed the proposal before me and find that it does not result in an unacceptable level of harm as identified in the earlier proposal from 2003. This earlier appeal does not provide justification for the dismissal of the appeal here.
26. In terms of concerns over whom the case officer was and any potential earlier involvement with the site, my focus is on the planning merits of the proposal. I have not therefore considered this matter any further.

Conditions

27. A number of conditions have been suggested by the Council. In considering these I have taken into account Paragraph 206 of the Framework and the national *Planning Practice Guidance* (the Guidance) and in terms of the use of planning conditions.
28. A condition relating to the submitted drawings is necessary to provide certainty. Conditions relating to materials, refuse storage, landscaping (including the removal of existing fences and/or other means of enclosure), protection of existing trees, and external lighting are reasonable and necessary to protect the character and appearance of the area.
29. An archaeological condition is necessary in order to properly record any finds of interest. The submission of a construction management plan is reasonable in order to protect the living conditions of neighbouring occupiers during the construction phase. Conditions requiring the provision of vision splays and retention of parking areas would be necessary in the interests of highway safety.
30. The Guidance is clear in that the removal of permitted development rights should only be used in exceptional circumstances. In this case, the proposal would be located in the AONB, which is protected for its scenic beauty. I consider that this provides justification for the removal of permitted development rights in this case.
31. The submission of details of passive sustainable elements is necessary to ensure that the proposal meets the need to reduce carbon emissions and wider sustainable development objectives. A condition requiring the submission of a details for ecological improvements in line with those set out in the submitted Extended Phase 1 Habitat Survey is reasonable in order to achieve a net gain for biodiversity.

Overall Conclusion

32. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

Appendix A – List of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 716:P51 P; 716:P52 P; 716:P53 P; and 3673 DR 001.
- 3) No development above ground level shall take place until samples of materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority. Any archaeological works shall take place as approved.
- 5) No development shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of: vehicle routing to the site; loading and unloading of plant and materials; on-site parking for construction workers; hours of construction working; temporary lighting; measures to control the emission of dust and dirt during construction; and temporary hoarding/fencing. The approved CMP shall be fully complied with throughout the construction period.
- 6) Prior to the first occupation of the development hereby approved, details of a refuse storage area shall be submitted to and approved in writing by the local planning authority. The approved refuse storage area shall be provided before the dwelling is first occupied and shall thereafter be kept available for its approved purpose at all times.
- 7) The areas shown on the approved drawing, drawing number 716:P51 P, as vehicle parking space and turning space shall be provided, surfaced and drained before the first occupation of the development, and shall be retained for that use thereafter whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, and re-enacting that Order with or without modification).
- 8) Pedestrian visibility splays 2 m x 2 m either side of the vehicular access with no obstruction over 0.9 m above the access footway level shall be provided prior to the first occupation of the dwelling and shall thereafter be maintained at all times.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within Classes A, B, C, D, E or F of Part 1 of Schedule 2 of that Order and Classes A or C of Part 2 of Schedule 2 of that Order.

- 10) The development hereby permitted shall not be occupied until the landscaping scheme for the site, as shown by drawing number 3673 DR 001 and report titled 'Landscape Management Plan', has been fully implemented. Thereafter the landscaping scheme shall be maintained in accordance with the submitted details. Any trees or other plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 11) The approved development shall be carried out in such a manner as to avoid damage to the existing trees, including their root systems, and other planting to be retained by putting in place the following measures prior to commencement of the development:
 - i) All trees to be preserved shall be marked on site and protected during any operation on site by temporary fencing in accordance with BS 5837:2012 (or as may be subsequently amended). Such tree protection measures shall remain throughout the period of construction
 - ii) No fires shall be lit within the spread of branches or downwind of the trees and other vegetation;
 - iii) No materials or equipment shall be stored within the spread of the branches or root protection area of the trees and other vegetation;
 - iv) No roots over 50mm diameter shall be cut, and no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches or root protection areas of the trees and other vegetation at any time;
 - v) Ground levels within the spread of the branches or root protection areas (whichever the greater) of the trees and other vegetation shall not be raised or lowered in relation to the existing ground level.
 - vi) No trenches for underground services shall be commenced within the root protection areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained without the prior written consent of the local planning authority. Such trenching as might be approved shall be carried out to National Joint Utilities Group recommendations or other such replacement guidance.
- 12) Prior to the commencement of the development, details shall be submitted and approved in writing by the local planning authority for the methodology and measures of the proposed 'passive sustainable elements' set out within the submitted Design and Access Statement, together with a timetable for the implementation of these measures. The development shall be carried out in accordance with the approved details and timetable.
- 13) Prior to the commencement of the development a programme and timetable for the enhancement of protected species and their habitats shall be submitted to and approved in writing by the local planning authority. The programme shall be based upon the recommendations of the submitted *Extended Phase 1 Habitat Survey*, dated December 2015. The approved programme shall be carried out in accordance with the approved details and the approved timetable.

- 14) No development above ground level shall take place until details of all external lighting have been submitted to and approved in writing by the local planning authority. The said details shall include heights of columns, light fittings, cowls and levels of luminance. The development shall be carried out in accordance with the approved details and prior to the first occupation of the development. No further external lighting, whether temporary or permanent, shall be installed or brought onto the land.
- 15) Prior to the first occupation of the development hereby approved, all gates, fences, walls and other means of enclosure shall be removed from the site.

END OF CONDITIONS