
Appeal Decision

Site visit made on 2 January 2018

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 January 2018

Appeal Ref: APP/X2220/W/17/3181154

Statenborough Farm Cottage, Felderland Lane, Worth, Kent CT14 0BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Harry Kenton against the decision of Dover District Council.
 - The application Ref DOV/16/01467, dated 23 December 2016, was refused by notice dated 24 April 2017.
 - The development proposed is detached dwelling.
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Decision

1. I allow the appeal and grant outline planning permission for a detached dwelling at Statenborough Farm Cottage, Felderland Lane, Worth, Kent CT14 0BX in accordance with the terms of the application, Ref DOV/16/01467, dated 23 December 2016, subject to conditions 1) to 8) on the attached schedule.

Main Issues

2. The application was in outline with access and layout to be determined. The main issue is the effect of the proposal on the aims of policies on the location of residential development and the weight to be attached to other material considerations.

Reasons

3. The Core Strategy was adopted in February 2010, ahead of the publication of the National Planning Policy Framework. Policy CP1 sets out the Settlement Hierarchy, the lowest being hamlets, which are stated to be not suitable for development unless requiring a countryside location, and Policy DM1 confirms that development will not be permitted outside urban boundaries and rural settlement confines unless justified through the need for such a location. Development that would generate travel is not to be located outside urban boundaries and rural settlement confines unless justified, as set out in Policy DM11. Policy DM15 concerns the protection of the countryside and development that would result in the loss of or would adversely affect the character or appearance of the countryside will only be permitted if justified by criteria set out in the Policy.
4. Paragraph 17 of the Framework sets out the Core Planning Principles which include supplying housing to meet identified need; high quality design; recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; encouraging the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and actively managing

- patterns of growth to make the fullest possible use of public transport, walking and cycling. The site is outside settlement boundaries and in the countryside for policy purposes. It is not however away from other built form and as determined in the case of *Braintree DC v SSCLG & ORS* [2017] EWHC, cannot be considered to be remote in the terms of paragraph 55 of the Framework.
5. The Council accept that the 'tilted balance' in paragraph 14 of the Framework is invoked, not because there is a lack of 5 year supply, but because the 2010 Core Strategy does not meet the current objectively assessed housing need as required by paragraph 47 of the Framework, being based on the revoked South East Regional Spatial Strategy, and is therefore out of date.
 6. The appellant made representation as to the 5 year housing land supply situation, and stated that another appeal in the same local authority area would be determined before the current appeal, and that this would give a key indication as to the reliability of the Council's housing land supply claims.
 7. That other Appeal Decision (Ref; APP/X2220/W/17/3174842) was issued on 16 January 2018 and hence was available to this Decision. That appeal proceeded by way of an Inquiry and clearly considered the issue of housing land supply in detail. The conclusions are that only a 5% buffer is warranted, that the requirement is 529 dwellings per year derived from the Strategic Housing Market Assessment, and that the Council can demonstrate 5.65 years supply. Further commentary on delivery led the Inspector to refer to other scenarios of 5.5 years and 5.2 years.
 8. Significant weight attaches to this recent analysis of the housing land supply situation. In the event, that appeal on a proposal for 104 houses was dismissed due to the effect on the character and appearance of the area and the loss of the best and most versatile agricultural land, such that the proposal was contrary to Development Plan policies. It was concluded that, whilst the 'tilted balance' was invoked, the harm significantly and demonstrably outweighed the benefits of the scheme, which is the balancing exercise required under paragraph 14 of the Framework where policies are out-of-date. The exceptions in footnote 9 did not apply in that case, and neither do they apply to the current appeal case.
 9. The Council granted permission in December 2016 for a dwelling very close to the appeal site (Ref; 16/01153) on the further side of the private road, known as *Solanum*. Whilst the application dates were within 2 months of each other, that permission was granted on the basis that the Council could not demonstrate a 5 year supply of housing land, although by the time that the appeal application was determined, the Council were of the view that they could demonstrate such a supply, and that the planning balance differed sufficiently to require the appeal proposal to be refused.
 10. The reason for refusal does not allege visual or similar harm, apart from reference to the consolidation of residential development within the rural area. However, the planning balance set out in paragraph 3.9 of the Council's Appeal Statement lists an impact upon the Council's overarching housing strategy of locating new dwellings within the urban areas and rural settlements; the need to travel, the impact upon the rural character of the area and harm to the open character and appearance of the area.

11. The site is within the curtilage of Statenborough Farm Cottage, being the rear part of the garden to that dwelling, and as such should be considered to be previously developed land as defined in the Annex 2 Glossary to the Framework. As set out in that definition, it should not be assumed that the whole of the curtilage should be developed. Near the site are substantial buildings apparently in commercial or agricultural uses, and there are residential buildings on the Lane and along a private road to the south. With the influence of the main A256 road to the west, it is not possible to conclude that the land is of a high environmental value referred to in the core planning principle on the re-use of previously developed land.
12. The proposed dwelling would be part of a cluster of buildings, including the large sheds to the south and the other residential buildings referred to, and to which it is reasonable to add the dwelling permitted just across the private road. To the extent that the partial infilling of the gap between the existing buildings would consolidate residential development, this would not cause harm to the character and appearance of the area, as the building would appear as an attractive part of the frontage along the private road when seen in views from the public highway. The development would, for that reason, not present the appearance of being backland or tandem development, but rather as an appropriate addition to the cluster. The present open nature of the site is not of significant importance in this cluster and hence there would be no serious harm to that aspect of the local environment.
13. With regard to the additional matters in the Council's statement; the need to travel, the impact upon the rural character of the area and harm to the open character and appearance of the area, it remains to consider the need to travel. Certainly the site is away from services and facilities, but so was the site at *Solanum* and the tilted balance applied there as here, indicating that the development was considered sustainable. The nearest places with facilities are Eastry or Worth, albeit there are no footways on the rural roads. Bus stops appear to be available at the far end of Felderland Lane and nearer Eastry. The journeys do not appear beyond reasonable cycling distance, but it is acknowledged that a private vehicle would be used for many journeys.
14. Looking at the 3 dimensions of sustainable development in paragraph 7 of the Framework, there would be economic benefits in construction jobs and providing additional work force to the local economy; and social benefits in the provision of housing and by introducing new residents and visitors to the local social life. The Council do not identify environmental benefits, but as set out above, the development of a dwelling on this site would beneficially consolidate the built form and introduce a pleasing frontage along with *Solanum* to the private road seen from the public highway. Policy DM15 on protecting the countryside would be accorded with, as would the same aims of the Framework. In addition, since the housing figures are not a ceiling and having mind to the other scenarios identified by the Inspector on the other Appeal, the provision of just a single dwelling would ease concerns as to delivery, and be in line with the aims stated in paragraph 47 of the Framework to boost significantly the supply of housing.
15. On the other side of the balance is the lack of compliance with Policies CP1, DM1 and DM11, but very limited harm can be apportioned to that failure, in view of the lack of isolation by reason of the cluster of built form.

16. As stated by the Council, the balance has shifted slightly from when the permission for *Solanum* was granted, but still not to the point where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Outline planning permission should be granted in line with the policies of the Framework and paragraph 14 in particular.

Conditions

17. The Council suggested conditions, and in addition to the standard outline commencement and reserved matters conditions of appearance, scale and landscaping, it is reasonable and necessary to control surface water and foul drainage, and to address a risk of contamination. This latter is due to the location of the site adjacent to hardstanding used by vehicles associated with the commercial or agricultural buildings. In view of the other residential buildings in the cluster, it is reasonable to control working hours to which should be added Bank and Public Holidays as they fall on a Monday to Friday where work would otherwise be permissible. Lastly, a condition is required detailing the drawings to which this permission relates, for the avoidance of doubt and in the interests of the proper planning of the area, but only so far as applicable to the outline permission.

Conclusions

18. Notwithstanding the findings of a recent Appeal Decision that confirms the Council's statement to this appeal that they can demonstrate a 5 year supply of housing land, the 'tilted balance' in paragraph 14 of the Framework does still apply, and that was also confirmed in the other Appeal. Whilst that balance has changed slightly from when permission was granted for *Solanum*, there are positive visual effects as set out above, and the site cannot be considered truly isolated in the terms of paragraph 55 of the Framework. The supply of housing would assist in Central Government and local policy aims. The balance has not changed to the point where the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits for this sustainable development. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, scale and landscaping of the site (herein called the 'Reserved Matters') shall be submitted to and approved in writing by the Local Planning Authority before any part of the development takes place. The approved details shall be carried out as approved.
- 2) Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission. The development shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) The layout of the site and the means of access from Felderland Lane shall be carried out in accordance with the following approved plan: 022/101.
- 4) No development shall commence until a surface water drainage scheme based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the occupation of the dwelling.
- 5) No development shall commence until a scheme for the proposed means of disposal of foul water discharge from the development has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme prior to the occupation of the dwelling.
- 6) No development shall commence until a ground investigation and contamination report has been submitted to and approved in writing by the Local Planning Authority. The report shall include investigation, sampling and/or evaluation of soils and water and shall set out a scheme of remediation or mitigation, as necessary. The approved scheme shall be carried out before the development commences.
- 7) If, during the course of construction of the approved development, contamination not previously identified on the site is found to be present the occurrence shall be reported immediately to the Local Planning Authority. Construction shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No construction shall take place outside the hours of 0800 to 1800 on Mondays to Fridays, or outside the hours of 0800 to 1300 on Saturdays. No construction shall be carried out on Sundays, Bank and Public Holidays.