



Appeal Decision

Site visit made on 17 September 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/X2220/W/19/3221014

Adelaide Farm Cafe, Sandwich Road, Hacklinge CT14 0AT

- 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 I Farrington against the decision of Dover District Council.
 - The application Ref DOV/16/00955, dated 8 August 2016, was refused by notice dated 24 September 2018.
 - The development proposed is demolition of existing café building and letting rooms and the erection of a building containing 10 one bedroom apartments, alterations to existing access, provision of car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The wording of the description of development on the Council's decision notice differs to that given on the planning application form. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application form.
3. Since the application was submitted to the Council the National Planning Policy Framework (the Framework) has been revised. Both main parties have had an opportunity to comment on any relevant implications for the appeal and any comments received have been taken into account in my reasoning.

Main Issues

4. The main issues are:
 - whether the proposal is in a suitable location, having regard to its position within the countryside and its accessibility to services and facilities,
 - the effect of the proposal on the character and appearance of the area,
 - whether the proposal poses an unacceptable risk of groundwater contamination,
 - whether the proposal would be safe from flooding, and

- the effect of the proposal on the Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest (SSSI) and the Thanet Coast and Sandwich Bay Ramsar site.

Reasons

Location

5. Policy CP1 of the Dover District Local Development Framework Core Strategy adopted February 2010 (the Core Strategy) seeks that the location and scale of development in the District complies with the Settlement Hierarchy. This identifies Hacklinge, where the appeal site is, as a hamlet not suitable for further development unless it functionally requires a rural location, such as rural affordable housing, rural business development, agriculture and forestry.
6. Policy DM1 of the Core Strategy resists development on land outside defined urban boundaries and rural settlement confines unless justified by other development plan policies or it functionally requires such a location, or it is ancillary to existing development or uses. The appeal site is in the countryside outside of any settlement boundary and based on the information provided, I am not satisfied that it functionally requires a rural location or that it is ancillary to existing development or uses.
7. Policy DM11 of the Core Strategy states that applications for development that would increase travel demand should be supported by a systematic assessment to quantify the amount and type of travel likely to be generated. It also seeks that measures that satisfy demand to maximise walking, cycling and the use of public transport are included. This policy resists development outside the urban boundaries and rural settlement confines that would generate travel unless justified by development plan policies.
8. The proposed development would change the mix of uses on the site and increase the amount of development compared to the existing situation. As stated by the appellant, no specific traffic study has been carried out and limited information has been provided to evidence what services and facilities are available nearby. So, based on the information provided, I am not satisfied that the proposal would not increase travel demand.
9. The site is on a narrow road carrying fast moving traffic. The road has limited street lighting and in places its footpaths are narrow and overgrown. There is a bus stop nearby but I have no information on the quality or frequency of the service available. Considering all of the above points, based on the information provided, in my judgement the development would likely increase travel demand and this would be met by the generation of a significant number of private car journeys rather than by walking, cycling or public transport.
10. The appellant considers the proposal is a replacement for the existing development. Whilst it would occupy the same plot, it does not already exist in the arrangement or scale of that proposed and does not entail the reuse of existing facilities as has been suggested. Instead it would contain additional dwellings and it is therefore a new development and is not comparable to the existing development.
11. My attention has been drawn to Policy DM8 of the Core Strategy which concerns replacement dwellings in the countryside. The evidence indicates the

number of dwellings on the site would increase from 5 to 10 as a result of the proposal and so Policy DM8 does not support the development proposed.

12. I am not satisfied the use history of the site justifies the development in light of my findings above nor does the fact that the appellant does not own any other land. My attention has not been drawn to any other policies to justify the development in respect of this main issue.
13. I conclude the proposal is not in a suitable location, having regard to its position within the countryside and its accessibility to services and facilities. It therefore would not comply with Policies CP1, DM1 and DM11 of the Core Strategy noted above or the transport policies of the Framework. I am satisfied these policies are relevant to the circumstances of this case and that it is not the case that the development plan is silent in this regard as has been suggested by the appellant.

Character and appearance

14. The appeal site contains a modest single storey detached building with a low, part-pitched, part-flat roof set back from the road. It was formerly used as a café and incorporates some residential accommodation at the rear. To the front and left of the appeal building is an informal surface car parking area. A stream, known as South Stream, runs along the southern boundary of the site.
15. The appeal building stands in front of a farmhouse and chicken farm. To the north is a former filling station now used as a car wash. Opposite the site is a dwelling known as 'The Willows'. Overall the area has a rural character and consists of a landscape of predominantly flat and open marshland.
16. The appeal scheme is for a long, two storey pitched roof building sited perpendicular to the road and significantly closer to it than the existing building. Due to its appearance, length and siting, it would appear as a massive residential apartment block which would be clearly seen from the surrounding area, particularly when travelling south on Sandwich Road. In this rural setting it would appear incongruous and obtrusive compared with the modest and/or rural buildings on neighbouring land including the modest farmhouse behind it. In my judgement this effect would not be mitigated by the proposals for soft landscaping.
17. I conclude the proposal would harm the character and appearance of the area and would not comply with Policies DM15 and DM16 of the Core Strategy. Together these resist development which would adversely affect the character and appearance of the landscape and countryside.
18. In respect of this main issue my attention has also been drawn to paragraphs 127 and 130 of the Framework. These seek that developments should be visually attractive and sympathetic to local character and that permission should be refused for poor design. Given my findings above the proposal would not comply with these provisions of the Framework either.

Groundwater Contamination

19. Foul sewerage disposal from the development would be to a sealed cess pit with a 30 day plus capacity. Local groundwater levels fluctuate and so there is concern about leaks from cess pits and their pipework. Limited information has

been provided which addresses this concern, or in respect of near capacity/overflow alarms.

20. A infiltration blanket is proposed to deal with surface water drainage from the site. But limited information about this has been provided including in respect of the capacity of the ground to accommodate the resultant drainage rates from this blanket or how it would ensure pollutants do not enter water courses.
21. Statutory consultees have not all agreed that these matters relating to foul sewerage disposal and surface water drainage may be satisfactorily addressed by condition. Moreover I am not satisfied there is a condition which could be imposed for either concern which complies with the tests for conditions set out in paragraph 55 of the Framework.
22. I appreciate the existing development may currently discharge surface water runoff and treated foul drainage into the South Stream and no measures may exist which currently prevent potential contamination within the existing parking area entering the ground or stream. But these are not good enough reasons to allow the appeal development given it would result in an increase in development on the site and therefore a likely increase in wastewater and potential contamination.
23. I therefore conclude the proposal poses an unacceptable risk of groundwater contamination. This would not comply with the natural environment policies of the Framework, including paragraphs 163 and 170.

Flooding

24. The appeal site is within Flood Zone 3 where there is a high probability of flooding. As such the proposal should be supported by a Flood Risk Assessment following a sequential test as confirmed in footnote 50 to paragraph 163 of the Framework. Paragraph 158 of the Framework advises that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding.
25. The appellant states there is no record of any flooding and limited information has been provided to demonstrate the proposed development would be safe from flooding. The appellant considers the sequential test is passed due to the site being previously developed. But this does not satisfy me there are no other sequentially preferable alternative sites where this development, (which includes a significant increase in residential accommodation over what already exists), could be accommodated.
26. Based on the information provided, I am not satisfied that no other suitable sites exist for this development, notwithstanding that the appellant may not own any other sites, and therefore the appeal scheme does not pass the sequential test.
27. I acknowledge the appeal site may already contains some residential development but this is not a good enough reason to allow more given my findings on this main issue. I conclude on this main issue that based on the information provided, I am not satisfied the development would be safe from flooding and would not increase the number of people at risk from flooding. The proposal would therefore be contrary to the flood risk policies of the Framework.

SSSI and Ramsar Site

28. A stream runs between the appeal site and the adjacent SSSI. This SSSI contains the most important sand dune system and sandy coastal grassland in South East England and also includes a wide range of other habitats such as mudflats, saltmarsh, chalk cliffs, freshwater grazing marsh, scrub and woodland.
29. Associated with the various constituent habitats of the SSSI are outstanding assemblages of both terrestrial and marine plants with over 30 nationally rare and nationally scarce species, having been recorded. Invertebrates are also of interest with recent records including 19 nationally rare, and 149 nationally scarce species. These areas provide an important landfall for migrating birds and also support large wintering populations of waders, some of which regularly reach levels of national importance.
30. Under the Conservation of Habitats and Species Regulations 2010 as amended, a plan or project may only be agreed to after it has been ascertained that it will not adversely affect the integrity of European sites (i.e. including those noted above) subject to exceptional tests that there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.
31. Based on the information provided, the concerns noted above about the proposed arrangements for foul sewerage disposal and surface water drainage mean that I cannot be certain there would be no indirect harmful effect on the integrity of these European sites as a result of pollution from the appeal site as a result of the proposals for foul sewerage disposal and surface water drainage. Moreover, I am not satisfied there is no alternative to the development or that it must be carried out for reasons of overriding public interest.
32. I conclude that the proposal would harm the Sandwich Bay to Hacklinge Marshes SSSI and the Thanet Coast and Sandwich Bay Ramsar site. As such, the proposal would not comply with Policy DM15 of the Core Strategy which resists the loss of ecological habitats or the natural environment policies of the Framework, including paragraphs 170, 175 and 176.

Other Matters

33. The appellant has stated that reasons for refusal 3 and 5 are dealt with by other legislation but no further details have been provided so I am not satisfied that is the case.
34. There is some local support for the proposal as it is perceived that it would improve the appearance of the site, lead to a reduction in traffic, be easily accessible and would provide an energy efficient building of 1 bedroom affordable flats of which there is a shortage in the area. I also note the appellant considers the existing building is uneconomic to maintain. However, I have not been provided with any information which satisfies me the flats would be affordable in the terms set out in the Framework and, given the harm identified above, the points made in support of the scheme do not change my overall conclusions.
35. The evidence indicates the Council cannot demonstrate a 5 year supply of land for housing. As such the weight to be given to conflict with Policies CP1, DM1 and DM11 noted above is substantially reduced as these policies restrict the

supply of land for housing. However, paragraph 11 of the Framework sets out that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development.

36. In this case, such policies include those relating to SSSIs and Ramsar sites. In respect of that main issue I have found harm, as set out above. Accordingly there is a clear reason for refusing the development, notwithstanding the benefits of the scheme including the delivery of additional dwellings. Therefore, the Council's 5 year housing land supply position is not a determinative issue in this appeal.
37. I have had regard to the site's location in relation to the Thanet Coast and Sandwich Bay Special Protection Areas. These are European designated sites afforded protection under the habitats regulations. The Council has identified that housing development can have a significant effect on these sites as well as on the Thanet Coast and Sandwich Bay Ramsar site as a result of the disturbance of birds due to increased recreational activity. As any consideration of this matter would not affect my finding on the main issues, and the appeal would in any case be dismissed, it is not necessary for me to address this matter any further as part of this decision.

Conclusion

38. For the reasons given above the appeal is dismissed.

L Perkins

INSPECTOR