



Appeal Decision

Site visit made on 25 September 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Appeal Ref: APP/X2220/W/19/3232333

Land adjacent to The Fieldings, Stoneheap Road, East Studdal, CT15 5BU

- 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 Allan and Melanie Dewar against the decision of Dover District Council.
 - The application Ref DOV/18/01113, dated 12 October 2018, was refused by notice dated 8 January 2019.
 - The development proposed is single storey detached self-build dwelling with associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the application, the Council changed the description of the development to "Erection of a detached dwelling, formation of vehicle access, creation of parking and associated landscaping (existing garage to be demolished)" as it was considered that this more accurately describes the proposal. At the time of my site visit, there was no garage present on the site. Although the appellant did not formally accept the alteration to the description, I note that they have used this description within their appeal form, although omitting the reference to the garage. I have considered the appeal on the basis of this description.
3. No site address was provided on the application form. I have therefore used the address provided on the decision notice. I have determined the appeal on this basis.
4. There has been a previous appeal against the refusal to grant permission for a single dwelling on this site, PINS ref: APP/X2220/W/16/3160915 (the 2017 appeal). Given that this decision relates to similar development on the same site this is a material consideration of significant weight.

Main Issues

5. The main issues are: -
 - Whether the site is a suitable location for a new dwelling having regard to local planning policy and the character and appearance of the surrounding area; and: -

- The effect of the development on the biodiversity of the area, with particular reference to slow worms, which are a protected species.

Reasons

Suitability of the site for housing

6. The appeal site is an enclosed field with informal scrub growth. It is fronted by Stoneheap Road. It is bounded to the rear by mature trees and these extend part-way down either side. The land rises up from the road to the south-east. There is sporadic development alongside Stoneheap Road and opposite the site, and to the north-east are dwellings of varying design and scale. Stoneheap Road is a single carriageway road without footway provision or full street lighting provision. On the site frontage the road is subject to a 30 MPH speed limit. The site has, at some point in the past, been cleared and now contains informal scrub growth. However, the site and its vicinity retain a rural character.
7. Policy CP1 of the Dover District Local Development Framework Core Strategy 2010 (the Core strategy) sets out the Council's spatial strategy for development and is broadly consistent with the aims of the Framework of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities (Paragraph 78 of the Framework). The policy identifies East Studdal as being a village which is a tertiary focus for development in the rural area, and suitable for a scale of development that would reinforce its role as a provider of services, essentially for its home community. An allocation of land has been made within the village for 30 dwellings.
8. The appeal site is situated outside the settlement boundary of East Studdal as defined within the Dover District Land Allocations Local Plan 2015 (the Local Plan) and as such falls within an area defined as countryside by policies. It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies.
9. Policy DM1 of the Core Strategy states that development will not be permitted on land outside the rural settlement confines unless specifically justified by other development plan policies. Policy DM11 states that development that will generate travel will not be permitted outside rural settlement confines unless justified by development plan policies. Policy DM15 also seeks to resist development which would result in the loss of, or adversely affect the character or appearance of, the countryside.
10. These policies seek to protect the intrinsic character and beauty of the countryside by resisting the spread of unnecessary development and concentrating development in sustainable locations and are broadly in accordance with the aims of the National Planning Policy Framework (the Framework), albeit that the Council is currently updating its housing needs evidence base and so Policies DM1 and DM15 do not carry their full weight.
11. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of such boundaries. The appeal site is located in close proximity to existing dwellings and is not isolated and so the countryside location does not conflict with paragraph 79 of

- the Framework. Paragraph 78 supports new housing where it will enhance or maintain the vitality of rural communities and so, whilst the site is outside the settlement boundary this in itself does not persuade me that the site is in an unsustainable location.
12. The village of East Studdal contains a limited range of services, including two halls, but no shop since the village shop has been converted to a dwelling. Although there are services here which can be reached on foot or by bicycle, the services provided are limited and would not cater for all of the day-to-day needs of the future occupiers of the proposal. The nature of Stoneheap Road, with its lack of a continuous footway and limited street lighting is likely to discourage pedestrians and cyclists, particularly after dark, with children or during inclement weather. Whilst the village is served by a bus stop the services are infrequent and require a journey along Stoneheap Road. The bus service is therefore unlikely to provide a realistic alternative to the use of the private car for the day-to-day needs of future occupiers of the development. It is therefore likely that the travel required to access facilities providing for the day-to-day needs of residents would be largely reliant on the use of a private car.
 13. In the 2017 appeal, the Inspector noted a degree of inconsistency between the housing allocation within the development plan and the opinion of the Council that the site was not in a sustainable location. However, from my observations during my site visit, the additional journey along Stoneheap Road to access the village itself, would be sufficient deterrent to discourage walking and cycling. The footway and street lighting within the village itself would not present such drawbacks.
 14. The proposal would cut into the slope to create a space to build an L-shaped dwelling and associated car parking, seeking to reduce the visual impact of the development. Use of a green roof, raising ground levels and planting is proposed to further reduce this impact. The site is visually contained from the south-east, south west and north-east by existing planting and development and views from the wider countryside would be limited. The proposed design is intended to provide an innovative and environmentally sustainable design solution to the introduction of an additional dwelling to the area. However, the proposal would raise some ground levels within the site, steepening the existing slope and would introduce a large hummock to the rear of the site formed by the roof of the proposed dwelling. This feature would be unnatural and incongruous within the site and the surrounding area when viewed from the adjacent road or the dwellings opposite.
 15. The appellant has proposed additional planting on the boundaries within the site to reduce the visual impact of the development. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm identified, as new planting would take time to establish itself and there is no substantive evidence before me that sufficient or appropriate screening would be achieved to address the matter successfully.
 16. I therefore conclude that the development would not be a suitable location for a dwelling, having regard to local planning policy and the character and appearance of the surrounding area. The development is therefore contrary to the provisions of Policies DM1, DM11 and DM15 of the Core Strategy. Similarly

the proposal would be contrary to the aims of paragraphs 8, 127 and 170 of the National Planning Policy Framework in as much as these seek that development should contribute to protecting and enhancing our natural environment; add to the overall quality of the area, be visually attractive as a result of good architecture, layout and appropriate and effective landscaping; sympathetic to local character, including the surrounding landscape setting; and recognise the intrinsic character and beauty of the countryside.

Ecology/biodiversity

17. A Phase 1/Ecology Scoping Survey submitted with the application identifies a population of slow worms, which are protected under the Wildlife and Countryside Act, 1981 and are a Priority Species under the Post-2010 Biodiversity Framework, being present on the site.
18. The survey to determine the presence or absence of reptiles within the site was carried out in October 2018. However, October is at the end of the period when reptiles would be expected to be active and I note that, on the days that the surveys were carried out temperatures were often below 18°C and, for most of these there were significant amounts of cloud cover. I also note that the refugia were distributed within the site on 2 October, 7 days prior to the first survey on site.
19. I am mindful of the guidance provided in Natural England's standing advice Reptiles: surveys and mitigation for development projects (2013) that surveys should be carried out in April, May or September. Given the prevailing weather conditions during the survey, and the advice contained in Natural England's guidance and Froglife Advice Sheet 10: Reptile Survey (1999) the temperatures and weather on site were likely to reduce slow worm activity. The short period between distribution of the refugia and commencement of the surveys also casts doubt upon the opportunity of reptiles to make use of them. I consequently consider that it is likely that the survey underestimates the number of slow worms using the site.
20. Whilst I understand that the appellants have made efforts to assess the slow worm population and identify possible mitigation of the impact of the development, I am not satisfied that the survey is sufficient to establish the size of the population and so I cannot be satisfied that it can be used to establish appropriate mitigation.
21. I conclude, on the basis of the evidence before me, that the appeal scheme would cause material harm to the ecology of the area. The development is, therefore, contrary to paragraph 175 a) of the National Planning Policy Framework (the Framework), which requires that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and paragraph 98 of Circular 06/2005 'Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System', in as much as the proposal does not identify appropriate mitigation to offset its impact upon the protected species.
22. The Appellants consider that the issue of ecological mitigation could be dealt with by a condition suggested by the Council. For the reasons set out above, I

am not satisfied that this condition would provide sufficient mitigation, or that appropriate mitigation could be provided.

Other Matters

23. The site is located within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Within the Local Plan the Thanet Coast and Sandwich Bay Suffolk SPA and Ramsar Mitigation Strategy (the RAMS) incorporates strategic mitigation measures to be delivered to avoid adverse impacts.
24. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
25. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Planning Balance

26. The development would provide benefits in terms of delivering an additional home to boost local housing supply. The Framework acknowledges that small and medium sites, such as this, can make an important contribution to meeting housing requirements as they are often built out relatively quickly. There would be minor benefits to the local economy in terms of short term employment in the construction industry and longer term support to shops and businesses. The appellants have referred to the development as self-build. National policy and guidance support and encourage the provision of self-built housing. However, there is little evidence before me to demonstrate that the appellants are entered on a self-build register or how the development would be secured as a self build. Taken together, given the limited scale of the development these benefits carry limited weight.
27. It is proposed that the development would be an innovative design incorporating many sustainable features. However, I am not persuaded on the basis of the evidence before me that the dwelling would necessarily be outstanding or innovative in terms of its levels of sustainability, and consequently would not represent the circumstances where the Framework considers that great weight should be afforded to such development. In particular the degree of reliance upon the private car would be at odds with the overall aim of sustainability. Several representations have been made by local

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

people, including the Parish Council, in support of the proposal. Taken together these are matters in the proposal's favour to which I attach moderate weight.

28. Given the location of the site and the lack of access to safe walking and cycling routes or public transport to provide for day to day needs it is likely that future occupants of the development would be heavily reliant on private motor vehicles to access local shops and services. Taken together with the harm that I have found by virtue of the proposal undermining the adopted settlement strategy set out within the Local Plan, the harm to the character and appearance and the biodiversity of the surrounding area, these are significant factors weighing against the scheme.
29. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.
30. In conclusion, even if I were to accept the appellants view that the policies most relevant to the supply of housing within the Development Plan are out of date, the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.

Conclusion

31. For the reasons given above, and having regard to all other matters raised, the appeal should be dismissed.

I Dyer

INSPECTOR