
Appeal Decision

Site visit made on 5 February 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Appeal Ref: APP/X2220/W/19/3240292

Land off Gore Lane, Eastry, Sandwich, Kent CT13 0ED

- 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 Good Deal Developments against the decision of Dover District Council.
 - The application Ref 19/00912, dated 20 June 2019, was refused by notice dated 4 October 2019.
 - The development proposed is erection of 4no. semi-detached dwellings, erection of fencing, formation of vehicular access and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken the description of development from the Council's decision notice as this more comprehensive than that on the planning application form.

Main Issue

3. The main issues are (a) whether this is an appropriate location for the proposal having regard to local and national planning policies and (b) the effect of the development on the rural character and appearance of the area having regard to the scale, design and siting of the buildings and the impact on trees at the site.

Reasons

Location

4. The site comprises a rectangular land parcel to the northern side of Selson Lane not far from its junction with Gore Lane. It comprises mainly a rough grassed area but with an embankment to its western side along which is a line of mature trees. To its eastern side is an access road providing parking to the rear of houses fronting Gore Lane. The appeal site has recently been used to assist in the construction of 3 of these houses and the access road¹.
5. The site is outside of but close to the settlement boundary for Eastry as defined in the Dover District Core Strategy (2010) (DCS). The boundary line runs to the rear of the newly constructed houses close to the access road. Most of Eastry lies to eastern side of Gore Lane, but there are a few longstanding

¹ Planning permission DOV/17/00267

buildings to its western side outside of the settlement boundary. To the south of the appeal site on the opposite side of Selson Lane are the extensive gardens to Gore Court, a Grade II Listed Building, that fronts Gore Lane. To the west of these gardens and fronting Selson Lane is Wells Farm Cottage, a relatively isolated two storey house.

6. Policy DM1 of the DCS states that development will not be permitted on land outside settlement boundaries unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses. The proposal for 4 market houses would not satisfy any of these exempting criteria and so would conflict with the strategy set by Policy DM1.
7. However, the DCS pre-dates the National Planning Policy Framework (the Framework) and Policy DM1 can be regarded as out of date in respect of its rigid adherence to defined settlement boundaries. Paragraph 78 of the Framework states, *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities"*.
8. The proposal would not be for isolated homes in the countryside. It would be close to existing housing on the edge of an established settlement. Eastry has shops, a GP surgery, a primary school about 400m to the south of the site and has bus links to Deal and Sandwich where there are a greater range of services. The site is in a reasonably sustainable location and the proposal would help to maintain the vitality of Eastry. The residential curtilage to the dwelling Halstead, extends alongside the appeal site's northern boundary to align with the embankment and line of trees to the western side of the appeal site. This western boundary forms a hard edge to open fields and countryside beyond the appeal site and Halstead. The proposal would be contained within this edge. My findings on the first main issue are that the site would be a suitable location for housing, but the details of the proposal need to be examined in relation to other considerations.

Character, appearance and trees

9. A pair of semi-detached houses are proposed to front Selson Lane. Their architectural referencing is clearly taken from Wells Farm Cottage diagonally opposite, but the houses would be deeper, of greater massing and include a crown roof, a feature not characteristic of the area. The dwellings to the rear of this have been designed to resemble an outbuilding of agricultural origin with dark cladding. Whilst single storey in nature, there would be a substantial pitched roof over due to the extensive footprint to both dwellings and their semi-detached form. There would appear to be no local reference for these 'barn' style dwellings and in view of their massing and proximity they would appear conspicuous and incongruous when viewed from houses fronting Gore Lane.
10. The 'barn' style dwellings would also appear prominent when viewed from Selson Lane and the open countryside to the west of the site as they would be sited alongside a gap in the line of trees to the appeal site's western boundary. There is the potential for existing trees to offer some screening to the two frontage houses, but the proposal would involve some loss close to these houses. Overall, the proposal would result in a hard and domesticated edge that would be harmful to the rural landscape character of the area.

11. The appellant's design and access statement includes a survey of trees and land levels. But the proposal, notwithstanding intent for retention of most of the trees, does not specify levels for the houses and parking areas alongside or how ground levels around the trees where the embankment has been built up would be changed. Construction of the frontage houses and driveways alongside would involve levelling and excavations that would be likely to impact on the roots of trees along the belt. Garden sheds are proposed close to the trunks of trees on what is currently sloping ground due to the embankment. Whilst sheds could easily be relocated, given the proximity of the trees to the development and the changes in ground level involved in construction, I do not consider that details for safeguarding the trees could readily be deferred for management through the imposition of planning conditions.
12. The tree belt is a valuable feature as an attractive element in the local landscape and as a means of enclosing and softening the appearance of development on the appeal site. Its loss would be harmful to the character and appearance of the local landscape and countryside. Even if most trees were to survive there would be pressure for their reduction or removal as being to the south and west of the proposed dwellings, they would cast shadows over much of their gardens.
13. Policies DM15 and DM16 of the DCS seek to protect the appearance of the countryside and the landscape character of rural areas. The weight that can be attached to these policies is undermined to a degree as both reference permitting development only if it is in accordance with allocations made in Development Plan Documents. This reflects the restrictions set by Policy DM1. But both policies refer to alternative other circumstances. The proposal could be considered justified by the need to sustain the rural economy or a rural community given the need for additional housing. Policies DM15 and DM16 are broadly in accordance with Paragraph 170(b) of the Framework which states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and of trees and woodland.
14. The siting, massing and design of the proposed dwellings and their impact on the line of trees to the western side of the site would have a harmful impact on the appearance of the countryside and landscape character of the area. There would be conflict with Policies DM15 in that the proposal does not incorporate measures to reduce, as far as practicable, any harmful effects on countryside character. There would be conflict with Policy DM16 in that elements within the proposal have not been sited or designed to avoid or reduce the harm to mitigate the impacts to an acceptable level.

Housing Land Supply

15. There is disagreement between the parties on whether the Council has a five year housing land supply. The Council's Monitoring Report for 2017/2018 indicates that it has 5.56 year housing land supply. The appellant has referred to shortfalls in anticipated provision on land at and near to Eastry² and to delays in the delivery of a strategic site in Dover³. However, housing land supply calculations are on a district wide basis and over a period spanning several years in which there may be an ebb and flow on the delivery of

² Permission DOV/17/01114 for up to 50 dwellings at Gore Lane, Eastry & 40 dwellings proposed at Capel Street

³ Dover Mid Town as reported in the Authority Monitoring Report 2017/2018

envisaged and windfall sites. The Council's Housing Delivery Test Result for 2019 published earlier this year shows a slip to 92% but there is no conclusive evidence before me that the Council cannot demonstrate a five year housing land supply.

16. The appellant indicates that the tilted balance referred to in Paragraph 11 of the Framework should apply to the proposal by reference to findings in a recent appeal decision in the District⁴. The Inspector in that decision concluded that the tilted balance should apply as the policies identified in that case as "*most important for determining the application are out-of-date*". That proposal was for 48 dwellings and a 64-bed care home. The most important policies identified were strategic policies relating to housing supply including Policy DM1 and policies relating to highway safety and capacity were also relevant. The current proposal is modest in scale for housing delivery by comparison and in my judgement the most important policies for determining the proposal relate to countryside and landscape issues.

Nature conservation

17. The site is not far from the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The proposal in combination with other housing development within Dover District has the potential to have an adverse effect on the integrity of the SPA through an increase in recreational activity. The Council has a mitigation strategy agreed with Natural England in 2012 to prevent or reduce the harmful effects of new housing but considers that a contribution towards the strategy would not be required in this instance due to the limited scale of the proposal.
18. However, since 2018 the Court of Justice of the European Union has ruled that Article 6(3) of the Habitat Directive must be interpreted as meaning that measures which are intended to avoid or reduce effects should be assessed within the framework of an appropriate assessment (AA); furthermore, that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. There is no evidence before me that the Council has undertaken an AA on this proposal in accordance with Regulation 63 of the Habitat Regulations. In view of the refusal of the appeal proposal, the competent authority role falls within the remit of this decision. If the appeal was to be allowed, having regard to all other issues, I would have had to have given this matter greater consideration.

Heritage

19. The listed building at Gore Court is located about 95 metres from the appeal site. The most sensitive elements of this site from a heritage perspective are the building itself and its immediate surroundings in which the asset is experienced. Where the site's curtilage abuts Selson Lane opposite the appeal site the boundary is formed by a hedgerow and gate which provides access. This part of the site closest to the proposed development is remote from the sensitive parts of the Gore Court site. Having regard to the separation distance between the proposed dwellings and Gore Court, I am satisfied that there would not be any material harm to this designated heritage asset, nor conflict with the special duty to preserve the building or its setting⁵.

⁴ Appeal Ref: APP/X2220/W/19/3213086 – Land at Churchfield Farm, Sholden, Deal

⁵ S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

20. There would be some overlooking from the front windows of the proposed frontage houses towards the garden at Gore Court. However, there are gaps in the hedgerow along Selson Lane that already allow views into the remote part of the garden close to the appeal site. There would not be any undue loss of privacy at the building or in the grounds closest to it.

Land ownership

21. Residents have commented that not all the land shown outlined in red on the site plan is within the appellant's ownership and that there is a strip of unregistered land along the Selson Lane frontage. The appeal documents indicate that all the appeal site is within the appellant's ownership but has not commented on residents' assertions. As the appeal is to be dismissed in relation to other matters, I have not given this issue further consideration.

Planning Balance

22. The proposal would have the benefit of providing four additional dwellings to meet housing need within the District. Whilst the Council would appear to have a five year supply of housing land, this is not a ceiling as it is a clear objective set in the Framework to significantly boost the supply of homes. Paragraph 68 of the Framework notes that small sites can make an important contribution to meeting the housing requirements of an area and are often built out relatively quickly. The proposal would bring limited social and economic benefits to the community at Eastry notwithstanding the location of the site just outside its settlement boundary set by the Core Strategy from 2010.
23. However, Paragraph 117 of the Framework points out that making effective use of land in meeting the need for homes and other uses should be whilst safeguarding and improving the environment. The proposal would have a harmful effect on the rural character and appearance of the area having regard to the scale, design and siting of the buildings and the impact on trees at the site. The harm identified would be significant and long term in its impact and would outweigh the benefit arising from the provision of four additional homes.

Conclusion

24. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Rory MacLeod

INSPECTOR