



Appeal Decision

Site visit made on 22 September 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/J2210/W/19/3243206

Land East of Cockerling Road, Chartham CT4 7PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jose DeSousa & Mr Damien Gillies (DJ Investments) against the decision of Canterbury City Council.
 - The application Ref 18/01460, dated 11 July 2018, was refused by notice dated 2 July 2019.
 - The development proposed is erection of 3 dwelling houses, car port building, creation of a parking area, formation of vehicular access from Cockerling Road and hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would result in an unacceptable loss of open space, with particular regard to visual amenity and the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB).

Reasons

3. The appeal site lies in an area of semi-rural character, within close proximity to the Kent Downs AONB, which is also designated as an Area of High Landscape Value (AHLV). The site comprises an area of undeveloped land, which sits prominently near the junction between Cockerling Road and The Downs, and its verdant character provides visual relief to the surrounding residential area.
4. The appeal site is one of several areas which were identified as open space as part of an outline application for a large residential scheme approved in 1995¹. I understand that the provision and retention of these areas as public open space was secured through a Section 106 (S106) legal agreement, in the form of covenants.
5. The appellants argue that it is uncertain whether the covenants in question still bite, by reason of the Deeds of variation to the original S106 which were agreed subsequently, but this is not supported by detailed information. In the absence of substantive evidence demonstrating otherwise, such as copies of the S106 and subsequent Deeds of variation, I find no reasons to come to the view that the appeal site is no longer subject to the legal provisions previously agreed as part of the planning process.

¹ Local Planning Authority Reference CA/90/00844/CHA.

6. Annex 2 to the National Planning Policy Framework (the Framework) defines open space as 'all open space of public value, including not just land, but also areas of water which offer important opportunities for sport and recreation and can act as a visual amenity'. Setting aside the protection afforded by the planning obligations, the site, by making a positive contribution to the character and appearance of the area, constitutes open space for the purposes of the Framework.
7. The site is not included within the Council's Open Space Strategy or shown as Protected Open space on the Proposals Map of the development plan. However, the supporting text to Policies OS9 and OS10 of the Canterbury District Local Plan (LP) (adopted July 2017) explains that there is an overall deficiency of open space in the District. I am of the view that these policies have to be read side by side, as they both relate to the protection of existing open space. Policy OS9 focuses on development proposals affecting protected open space, whilst Policy OS10 seeks to prevent the loss of open space and play areas, which have not been formally identified on the Proposals Map, and this could be for a number of reasons.
8. The appellants' submissions suggest that Policy OS10 only applies to open space and play areas provided as part of developments approved after the adoption of the LP. However, such an approach would be out of kilter with the overall aim of the Council's strategy to tackle the overall deficiency of this type of infrastructure, by failing to provide any form of protection for open space and play areas which do not appear on the Proposals Map, but have purposely been provided as part of development schemes to address the shortfall.
9. The approach set out in the LP is largely consistent with paragraph 97 of the Framework, which seeks to protect open space but details a number of circumstances where the loss of such areas may be permissible. The appeal scheme relates to the erection of three dwellings, and the exceptions set out in paragraphs 97b and 97c of the Framework are therefore not relevant. In respect of paragraph 97a, I have not been presented with detailed evidence to demonstrate that the open space is surplus to requirements to justify its loss.
10. I appreciate that a number of trees would be retained, and the proposal includes additional planting. However the appeal scheme, together with the paraphernalia associated with residential development, would have an urbanising effect, which would inevitably erode the site's present contribution to visual amenity, not just in relation to its immediate surroundings, but also the wider landscape setting of the Kent Downs AONB and AHLV.
11. Accordingly, I find that the proposal would result in an unacceptable loss of public open space, which would be harmful to visual amenity and the setting of the Kent Downs AONB and AHLV. It would therefore fail to accord with LP Policy OS10 and paragraph 97 of the Framework. The scheme would also conflict with LP Policies DBE3, LB1 and LB2 which, amongst other things, seek to ensure that development proposals are suitably integrated into the landscape and have regard to the setting of the Kent Downs AONB and AHLV.

Other Matters

12. During the course of the appeal process, Natural England have raised concerns regarding the likely significant effects which the proposed development, in combination with other plans and projects, could have on the water

environment in the Stour and the Stodmarsh designated sites. High levels of nitrogen and phosphorous have been found within this water environment, which are thought to be largely linked to wastewater from existing housing and agricultural sources. The evidence suggests that these nutrients are causing a dense growth of certain plants, otherwise known as eutrophication, which is impacting on protected habitats and species found within the Stodmarsh designated sites.

13. As this appeal is being dismissed on other substantive grounds, this is not a matter which needs to be considered further here. However, had the proposal been considered acceptable in all other respects, I would have sought to explore the necessity for undertaking an Appropriate Assessment, to ensure the development's compliance with Habitats Regulations.

Planning Balance

14. The appellants consider that the Council is presently unable to demonstrate a five-year supply of deliverable housing sites, although I have not been presented with detailed evidence with regard to the extent of the shortfall. That said, the lack of housing land supply is not disputed by the Council. In such circumstances, paragraph 11 d) of the Framework, as directed by Footnote 7, indicates that the policies which are most important for determining the application are considered out-of-date.
15. The construction of three additional dwellings would make a small contribution towards housing supply and choice in the area, and bring some economic benefits, notably during the construction phase. Beyond that, future occupiers may use local services and facilities. I ascribe some weight to these considerations. Set against these, the appeal development would result in the loss of open space, which would be detrimental to visual amenity and cause harm to the landscape setting of the Kent Downs AONB and AHLV. The harm identified weighs significantly against the development.
16. Overall, the adverse effects of the proposal would significantly and demonstrably outweigh their modest benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

17. There are no material considerations, which indicate that the proposed should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I therefore conclude that the appeal is dismissed.

S Edwards

INSPECTOR