



Appeal Decision

Site visit made on 9 March 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021.

Appeal Ref: APP/X2220/W/20/3248667

Land adjacent to 2 The Old Fairground, High Street, Wingham, CT3 1BU

- 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 F Callow against the decision of Dover District Council.
 - The application Ref DOV/19/01232, dated 8 October 2019, was refused by notice dated 18 December 2019.
 - The development proposed is the erection of 2 No. detached dwellings with associated parking.
-

Decision

1. The appeal is dismissed

Preliminary matters

2. The description of the proposed development was given on the application form as erection of '2 residential dwelling houses within sub-divided plots which will serve as living accommodation for disabled/ambulant disabled or elderly occupants, incorporating all relevant features to lifetime homes (or greater) standards'. However, the council, in its decision notice, amended this to the erection of '2 No. detached dwellings with associated parking'. This more succinct description adequately encompasses the physical development proposed, and I adopt it in my heading above. To the extent that it might be necessary to incorporate the remainder of the description on the application form, as some form of restriction on any permission, it would have to be achieved by way of a condition. I have also amended the address to refer to land adjacent to 2 The Old Fairground, which more accurately describes the location of the site.
3. The application is in outline with appearance, landscaping and layout reserved. The only detail before me is the access and scale of the proposed development. Within the Design and Access Statement, the scale of development is described as single storey and an illustrative drawing has been submitted showing how two detached dwellings could be located on the site, with front and rear gardens. I treat these as indicative of the way in which the development might take place. Appearance, landscaping and layout remain reserved matters.

Main Issues

4. The main issues in the case are: whether the appeal site is a suitable location for residential development, with particular regard to: i) the effect on the open

and rural character and beauty of the countryside; ii) risk of flooding; and iii) the effect on the living conditions of occupiers of No.10 North Court Close.

Reasons

Whether the site is a suitable location for residential development, with particular regard to the effect on the open and rural character and beauty of the countryside

5. The starting point in considering the appeal proposal is the development plan; in this case, the Dover District Core Strategy (CS) adopted in 2010. The policies of this plan that are quoted in the refusal notice are DM1 and DM11. Policy DM1 has the title 'Settlement Boundaries'; effectively it places a blanket ban on development of land outside urban boundaries or rural confines, unless specifically justified by other policies of the plan or it functionally requires such a location or is ancillary to existing development or uses.
6. Policy DM15 deals with 'Protection of the Countryside'. It restricts development that would result in a loss of, or adversely affect the character or appearance of the countryside unless it meets 1 or more of 5 criteria. The criteria include if the land is allocated for development, is justified by the needs of agriculture, is needed to sustain a rural economy or community, etc; none of which apply in this case.
7. The CS adoption predates the initial National Planning Policy Framework¹ (the Framework) and, as the officer's report fairly points out, there is a degree of tension between Policy DM1 and the Framework. As set out above, Policy DM1 seeks to prevent development outside village confines - development that is not exclusive to, but would include housing. It does not factor in the requirement for sustainable forms of development and the planning balance. Therefore, full weight cannot be given to Policy DM1, and the 'tilted balance' of Framework 11d comes into play. Nevertheless, for development plan purposes, the appeal site is outside the settlement confines, and is therefore in the countryside. It is appropriate to take into account Policy DM15, which protects the countryside from development; this policy is compatible with Framework paragraph 170 b) by "*recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services*".
8. The site does not relate to natural boundaries, seemingly being arbitrarily carved out of the appellant's land ownership and, judging by the 'blue' line on the location plan, that of an adjoining owner. A short distance to the north-west is the Wingham River, and the scene is one of tranquil riparian attractiveness, which actually or potentially is part of the natural capital and ecosystem services. In spite of the site including a gravelled area bounded by a small concrete verge, it is clearly appreciated as part of the countryside, and Policy DM15 is applicable and would be breached by the development of 2 dwellings.
9. Set against these matters, whilst the site is outside of the Wingham's settlement confines, it immediately abuts the boundary and is located within easy access of the High Street and the facilities and public transport that serve Wingham. As such, the site is not so separated from the village for the occupiers of the proposed dwellings to have to rely heavily on car-based travel

¹ The Framework was first published in 2012, but it was revised in 2018 and again in February 2019. In the remainder of this decision, where the Framework is mentioned, it is the 2019 version that is referred to.

for their day to day needs. To that extent it would be sustainable development. Furthermore it would help to contribute towards enhancing the vitality of the village community.

10. A related point made by the appellant is that the proposal dwellings are intended to be bungalows, primarily designed for disabled and elderly persons, to 'Lifetime Homes' criteria. They would allow independent living for the majority of elderly or disabled people, and subsequent aided care. It is understood by the appellant that there is a need for properties of this type within Wingham and the surrounding area, although no detail of the extent of this need is provided. Nevertheless, I can see that such bungalows are likely to be a useful addition to the local housing stock that could address an under-met need.
11. The appellant draws attention to a number of paragraphs in the Framework, which is a material consideration of considerable importance, some of which I should mention. Framework paragraph 117 promotes an effective use of land in meeting the need for homes and other uses, paragraph 118 encourages multiple benefits from both urban and rural land, gives substantial weight to the value of using suitable brownfield land within settlements, and promotes and supports the development of under-utilised land and buildings, especially if this would help meet identified needs for housing. My response to these points can be brief: the council is able to demonstrate that it has a 5.39 years-worth of identified land for housing, as of January 2021, and I do not regard the site, bearing in mind its situation in the countryside, as being under-utilised, not is it brownfield land within a settlement.
12. The appellant also puts forward a number of 'precedents' that are considered to drive to the conclusion that the principle of development in the immediate locality has been acknowledged in recent times by the council. On this point the council explains that the barn-like dwelling to the north of the Appeal site was allowed as a replacement dwelling (formerly a mobile building), the two new houses further north replaced a dwelling (formerly a mobile dwelling) and the applicant's dwelling (No.2) was approved following a successful appeal to replace existing development. In any event, I do not find these 'precedents' of any force when considered against the other matters that I deal with.

Risk of flooding

13. I move on to the issue related to flood risk. The site falls within Flood Risk Zone 3, which is land defined by planning practice guidance as having a high probability of flooding. As shown in the planning practice guidance's flood zones and flood risk tables (table 3), development classified as more vulnerable (which includes residential development) is only appropriate in these areas if the exception and sequential tests are passed. Framework paragraph 161 makes it clear that both elements of the exception test must be passed for development to be permitted. Part 2 of the test requires the applicant to demonstrate, via a site-specific flood risk assessment, that the development will be safe, without increasing flood risk elsewhere. Where possible, the development should reduce flood risk overall.
14. The Environment Agency (EA) objected to the proposal on the basis that the submitted Flood Risk Assessment (FRA) does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The

FRA does not therefore adequately assess the development's flood risks. In particular, the EA states, the FRA fails to: i consider how people will be kept safe from the identified flood hazards; ii consider how a flood event will affect people and property; and iii take the impacts of climate change into account. The EA also object to the development because it fails the second part of the flood risk exception test.

15. The appeal application did include a FRA, but as the EA has pointed out, this did not meet the requirements of the Framework or follow the planning practice guidance. It is a very generalised statement that refers, for instance, to the surrounding land being level and "roughly 4m above ordnance datum" and therefore, since it is anticipated that any flood would give rise to water levels of greater than 0.6m, the design (of the dwellings) would be based upon a 'Water entry' strategy, allowing water into the building, facilitating drainage and consequent drying. Details are then set out of flood proofing/resilience and resistance techniques that would be used.
16. This document is clearly inadequate as a FRA in respect of evaluating the degree of flooding that may occur, and in failing to address the need to allow for climate change, and failing to address the sequential and the exception tests. Furthermore, the indicated 'Water entry' strategy seems wholly inappropriate for bungalows intended to be occupied by disabled and elderly persons. The lack of a detailed FRA written to industry standards is a fatal flaw of the appeal proposal. The appellant's suggestion that a condition could be imposed requiring a FRA to be submitted would not be appropriate since at that point planning permission would have been granted, without the required preceding sequential and the exception tests, irrespective of the flood risks revealed.

The effect on the living conditions of occupiers of No.10 North Court Close

17. The access to the development would be via an existing concrete hardstanding that runs along the flank of No.10 North Court Close. At present this area appears to be little used, but has a field gate serving the open area of which the appeal site is part. At things stand. it would seem that there is very little to disturb the occupants of No.10. However, if the appeal development were to be permitted and took place in the form identified - bungalows intended to be occupied by disabled and elderly persons - it would seem unlikely that there would be a level of activity and disturbance that would sufficiently intrude on the living conditions of the occupiers of No.10 North Court Close to warrant the refusal of planning permission.

Overall conclusion

18. The proposal development would be contrary to Policies DM1 and DM15 of the Dover District Core Strategy, but these policies do not entirely conform to the policies of the Framework, which post-date that document. As a result, the tilted balance under Framework paragraph 11 comes into play. The proposed development would, to a reasonable extent be sustainable since the site immediately abuts the boundary and is located within easy access of the High Street and the facilities and public transport that serve Wingham. Furthermore the 2 dwellings proposed would help to contribute towards enhancing the vitality of the village community

19. However, the site is a short distance from the Wingham River, and the scene is one of tranquil rural landscape. The Framework requires decisions to recognise for the intrinsic character and beauty of the countryside, and its wider benefits. Since the council can demonstrate a housing land supply of more than 5 years, in my judgement the planning balance rests with resisting development beyond the settlement confines, that would be damaging to the open and rural character and beauty of the countryside. Added to this factor is the risk of flooding that has not been adequately addressed: this is an issue to which I give great weight. As a result, and having taken all other matters into consideration, I dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR