
Appeal Decision

Site visit made on 22 February 2021

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2021

Appeal Ref: APP/T2215/W/20/3251527

Warner House, Cotton Lane, Stone, Dartford DA9 9BF

- 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 Jamie Perfitt against the decision of Dartford Borough Council.
 - The application Ref DA/18/01501/FUL, dated 13 November 2018, was refused by notice dated 8 November 2019.
 - The development proposed is described as 'to erect a 3 bed detached home on the site of the former garden to Warner House terraces'.
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Decision

1. The appeal is allowed and planning permission is granted for a detached house at Warner House, Cotton Lane, Stone, Dartford DA9 9BF in accordance with the terms of the application, Ref DA/18/01501/FUL, dated 13 November 2019, subject to the conditions set out in the Schedule of Conditions below.

Applications for costs

2. Applications for costs have been made by Mr Perfitt against Dartford Borough Council and Kent County Council. Those applications are the subject of separate Decisions.

Main Issues

3. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the use of the access on highway safety; and
 - whether the site would be an appropriate location for an infill dwelling.

Reasons

Character and Appearance

4. The development would involve the construction of a two storey, two bedroom house. The appeal site is an irregularly shaped and has been described as being former garden. The site is set back from Cotton Lane and is elevated, rising from a little over one metre to two metres above the level

of Warner House's forecourt parking area. Warner House being a two storey building, with basement, that now accommodates three dwellings.

5. The house would be orientated at right angles to and a little up slope of Warner House and would be set back from Cotton Lane by 27 metres¹. Given that siting the house would be discretely situated, with a little under half of its Cotton Lane facing elevation being screened from view by Warner House. I consider there would only be fleeting views of the house and that it would not have a domineering appearance within the streetscene.
6. While the house would be of a simple but inoffensive design, and I consider its appearance would be acceptable and that it would neither detract from the appearance of Warner House nor be at odds with the properties on the northern side of Cotton Lane, including the 16 terraced houses being built at the time of my site visit². I also consider that the provision of an additional dwelling at this point in Cotton Lane would be in keeping with the character of the area within the immediate proximity of the site, given the presence of the existing dwellings and those currently under construction.
7. I conclude that the development would not be harmful to the character and appearance of the area. I therefore consider that there would be no conflict with Policies DP2 and DP7 of the Dartford Development Policies Plan of 2017 (the DDPP). That is because this development would: be acceptably scaled and sited relative to the neighbouring buildings; not be visually obtrusive; and retain the character of the area, while achieving a satisfactory quality of residential development.
8. The second reason for refusal cites conflict with Policy DP5 of DDPP. However, Policy DP5 addresses a range of matters concerning environmental and amenity protection rather than the visual effects of new development. I therefore consider Policy DP5 is not relevant to the concerns identified in the second reason for refusal.

Highway safety

9. Warner House's forecourt parking area is shown on the existing site plan as being capable of accommodating up to four cars without a turning facility. This forecourt area has a direct vehicular access (the access) onto Cotton Lane, a C class road (the C281³), which immediately to the east becomes Elizabeth Street. The access appears to have been created without the benefit of planning permission, with the appellant contending that it has become lawful through the passage of time.
10. Cotton Lane and Elizabeth Street are both subject to a 30mph speed limit. Cotton Lane, for much of its length being wide enough for a single vehicle, with passing places, and it has no footway⁴ and limited streetlighting. Elizabeth Street is wide enough for vehicles to travel in opposite directions and along the whole of its southern side there is a footway and streetlighting.
11. It is proposed that the forecourt area would be extended to enable: four parking spaces to be made available to Warner House's occupiers; two parking spaces

¹ Paragraph 4.3 of the appellant's appeal statement

² Subject to planning permission DA/14/00028/FUL

³ Paragraph 1.3 of the appellant's highway appeal statement

⁴ A stretch of footway will be provided on the northern side of Cotton Lane in association with the development subject to planning permission DA/14/00028/FUL (paragraph 4.1 of the appellant's highway appeal statement)

to be provided for the proposed house; and a turning area to be formed for the use of the occupiers of all four properties.

12. The highway authority (Kent County Council [KCC]) is of the view that the access is 'substandard' because of the limited forward visibility afforded when emerging onto Cotton Lane. KCC has assessed the forward visibility as being 15 metres to the west and 28 metres to the east and contends visibility splays of 43 metres by 2.0 metres should be available, based on the guidance contained in 'Manual for Street's (MfS1 and MfS2⁵). However, given what is stated in MfS1 and MfS2 (text and diagrams) the provision of visibility splays of up to 43 metres by 2.0 metres appears to be applicable at junctions between 'major and minor arms' (roads), rather than a junction between a road and an access serving a few dwellings.
13. The presence of an extra house would increase the use of the access. However, this development would utilise an access onto a 'C' class road and there is agreement that in each of the morning and evening peak hours⁶ there would be around one half of an additional vehicle movement.
14. The daily additional peak and non-peak use of the access is therefore likely to be modest. In that regard the increased use of this access does not appear to have been a matter of concern to KCC when planning permission DA/17/00602/FUL was granted for the conversion of 1 Warner House into two dwellings. While a safety concern has been raised there is no evidence of the access' use contributing to any accidents. So, while the available forward visibility, particularly to the west, for drivers emerging onto Cotton Lane would be limited I do not consider that the use of this access is inherently dangerous. That is because the access is already accommodating the vehicular movements generated by three dwellings without adversely affecting highway safety. In that regard the limited forward visibility that is available I consider is likely to encourage a cautious approach to the access' use.
15. Some traffic calming works are due to be undertaken in association with the development subject to planning permission DA/14/00028/FUL. Those highway works being subject to an extant agreement under Section 278 of the Highways Act 1980⁷ and will include the installation of a speed cushion with a road narrowing not far west of the access. KCC contend that '*There is little evidence that this isolated scheme will slow speeds below the posted speed limit*'. That proposition seems implausible, because if the installation of the speed cushion and road narrowing were not intended to reduce vehicle speeds, then there would be no reason for their installation. I am therefore not persuaded that following the undertaking of the traffic calming works there would not be some reduction in the speed of vehicles travelling in both directions within the immediate vicinity of the access. I also accept the appellant's view that if a conflict between eastbound traffic and vehicles emerging from the access was likely to arise, then what is now an approved road narrowing, would have been unlikely to have passed the safety auditing undertaken in connection with the Section 278 procedure.

⁵ 'Manual for Streets' (MFS1) and 'Manual for Streets Wider application of the principles' (MFS2) having respectively been published in 2007 and 2010

⁶ Morning between 08:00 and 09:00 and evening 17:00 and 18:00

⁷ Paragraph 4.2 and Appendix 7 of the appellant's highway appeal statement

16. Any possible conflict between the increased use of the access would, in any event, only arise should there be vehicles passing by the access at times when a vehicle was also in the process of emerging onto Cotton Lane. That would potentially be a low frequency occurrence, given the modest traffic generating nature of the appeal development.
17. The provision of a turning area would potentially enable all vehicles entering or existing the forecourt area to do so in a forward gear. The provision of the turning area would not address the forward visibility for drivers emerging onto Cotton Lane that lies at the heart of KCC's concern. However, the availability of a turning area would potentially end the need for vehicles using the access to either reverse in or out of the forecourt area and I consider that would reduce the potential for less safe reversing manoeuvres and would be advantageous.
18. I conclude that the development's use of the access would not have an adverse effect on highway safety. I therefore consider that the development would accord with Policies DP3, DP4, DP5 and DP7 of the DDPP because it would not result in a 'severe impact' on the safety of road users, with the vehicular access arrangements for the new development being appropriate, having regard to highway capacity and safety. I also consider that there would be no conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because there would be no '... unacceptable impact on highway safety ...'.
19. The first reason for refusal contends that there would be 'significant harm to ... amenity'. However, neither the Council's officer report nor appeal statement elaborate on what the alleged harm to amenity (living conditions) might be. For completeness, I consider that the additional use of the access would not cause unacceptable disturbance to the occupiers of Warner House or increased on-street parking and in those regards there would be no conflict with Policy DP7(3)(d) of the DDPP.

Location

20. The appeal development concerns an unallocated site and is a residential windfall site for the purposes of Policy CS10(4) of the Dartford Core Strategy of 2011 (the CS). The suitability of residential windfall sites is to be considered in line with Policy CS10(4) and the guidance contained in the Council's Housing Windfall Supplementary Planning Document of 2014 (the SPD). The SPD explains that windfall development is to be managed to ensure that the Council's strategy for the delivery of housing within three priority areas and/or on large scale previously developed land (PDL) is not undermined and that any such development is sustainable and does not place undue pressure upon the available infrastructure.
21. Building upon the provisions of Policy CS10(4), Policy DP6(2) of the DDPP sets out the policy for the consideration of 'sustainable residential locations'. Policy DP6 specifically addresses 'unplanned windfall residential development and states that such development may be permitted following an assessment that accords with Policy CS10(4) and (5) and Policy DP6(2) and (3). Under Policy DP6(2) there are three assessment criteria (a to c) which relate to proposals for 'five or more dwellings' and those criteria are not applicable in this instance. Policy DP6(3) states '*Residential development should provide evidence proportionate to the scale of the proposal that it will not result in*

unacceptable or unforeseen cumulative impacts on social, community or green infrastructure that cannot be mitigated’.

22. Given the site’s state of disuse there is disagreement between the appellant and the Council as to whether this proposal would concern either a greenfield site or PDL. PDL is defined in Annex 2 of the Framework as being ‘*Land which is or was occupied by a permanent structure, including the curtilage of the developed land ... This excludes: ... land in built-up areas such as residential gardens ...*’. The site was formerly used as garden land in connection with Warner House’s occupation and it is currently unused. While it is unclear how the site might lawfully now be used, for the purposes of the determination of this appeal I consider it reasonable to consider the most likely use for the site would be as garden land. The Council contends that the site should be considered as greenfield land, because it was formerly used as garden land and is located in a built up area, thus excluding it from the definition for PDL. The appellant by contrast has argued that the site should be viewed as being outside ‘any existing communities’ with the site being situated between the built up areas for Stone and Greenhithe.
23. I am of the view that this site cannot sensibly be said to be outside the built up area, given just how much built development there is within a few hundred metres of it to the north (ie to the north of the railway line) east, south and west. I consider that the site might best be characterised as being situated within an enclave of underutilised land within the urban area that lies between Cotton Lane, Stone Place Road and London Road. However, the character of the western half of that area of underutilised land is set to change with the construction of a school and some housing and the provision of an extensive tract of public open space⁸.
24. On the information available to me I therefore consider that this site does not come within the definition for PDL. However, that said I do not consider that this site can be said to be greenfield land in its truest sense because it has previously been in use as garden land. If I am incorrect in reaching the latter view, I consider that the resulting conflict with Policies CS10(4) and DP6(3), of itself, should not amount to a reason for withholding planning permission in this instance. That is because I consider the provision of one house on an unallocated site, of itself, would not frustrate the bringing forward of much larger numbers of new homes on PDL. I am also of the view that the provision of a single dwelling in this location would be very unlikely to generate a level of infrastructure demand that would interfere with the bringing forward of much larger schemes on PDL.
25. The Council has suggested that the location of the site relative to everyday services and facilities would mean that there might be a high dependency on car usage amongst the occupiers of the house. I do not find that proposition to be persuasive, given that the house would be located within what is essentially a built up area. In that regard I consider that the walking and cycling distances to train and bus services or other facilities such as schools and shops would not be so unreasonable as to act as a major deterrent and cause the occupiers of the house to be reliant on car usage.
26. I am also of the view that the consideration of the appeal development cannot be undertaken in isolation from the 18 houses in Cotton Lane granted

⁸ As shown on the masterplan included as Appendix 8 to the appellant’s appeal statement

planning by the Council in the last ten years or so under application references DA/10/00498/FUL and DA/14/00028/FUL. The later of those permissions having been granted permission in March 2014 and was for 16 houses and a multi-use hall just to the west of Warner House. The accessibility to everyday services and facilities amongst the occupiers of those 16 houses would essentially be the same as that for the occupiers of the house subject to this appeal. This location seemingly having been no impediment to the granting of planning permission for the aforementioned 16 houses, with their permission postdating the CS's adoption.

27. No information concerning the granting of permission DA/14/00028/FUL has been submitted by either the appellant or the Council and I do not know the circumstances that led to that permission. However, having seen where the 16 houses are located, I fail to see how the appeal development would be in a location that can now be construed as being materially less accessible to everyday services and facilities.
28. Attention has been drawn to two dismissed appeals, Downs Lodge⁹ and Tudor Court¹⁰, for which the Inspectors identified unacceptable conflict with Policy CS10. In determining those appeals, the Inspectors found that the occupiers of the proposed dwellings would have poor access to public transport services and other local facilities. In considering the proposal before me I have found that there would be an acceptable level of access to everyday services and facilities. I therefore consider that the proposal before me is distinguishable from the proposals concerning Downs Lodge and Tudor Court.
29. For the reasons given above I conclude that this would be an appropriate location for an infill dwelling. Although there would be some conflict with Policy CS10(4) of the CS and Policy DP6 of the DDPP, because this proposal would concern a windfall site, I do not consider that conflict of itself to amount to a bar to planning permission being granted in this instance. That is because I have found in accessibility terms this would be a sustainable location for one dwelling, with the occupation of the house having no adverse effect on infrastructure capacity in the area. For the reasons given above, in considering the development's effects on the character and appearance of the area and highway safety, I have also concluded that there would be no other harms.
30. The third reason for refusal cites conflict with Policy CS1 (spatial pattern of development) of the CS. Policy CS1 seeks to maximise regeneration benefits, by focusing new development within three priority areas. One of those areas is the Ebbsfleet to Stone Priority Area, where the intention is to bring back into productive use former quarries. While the appeal site is within the Ebbsfleet to Stone Priority Area¹¹ the Council has provided no explanation within its appeal evidence as to why the appeal development would be contrary to Policy CS1. Given the scale of the appeal development and no indication that the availability of the site would help in bringing a former quarry back into productive use, I consider there to be no conflict with Policy CS1. I am therefore of the view that this proposal would not frustrate the spatial pattern for development identified in the CS.

⁹ APP/T2215/W/17/3173649

¹⁰ APP/T2215/W/18/3198564

¹¹ Based on Diagram 5 which accompanies Policy CS4 of the CS

31. There is disagreement about the relevance of Policy CS4 of the CS to the consideration of this proposal. Policy CS4 specifically concerns the Ebbsfleet to Stone Priority Area and amongst other things it identifies this area as being the location for the provision of 7,850 homes by 2026. The appeal development would make an extremely small contribution to the delivery of new homes intended for the priority area. While the appeal development would therefore comply with Policy CS4, I consider that compliance with the development plan is not determinative in this instance.

Other Matters

32. Concern has been raised that the proposed development would affect the receipt of light to and outlook from Warner House. I consider the siting and orientation of the proposed house relative to Warner House would mean that there would be no adverse effects for the occupiers of Warner House with respect to the receipt of light or outlook. Any adverse overlooking of neighbouring gardens could be addressed through the installation of boundary fencing, a matter capable of being addressed through the imposition of a condition.
33. There is potential for the construction works to cause some inconvenience to the occupiers of Warner House, however those works would be of a temporary nature and some aspects would be capable of being controlled through the imposition of a condition, something I return to below.
34. Matters relating to land ownership, including what any Deeds may or may not permit, are not planning considerations and are not for my consideration. Similarly, any structural effect that the development might have upon adjoining properties would be a civil matter rather than a planning one.

Conditions

35. I have considered the need for the imposition of conditions, having regard to the Council's nine suggested conditions and the provisions of the national policy and guidance for the use of conditions.
36. Apart from the standard time limit condition, it is necessary that the development be built to accord with the submitted plans for certainty. To safeguard the appearance of the area it is necessary for conditions requiring details of the external materials and boundary enclosures be submitted to the Council for approval. To ensure the availability of on-site parking for the occupiers of the development and Warner House and to safeguard the operation of the public highway it is necessary that a condition be imposed requiring the provision of the parking and turning facilities for the duration of the development's occupation.
37. The third suggested condition would require a construction method statement to be submitted for the Council's approval prior to the development's commencement. Matters covered by the suggested condition are intended to minimise the construction effects upon the occupiers of the adjoining dwellings and the operation of the public highway. The appellant has objected to the imposition of this condition because of the development's modest scale. Although only one house would be constructed that would be in close proximity to Warner House and there would be potential for the works to adversely affect the living conditions of the occupiers of that property. The

injudicious use of the public highway for loading/unloading and the storage of plant and equipment could also adversely affect its operation. I therefore consider that the suggested condition should be imposed. That said I see no need for the installation of security hoardings to be covered by an approved statement given the scale of this development.

38. Given the site's proximity to the former 'Stone Pot 1' landfill site I consider it reasonable for landfill gas mitigation measures to be incorporated into the development's design. I have therefore imposed a condition requiring the implementation of the mitigation measures recommended in the submitted Preliminary Environmental Risk Assessment report.
39. The fourth suggested condition would require approval of the details for the proposed retaining wall along the site's western boundary to safeguard the appearance of the area. Any retaining wall along the site's western boundary would be modest in scale and discretely located and is unlikely to be a tall structure. I therefore consider that there is no need for the suggested condition.
40. The ninth suggested would remove the permitted development rights for the construction of extensions and other structures and additions. I consider there is no need for this suggested condition as the means to either safeguard the appearance of the area or the living conditions of the occupiers of Warner House, given the siting of the proposed house and the size of its plot. Nor do I consider it necessary for the imposition of this condition to address the proximity to the former landfill site, given the imposition of the previously mentioned mitigation condition.

Conclusions

41. For the reasons given above I have found that the development would have no adverse effect on the character and appearance of the area or highway safety, resulting in compliance with the parts of the development plan concerning those issues. In assessing the suitability of the site as the location for a house, I have found that there would be some conflict with Policy CS10 of the CS and Policy DP6 of the DDPP. However, under the circumstances of this case I consider that conflict represents a minor breach of part of the development plan and that when this proposal is assessed against the provisions of the development plan as a whole, there would be no unacceptable conflict.
42. As I have found that this development would result in no unacceptable conflict with the development plan as a whole, I consider there are no disbenefits that need to be weighed against any benefits. I therefore conclude that the appeal should be allowed.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 00 002 (Location and Ownership plan); 00 003 (Proposed site plan); 00 004 (East and West elevations); 00 005 (North elevation); 00 006 (South elevation); 00 007 (Side elevation); 00 008 (Ground floor plan); 00 009 (First floor plan); and 00 010 (Road splay diagram).
- 3) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall include details of:
 - a) wheel washing/the prevention of mud and debris on the public highway;
 - b) the loading and unloading of plant and materials;
 - c) the storage of plant and materials used in constructing the development;
 - d) the location and details of any generators;
 - e) measures to control the emission of dust, dirt, noise and vibration during construction works; and
 - f) the working hours, including the hours for deliveries.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) Prior to the development proceeding above slab level, details and samples of the external facing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) Gas remediation measures shall be implemented during the construction of the development in accordance with the recommendations stated in the Preliminary Environmental Risk Assessment report of 3 May 2019 prepared by Argyll Environmental. Prior to the occupation of the house a report verifying the implementation of the gas remediation measures, including the results from third party testing of the effectiveness of the measures, shall be submitted to the Local Planning Authority.
- 6) Prior to the occupation of the house hereby approved, details of all of the boundary enclosures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved boundary treatment details and thereafter the approved boundary treatments shall be retained.
- 7) The car parking spaces and turning area shown on drawing 00 003 shall be made available for use prior to occupation of the house hereby approved. The parking spaces and turning area shall be kept available for such use at all times and no development, whether permitted or not by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall be carried out in the parking spaces or turning area that would preclude vehicle parking or turning.