



Appeal Decision

Virtual Hearing Held on 25 August 2021

Site visit made on 26 August 2021

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10/09/2021

Appeal Ref: APP/X2220/W/20/3254613

Blue Bird Tea Rooms, 79 Granville Road, St Margaret's Bay, Kent CT15 6DT

- 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 A and Mrs M Wallace against the decision of Dover District Council.
 - The application Ref 20/00111, dated 3 February 2020, was refused by notice dated 28 April 2020.
 - The development proposed is change of use from tearooms and holiday let, to provide holiday let unit and managers accommodation above.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government issued a revision of the National Planning Policy Framework (NPPF) which is a material consideration in determining this appeal. It updates the previous 2018/9 version which the Local Planning Authority (LPA) took into account when making its decision. Accordingly, both main parties to this appeal have been invited to comment on the revised NPPF. I have taken into account representations received. All references in this decision to the NPPF are to the July 2021 version.

Main Issues

3. The main issues in this appeal are as follows:
 - (i) Whether the loss of the tearoom facility would have an unacceptably adverse impact on the local tourism economy, for users of nearby walking and cycling routes and for the local community;
 - (ii) Whether a permanent residential use (proposed managers accommodation) would be justified and sustainably located; and
 - (iii) the effect of the appeal proposal on the character and appearance of the surrounding area, including the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty (AONB) and the special character of the South Foreland Heritage Coast.

Reasons

Loss of the Tearooms

4. Despite a tearoom use trading at the appeal site for some considerable time, it has generally not been open since 1 May 2016 except for a brief period in autumn 2017. The appeal building occupies a peripheral location, separated from the main built-up area of the village. In contrast to the Council's assessment that the appeal site is a strategic, iconic clifftop visitor destination, I found the appeal location to be detached, out-of-the-way and with little evidence that the austere Dover Patrol Memorial monument and the small informal parking area would boost the viability of a refreshments business. Given its detachment from the core of settlement at St Margaret's, with the narrow and substandard access road, it is not a location, in my judgement, where a visitor would reasonably expect or anticipate a tearoom facility. From its peripheral location, I am not surprised that viability would be an issue.
5. It is not the only tearoom facility in St. Margaret's Bay providing refreshments for both visitors and the resident community. I observed The Pines Garden Tea Room, The First Light Bar and Café and the tearoom trading as 'Boodles'. In addition, there is the Coastguard pub adjacent to the main beach public car park. These refreshment facilities are better related to the resident community of St Margaret's and to visitors to this part of the Kent coastline. Consequently, I find there would be no harm to the local community or to the general visitor economy arising from the loss of the tearoom use.
6. The appeal site is located where a number of paths, including signed trails, pass the Dover Patrol Memorial, with onward access to a patchwork of clifftop countryside, including accessible areas owned by the National Trust. I accept these paths would provide passing custom, but I observed that some of the other refreshment facilities identified above are similarly located to serve these local trails. In terms of the England Coastal Path, this is signed so that it passes to the east of the appeal building directly on the clifftop. Users of this path would need to make a detour to access the tearoom. As such the existing tearoom use has only a limited relationship to the main coastal path.
7. Additionally, the signed coastal path descends to the beach at St Margaret's Bay and directly passes the Coastguard pub. Furthermore, clifftop refreshment facilities are not that distant to the south at South Foreland Lighthouse or the National Trust White Cliffs Visitor Centre. Whilst Kingsdown (and the Zetland Arms) are approximately 4 miles to the north, there will be many isolated stretches of the England Coastal Path where the intervening gap between refreshment facilities would be comparable or greater. Overall, I do not find the loss of the tearoom to be especially harmful to users of this national path.
8. Reference has been made to National Cycle Route 1 (NCR1). This is clearly signed in St Margaret's-at-Cliffe, some distance from the appeal location. There is no evidence, including from my site visit, that the NCR1 route or any cycling route passes the appeal site or that cycling is encouraged on the network of informal grass paths that criss-cross the clifftop.
9. Whilst the LPA have provided general information and data regarding the importance of tourism to the local economy, there is very little to suggest that

the loss of Blue Birds Tea Rooms, which has not traded for the best part of five years, would have a significant adverse effect on tourism in the District. I have not been directed to a specific development plan policy seeking the retention of tearooms or tourist facilities or any specific requirement that such facilities should be marketed, as per commonplace development plan policies for the last pub or village shop. Notwithstanding this, the appellant has engaged in some efforts to sell the premises as a going concern. Whilst there is a dispute over the valuation, I generally accept that due to a combination of its detached location, limited capacity, likely operational costs, lack of on-site living accommodation, potential environmental constraints on options to increase capacity at the site and competition from other facilities in the locality there would be limited interest in a hospitality/catering operation at the appeal site. Accordingly, I do not find the LPAs concerns about the adequacy of marketing and the valuation to be determinative, particularly in the absence of any significant harm to the local tourism sector or community well-being.

10. I therefore conclude that the loss of the tearoom facility would not have an unacceptably adverse impact on the local tourism economy, for users of nearby walking and cycling routes or for the local community more generally. There would be no conflict with paragraphs 84, 93 and 100 of the NPPF.

Residential Use (Managers Accommodation)

11. The appeal proposal would continue the established use of a holiday let at the building, switching it from the first floor to the ground floor. The proposed ground floor holiday let would be modest at 1 bedroom. The scale of the operation, in terms of frequency of changeovers, cleaning, handling enquiries and general maintenance and upkeep of the building, would not require or justify a permanent on-site presence. The appellants refer to security issues but there is very little documented evidence, that crime, the fear of crime or anti-social behaviour more generally would justify persons living permanently at the appeal location. Sadly, the nearby clifftop location sees suicides and accidental dog loss but the frequency of such events, as described by the appellants, does not warrant someone living permanently nearby as a first point of contact. Overall, a persuasive case for a permanent managers dwelling has not been made out. Accordingly, the development would not comply with Policy DM1 of the Dover District Core Strategy 2010 (the DDCS) in terms of having a functional justification to be located in the countryside.
12. Policy DM4 of the Dover District Core Strategy 2010 (the DDCS) allows for the conversion of rural buildings for private residential use in locations adjacent to the "confines" of settlements. The settlement "confines" for St Margaret's Bay are delineated to the south-west of the appeal location, terminating at 'South Goodwin House' on Granville Road. There is a notable countryside gap between this dwelling and the appeal building, with negligible inter-visibility due to the intervening topography and vegetation. The appeal site is not adjacent the "confines" of the settlement. Accordingly, the appeal proposal would be contrary to Policy DM4 of the DDCS.
13. I note from the earlier 2003 appeal decision that the appeal building was described as providing a "full stop" to the end of development in this part of St Margaret's Bay. That is true, in terms of the wider character of the area but it is not the same as saying the appeal site is part of or adjacent to the

established settlement in the terms expressed in Policy DM4. As such I give very little weight to this aspect of the 2003 appeal decision in this main issue.

14. Policies DM1 and DM4 predate the NPPF, which at paragraph 80 states that planning policies and decisions should avoid the development of isolated homes in the countryside unless particular circumstances apply. The appellant has made reference to the "Braintree judgement"¹ in terms of new dwellings and what is to be meant by 'isolated'. The appeal proposal would be within reasonable walking and cycling distances, along lightly trafficked roads, to the various services and facilities in St. Margaret's. It would not be an isolated dwelling. Additionally, paragraph 80(c) of the NPPF facilitates the principle of new homes in the countryside that would re-use redundant or disused rural buildings without reference or requirement to being adjacent to existing settlements. Therefore, I find Policies DM1 and DM4, as policies most important to this appeal, to be out of date. This limits the weight I can ascribe the harm arising from the identified policy conflict and potentially engages the 'tilted balance' at NPPF para 11(d)(ii).

Character and Appearance

15. The appeal site is wholly within the Kent Downs AONB and forms a small enclave, surrounded on all sides, within the South Foreland Heritage Coast designation. As part of the appeal the LPA has submitted the latest draft Kent Downs AONB Management Plan (2020-25) which includes an updated Landscape Character Assessment (LCA). The appeal site falls within the South Foreland Chalk Coast, part of the wider White Cliffs Coast Landscape Character Area (3A). The key characteristics of the landscape for both the AONB and the Heritage Coast at the appeal location are its openness, sense of naturalness and remoteness, and relative lack of settlement.
16. The appeal site is not part of the wider built-up settlement at St Margaret's Bay. It occupies a prominent clifftop location where wild grassland and scrub close to the cliff-edge extends inland for a short distance before opening out into expansive tracts of open, rolling chalk farmland. In many of the wide panoramic views from the various nearby paths within the AONB and Heritage Coast, development other than the appeal building and the Dover Patrol Memorial, is not a feature of this landscape. The absence of residential development in the landscape is particularly notable, including from the England Coastal Path as it passes to the north of the appeal site.
17. It was described to me at the hearing by the LPA as a "bleak" landscape. I find that to be an accurate but nonetheless positive attribute, in that there is a particular value to these remaining pockets of relative wildness and remoteness. This includes the experience of being able to move slowly along paths in a landscape that provides a brief, windswept escape and detachment from the hustle and bustle of modern life. The LCA at paragraph 8.2.6 provides a good summary of this part of the AONB. "This unique area is one of the most open and wild landscapes in Kent and is literally and metaphorically 'on the edge'. The sparse tree cover and the rolling, open countryside allow coastal landmarks such as Dover Castle, South Foreland Lighthouse and the Dover Patrol Memorial to stand out. It also results in an open landscape of uncluttered skylines, which is very vulnerable to any form of development."

¹ Braintree District Council v. SSCLG, Greyread Ltd and Granville Developments [2018] EWCA 610Civ

18. The appeal proposal would involve no external alterations to the building but the immediate curtilage to the building would reasonably be expected to form an amenity area (garden) for those living in the permanent residential unit. This curtilage area is enclosed by iron railings and has permission to be used for seating associated with the tearoom use, allowed on appeal in 2003, in the form of 4 unfixed picnic style table/seats with no parasols. Overall, the maintained and open condition of the immediate curtilage area, which I accept is technically previously-developed land as per the definition at Annex 2 of the NPPF, does not harm, or visually jar with, the character of the AONB or Heritage Coast.
19. Permanent residential use of the site would bring with it, reasonable expectations to the use the amenity space for activities such as sitting out, drying clothes, gardening and children's play. These would all be highly conspicuous features of uncharacteristic domestic clutter, in a vulnerable and open landscape. I accept that permitted development rights could be removed, by condition, to prevent structures such as sheds and greenhouses but I agree with the LPA that there would remain an array of domestic paraphernalia (washing lines, gardening equipment, play items etc) that is technically not development in accordance with Section 55 of the Act, that would reasonably be expected as part of a good standard of living conditions by future residents. Proposed hedge planting within the iron railings would offer some mitigation, in immediate views, but more widely, particularly in views from the England Coastal Path looking south and from the Dover Patrol Memorial looking north, and from the path that passes directly past the building, the overt domestication of the curtilage, in an otherwise sensitive rural landscape, would be starkly and harmfully apparent.
20. I am not persuaded that it would be reasonable or enforceable for future occupants of the proposed residential unit to rely on a tumble drier to avoid a washing line. The LPA has also suggested a possible condition to control domestic paraphernalia wider than that covered by the legal definition of development. It would not, however, pass the test of enforceability at NPPF paragraph 56. It would also result in particularly oppressive living conditions for future occupiers, contrary to the provisions of NPPF paragraph 130(f).
21. The appellant has a fall-back position in terms of the approved external seating for the tearoom, which is a material consideration. This is equivalent to garden furniture, but their use is largely seasonal, and their visual impact was finely balanced in the 2003 appeal resulting in a stipulation that no parasols should be erected. It is now nearly 20 years since that appeal and the assessment of landscape character has advanced, including a better appreciation of the value of remaining parcels of unfettered landscapes. In contrast to the 2003 appeal where there were wider economic benefits from external furniture supporting the tearoom use when balanced against visual impacts, the same benefits would not apply here for a private residential use. Overall, I find the inevitable change in character of the curtilage land to domestic garden in an otherwise open, uncluttered landscape to be significantly harmful.
22. The appellant invites any finding of harm on this point to be weighed against a potential benefit to the wider landscape of removing vehicles visiting the tearoom. I observed the informal car park adjacent to the memorial is relatively modest in size. I am not persuaded that the loss of tearoom would markedly reduce the demand or pressure for a free car park which already

serves the memorial and provides good access to coastal paths. As such, I do not find the harm would be mitigated as the appellant submits.

23. I therefore conclude that the appeal proposal would have an adverse effect on the character and appearance of the surrounding area, including the landscape and scenic beauty of the Kent Downs AONB and the special character of the South Foreland Heritage Coast. Consequently, it would conflict with DDCCS Policies DM15 and DM16 which seek to protect the countryside character and landscape character of the District. It would also conflict with saved Policy CO5 of the Dover District Local Plan 2002 which seeks to protect, amongst other things, the scenic beauty of the Heritage Coast. It would also conflict with the final part of Policy DM4 which requires all proposals for the re-use of rural buildings to contribute to local character and be acceptable in other planning respects.
24. It would also fail to accord with NPPF paragraph 174 requires development to contribute to and enhance the natural and local environment, including recognising the intrinsic beauty of the countryside. Specifically, the NPPF at paragraph 176 states that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs. Paragraph 178 of the NPPF is clear that within areas defined as Heritage Coast decisions should be consistent with the special character of the area and the importance of its conservation. Consequently, the appeal proposal would be contrary to policies in the NPPF that seek to protect areas of particular environmental importance.
25. The appellant referred to Planning Inspectorate correspondence (13 April 2021) regarding a screening opinion in respect of Environmental Impact Assessment (EIA). Section 7 of the opinion deals with landscape and AONB and identifies that the location, nature and scale of the proposed development means that significant effects are not likely to occur. That opinion is in terms of the need to carry out further detailed assessment through an Environmental Statement, which generally requires quite a high threshold as part of EIA. It is not a definitive or binding conclusion for the purposes of my decision on this main issue. Having undertaken an extensive site visit and having had regard to the LCA evidence submitted by the LPA I have arrived at my own conclusion that there would be a localised but nonetheless significant adverse impact on the sensitive landscape character at the appeal location that cannot be adequately mitigated.

Planning Balance and conclusion

26. I share the LPAs assessment that various of the policies most important to this appeal are out-of-date by virtue of preceding the NPPF by some margin, including Policies DM1, DM4, DM15 and DM16. That said, I find that there would be significant harm to the landscape character arising from the reasonable expectation that future occupiers of the proposed permanent residential unit would use the curtilage area as domestic garden introducing an overt and discordant residential character through various domestic paraphernalia into an unfettered and highly vulnerable area of unspoilt AONB and Heritage Coast landscape. Consequently, the tilted balance at paragraph 11(d)(ii) would not be engaged by virtue of footnote 7.
27. As set out above I have found that the loss of the tearoom would not result in any significant harm to the local tourism economy or unacceptably diminish or deprive users of nearby walking and cycling routes or the local community of

refreshment facilities. Whilst there is no persuasive functional case for the proposed managers accommodation, I nonetheless find the proposed re-use of the building for a unit of permanent residential occupation would be sustainably located and the harm arising from the conflict with DDCS Policies DM1 and DM4 would have only very limited weight. However, these material considerations do not outweigh the environmental harm identified and the conflict with development plan policy and the NPPF on the need to conserve and protect the intrinsic character and beauty of the landscape, including the great weight which should be given to the landscape and scenic beauty of AONBs and the need to protect the special character of Heritage Coasts.

28. I have taken into account all other matters raised but there is nothing that leads me to conclude other than that the appeal should be dismissed for the reasons given.

David Spencer

Inspector.

APPEARANCES

FOR THE APPELLANT:

Nigel Brown, Red House Design - Agent
Mrs M Wallace - Appellant
Mr A Wallace - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Neil Hewett – Principal Planner, Dover District Council (DCC)
Chris Townend – Strategic Tourism & Visitor Economy Manager (DCC)

DOCUMENTS received after the hearing:

- Doc 1. Map showing settlement confines for St Margaret's-At-Cliffe / St Margaret's Bay.
- Doc 2. Officer report for planning application Ref DOV/19/00712