



Appeal Decision

Site visit made on 31 March 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal Ref: APP/T2215/W/21/3279440

**Land adjacent Orchard Terrace, Elizabeth Street, Stone, Greenhithe
DA9 9AX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Akbar Jabar against the decision of Dartford Borough Council.
 - The application Ref DA/21/00014/PIP, dated 29 December 2020, was refused by notice dated 10 February 2021.
 - The development proposed is 1 – 3 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. The Council's objections relate to the location and land use proposed. I have determined the appeal accordingly.
4. A proposed site plan has been submitted, which is clearly marked as a sketch scheme for illustrative purposes. I have therefore considered this as such.

Main Issues

5. Taking the above into account, the main issues are whether the site is suitable for residential development in terms of location and land use, with particular regard to:
 - the effect on biodiversity; and
 - local policy relating to windfall development on greenfield sites.

¹ Paragraph: 012 Reference ID: 58-012-20180615

Reasons

Biodiversity

6. The Council's submissions confirm the proposal does not comprise habitats development. Kent County Council's Ecological Advice Service has advised that broadleaved woodland exists on and around the appeal site, which is a priority habitat, and as an undeveloped site protected species may be present and could be affected by the proposal. The appellant has not disputed that broadleaved woodland may be present on the appeal site, but no ecological surveys have been carried out because it is claimed they would not be necessary at this first stage of the permission in principle consent route and could be carried out as part of the technical details consent stage before any planning permission would be granted.
7. I am satisfied that details relating to habitat connectivity and biodiversity enhancements could be considered at the technical details consent stage. A planning permission would not be granted until technical details consent has been granted, but the Wildlife and Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006 place statutory duties on me, as the decision maker, to have regard to the protection of wild animals and plants.
8. The evidence suggests protected species may be affected by the proposal. There is no information before me to show protected species are not present, would be unlikely to be affected by the proposal, or that any impact on them could be satisfactorily mitigated in an appropriate manner. I am therefore unable to conclude that the location and land use of the proposed development would be acceptable in principle.
9. The proposal would fail to accord with Policy DP25 of the Dartford Development Policies Plan (2017) (DPP). This requires, amongst other things, proposals to seek to avoid any significant adverse impacts on existing biodiversity features and for any potential loss or adverse impact thereon to be mitigated, with existing habitats and ecological quality to be preserved.

Windfall Development on Greenfield Sites

10. The appeal site is not occupied by any buildings and does not fall within the curtilage of any developed land. It is not, therefore, brownfield or previously developed land as defined by the Glossary at Annex 2 of the National Planning Policy Framework (the Framework). As a windfall site, parts 4(a) – (d) of Policy CS 10 of the Dartford Core Strategy (2011) (CS) are relevant. This sets out, amongst other things, that new housing will be assessed by considering: (a) the sustainability of the site, (b) whether the benefits outweigh disbenefits, and (c) the capacity of infrastructure or (d) the ability of the site to provide for its requirements. I have not been referred to any concerns that infrastructure to serve the development would lack capacity.
11. The supporting text to Policy DP6 of the DPP advises that residential development of unplanned greenfield sites must only be exceptional and explains that such land is not wholly precluded in recognition that it could be possible for unanticipated genuinely sustainable development proposals to emerge. Amongst other things, the policy specifies that windfall development may be permitted following assessment in accordance with Policy CS 10 and any other relevant development plan policies and material considerations,

including the Dartford Housing Windfall Supplementary Planning Document (2014) (SPD). Parts (a), (b) and (c) of Policy DP6 are not relevant to the proposal, as it would comprise less than 5 dwellings.

12. Figure 1 of the SPD explains the process to be adopted for the determination of a windfall site proposal. It advises that the key local sustainability factors and weighting in Appendix 1 should be used to evaluate the benefits and disbenefits of a proposal to ascertain whether a site is sustainable for housing development. It explains that the application of Policy CS 10 seeks to ensure that windfall sites do not undermine the CS target of providing 80% of residential development on previously developed land, amongst other things.
13. It appears unlikely that the provision of up to 3 houses at the appeal site would undermine the 80% target. However, in assessing the first key objective of the Windfall Sites Sustainability Criteria and weighting in Appendix 1 of the SPD, there is weight against the sustainability of the appeal site on account of it not comprising brownfield land. The SPD states that this first key objective has the highest weighting attached, and that weight is therefore significant.
14. The appeal site is located close to a public house, community centre, and public open space. Further away, but within 800 metres, is a small neighbourhood centre which includes a number of local services. It is also located approximately 260 metres from Stone Crossing railway station with regular services to London and Kent and 430 metres from bus stops with regular services. I saw those services and facilities from the appeal site would appear to be accessible by existing footpaths, which although steep and/or narrow for some short sections, would appear to be reasonably safe and useable.
15. Therefore, with regard to the second key objective of the Windfall Sites Sustainability Criteria, the appeal site receives weighting in favour of it being sustainable for housing development on account of it being located within walking distance of a variety of existing facilities and public transport options providing services to a range of interest destinations. This would reduce the need to travel, minimise car use, and result in housing being provided close to facilities. As such, these are key local sustainability factors to which I assign significant weight.
16. With regard to the third and fourth key objectives, the proposal would support existing community facilities within 800 metres of the appeal site, but as an application for permission in principle, no information is presented as to how the proposal could assist the combatting of climate change. The level of support the proposed housing would provide to existing community facilities would be long lasting, but modest due to the small number of households. Moderate weight in favour of the sustainability of the appeal site is therefore assigned to the third key objective and no weight is assigned for or against in respect of the fourth.
17. Taking all of the Windfall Sites Sustainability Criteria set out in the SPD into account, there is significant weight for and against the site being considered a sustainable location for housing. On balance, the combined weight of the second and third key objectives in favour of the appeal site being sustainable outweigh that of the first key objective against.
18. Turning to other benefits and disbenefits of the proposal, the potential harm to biodiversity set out in the first main issue of this decision is a disbenefit. In the

absence of evidence demonstrating any such harm would not be caused or could be satisfactorily mitigated, I attach significant weight to this disbenefit.

19. It has been claimed the appeal site comprises degraded land, which the SPD advises could be assessed as brownfield land. I saw it to be an overgrown and unmaintained open parcel of land, which detracts from the pleasant appearance of dwellings to the west and woodland to the east, but I would not describe its condition as degraded or despoiled, as referred to in the SPD. It does not form part of a valued landscape or appear likely to make a positive visual contribution to the locality in the future. In the context of surrounding development, the provision of up to 3 houses on this land would have a modest positive effect on its appearance, which would be a benefit I assign moderate weight to.
20. The main parties agree the provision of housing is a benefit weighing in favour of the proposal. The Council is of the view that in the context of its ability to demonstrate a 5-year housing land supply, little weight should be assigned to that benefit. Paragraph 60 of the Framework refers to the Government's objective of significantly boosting the supply of homes. Paragraph 69 advises, amongst other things, that to promote the development of a good mix of sites, support should be given to the development of windfall sites and great weight attached to the benefits of using suitable sites within existing settlements for homes.
21. The appeal site is located within an existing settlement, and having followed the advice of the SPD, I have found it would be a suitable site with regard to its sustainability; however, its suitability in respect of the proposal's effect on biodiversity has not been demonstrated. Overall, I am therefore unconvinced that the site is suitable for housing, and in the context of Paragraph 69 of the Framework I am unable to attach great weight to the benefit amounting from the housing proposed.
22. The only other disbenefit of the proposal I have been referred to would be the development of a greenfield site, which the Council's development plan policies seek to discourage. As set out above, that is to meet the CS target of providing 80% of residential development on previously developed land, and no evidence has been presented to suggest this target would be undermined by the proposal. I therefore attach moderate weight to this disbenefit.
23. Policy CS 1 of the CS seeks to focus development towards priority areas in order to maximise regeneration benefits, promote sustainable patterns of development and protect less appropriate areas from development. The appellant has claimed the appeal site is located within the Ebbsfleet to Stone priority area, but based on the limited information before me, I am not convinced that this is the case.
24. Bringing things together, on account of the potential harm which could be caused to biodiversity, the benefits of the proposal would not outweigh the disbenefits. The principle of the location and land use proposed would therefore conflict with the aims of Policies CS 1 and CS 10 of the CS and Policy DP6 of the DPP, the requirements of which are set out above.

Other Matters

25. The Council's third reason for refusal refers to a lack of details demonstrating that a suitable vehicular access with adequate visibility splays can be provided to serve the proposal. The proposed site plan is for illustrative purposes only and there would be a number of options open to a developer with regard to any vehicular access and/or parking which may or may not form part of a detailed scheme. I am therefore satisfied that such details are not relevant to the principle of the proposal, with regard to its location and land use, and would not need to be considered at the first permission in principle stage in this case.

Conclusion

26. Although the sustainability of the site would be appropriate for housing development with regard to part 4(a) of Policy CS 10 of the CS, it has not been demonstrated that the principle of the location and land use proposed would be acceptable in terms of the proposal's potential effect on biodiversity and that the benefits of development would outweigh disbenefits. For the reasons set out above, I conclude that the principle of the location and land use proposed would conflict with the development plan taken as a whole. There are no material considerations that indicate my decision should be made other than in accordance with the development plan. Therefore, the appeal should not succeed.

L Douglas

INSPECTOR