



Appeal Decision

Site visit made on 7 February 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2023

Appeal Ref: APP/X2220/W/21/3286162

Land to the Rear of the Wingham Barn, The Old Fairground, Wingham, Canterbury 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 and Mrs Pomeroy against the decision of Dover District Council.
 - The application Ref 21/00541, dated 7 April 2021, was refused by notice dated 12 August 2021.
 - The development proposed is the erection of a detached two-storey dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved. The application included plans which showed the location and extent of the site, but no other details or indicative drawings were received.
3. Although raised during the course of the appeal, the Council has subsequently confirmed that concerns relating to nutrients reaching the Stodmarsh conservation sites have been withdrawn. I have, therefore, not considered this matter any further.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would comply with local and national planning policy, which seek to steer new development away from the areas at the highest risk of flooding.

Reasons

Character and appearance

5. The appeal site forms a parcel of land, accessed via a private drive from The Old Fairground. The site has an open and rural appearance, formed of grassland with fields and woodland visible to the north and west. The Wingham River, running along the boundary of the site, gives it a tranquil character.

6. Policy DM1 of the Dover District Core Strategy (CS, 2010) restricts development outside of settlement boundaries unless it is justified by other policies, it functionally requires such a location, or is ancillary to existing development or uses. CS Policy DM15 restricts development that would result in a loss, or adversely affect the character or appearance, of the countryside unless it is justified by the needs of agriculture, rural economy or community.
7. I acknowledge that the CS predates the Framework. In particular, I note that CS Policy DM1 is more restrictive than the Framework in respect of development outside of settlement boundaries. Accordingly, I attribute only moderate weight to this policy in respect of its degree of consistency with the Framework. Nevertheless, the proposed development conflicts with the policy as the appeal site is positioned outside of, albeit adjoining, a defined settlement boundary. It therefore lies within the open countryside. CS Policy DM15 is consistent with paragraph 174(b) of the Framework in respect of recognising the intrinsic character and beauty of the countryside.
8. The proposed development would be set behind established residential development within The Old Fairground and would therefore be largely out of sight from public vantage points, including High Street. Despite this, and whilst details of appearance and scale are reserved for subsequent approval, the proposed development would be highly visible from neighbouring properties. It would also be glimpsed from the site entrance at The Old Fairground, viewed through gaps in built form and landscaping, and from Pett's Lane. Whilst there are intervening trees from that vantage point, these would not be in leaf during winter months.
9. Due to the position of the proposed development next to established built form, it would be viewed in the context of those buildings. From that perspective, it could not be reasonably considered to be visually isolated. However, the proposed development would nevertheless introduce built form and a domestic character to a site where this is not the case. This would include the inevitable hard landscaping required to access the site and provide car parking, together with paraphernalia typical of a domestic property. Combined, this would have a harmful urbanising effect on the undeveloped site and surrounding area.
10. I note the appellant's comments in respect of the scheme proposing only a single dwelling on a site larger than some nearby which accommodate multiple dwellings. However, the proposed development would nonetheless intrude into, and erode, the rural and tranquil character of the site, and the visible transition from the more consolidated built form of Wingham to surrounding open countryside. Due to the position and orientation of the existing built form on The Old Fairground, a dwelling on the appeal site would appear poorly related to this, regardless of its design or position on the site. As it would be set behind the existing houses, it would not contribute to the framing of the space or the creation of a cohesive street scene. Moreover, there is no evidence before me to demonstrate that the proposed development is required in this location, including for the needs of agriculture, rural economy or community.
11. My attention is drawn to an approved scheme at Woodvale House¹. The appellant sets out that this development sits further back than the historic building line of Wingham Barn and that this has changed the boundary edge of development within The Old Fairground. Irrespective of any building line of

¹ Refs DOV/17/01004; DOV/15/00118

established nearby development, I have set out above the harm I have identified in respect of the open and rural character of the countryside. The precise building line of established neighbouring properties does not lead me to an alternative conclusion.

12. For the above reasons, I conclude that the proposed development would cause significant harm to the open and rural character and appearance of the countryside, contrary to the relevant provisions of CS Policies DM1 and DM15, which in summary seek to steer development away from countryside locations and protect its character and appearance. This is in a similar vein to the objectives of paragraph 174 of the Framework insofar as the need to recognise the intrinsic character and beauty of the countryside is concerned.

Flood risk

13. The site is identified as falling within Flood Risk Zones 2 and 3, an area with a medium-high probability of flooding. The Framework seeks to direct development away from areas at risk of flooding. The appeal scheme is supported by a Flood Risk Assessment (FRA) and a Site Specific Sequential Test (sequential test).
14. The sequential test is necessary to determine whether any other sites would be available to meet the need for development of this nature, outside of areas most at risk of flooding. The submitted sequential test states that a search has been carried out of development land within the Dover District consisting of Wingham, Ash, Eastry, Preston and Goodnestone. The appellant's methodology included discussions with local estate agents, a search of online listings for suitable plots and a search of sites within the Council's Housing and Economic Land Availability Assessment. This identified three potential sites that were discounted by the appellant as they were either located in Flood Zone 3 or were not comparable to the appeal site, providing land for multiple properties rather than single dwellings. The sequential test ultimately concludes that no other suitable sites are available within the identified area.
15. The Framework does not define the extent of a sequential test search area. The Planning Practice Guidance (PPG) advises that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for the type of development proposed and that a pragmatic approach on the availability of alternatives should be taken. Ultimately, the local planning authority needs to be satisfied that the proposed development would be safe and not lead to increased flood risk elsewhere. The search area was confined to the Wingham, Ash, Eastry, Preston and Goodnestone, which appears to cover only a limited part of the district. I have no evidence before me to demonstrate how that search area was defined, limited only to a reasonably small area, nor evidence of the LPA's agreement to it.
16. I also find the evidence of correspondence between the appellant and local estate agents to be very limited as it does not confirm any details with regard to the area searched, or the criteria used by the estate agents to search for sites. The evidence does not therefore give me sufficient assurance that a robust search has been carried out.
17. The PPG sets out that even where an FRA shows the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the sequential test still needs to be satisfied. Similarly, the Exception Test should

only be applied if the sequential test has shown that there are no reasonably available, lower-risk sites suitable for the proposed development.

18. That other nearby properties adjoin the river, or are situated on the flood plain, are not reasons that overcome the above. I am assessing the scheme on its own individual circumstances.
19. Overall, I conclude that I cannot be satisfied that the proposed development has met the requirements of the sequential test, demonstrating there are no other available sites with a lower risk of flooding. Accordingly, the proposed development would be contrary to the relevant provisions of paragraphs 159 and 162 of the Framework, which in summary seek that a sequential test is undertaken to steer new development to areas with the lowest risk of flooding.

Other Matters

20. I note the appellant's comment in respect of communication with the Council and that the issues that led to the refusal of the planning application were potentially resolvable. Nevertheless, I have assessed the scheme on its planning merits and have identified harm, as explained above.
21. I acknowledge that the proposal would provide certain benefits. This includes the provision of an extra home in the district, for which the appellant states there is market demand, as well as economic benefits through the provision of employment during construction and the bringing about of additional trade following occupation. I also accept that the site is located in a reasonably sustainable location, near to existing shops, services and public transport facilities² and that the proposed development would optimise the potential of the site.
22. Nevertheless, the scale and nature of the development is such that the public benefits identified would inevitably be limited and would not outweigh the harm I have identified, which would be substantial and enduring. Neither the support in the development plan, nor Framework, for new housing is at the expense of ensuring the protection of the countryside.
23. The appellant sets out that the proposed development has the potential to provide biodiversity enhancements to the site. I accept that these works are of benefit, although the enhancement of the site for the benefit of biodiversity is not inherently dependant on the proposed scheme.
24. Whilst the Council can presently demonstrate a five year land supply of deliverable housing sites, the appellant sets out that the Council is failing to meet its Housing Delivery Test (HDT) targets, delivering 80% of its requirement. Footnote 8 of paragraph 11.d) of the Framework sets out that the presumption in favour of sustainable development is triggered where the HDT indicates a delivery of housing less than 75% of its requirement over the previous three years. I have no evidence before me to demonstrate that this is the case.
25. Even were I to accept the appellant's position, bullet (i) of paragraph 11.d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including areas at risk of flooding, provide a clear reason for refusing the development.

² Consistent with the findings under Appeal Ref APP/X2220/W/3248667

As I have found harm in respect of flood risk and this provides a clear reason for refusing the appeal proposal, the presumption in favour of sustainable development would not apply in this particular case.

Conclusion

26. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

A Price

INSPECTOR