



Appeal Decision

Site visit made on 5 December 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Appeal Ref: APP/X2220/W/22/3312851

Elite Wash Centre, Sandwich Road, Hacklinge, Kent CT14 0AT

- 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 Tony Reid against the decision of Dover District Council.
 - The application Ref 22/01163, dated 5 September 2022, was refused by notice dated 1 November 2022.
 - The development proposed is described as 'outline application for the erection of 5no. dwellings (with all matters reserved except access).'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The planning application was for outline planning permission with all matters reserved for subsequent consideration. The Council's decision notice refers to the application being for outline permission but with all matters except access reserved. Although I have not been provided with specific confirmation that access was to be considered at this stage, the Appellant's appeal form and statement both repeat the description used in the decision notice. Furthermore, the statement makes direct reference to the proposed access arrangements and visibility splays. Therefore, for consistency and clarity, I too have taken the description of development from the Council's decision notice and have considered the proposal on that basis.

Main Issues

3. The main issues are a) the location of the site; b) the effect of the proposed development on the character and appearance of the area; c) flood risk; and d) the effect of the proposed development on the protected habitats of the Thanet Coast and Sandwich Bay Ramsar site and the Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest (SSSI).

Reasons

Location

4. The appeal site is a former petrol filling station that is now being used as a car wash. It is located on the eastern side of the A258, to the north of Sholden, which forms part of the northern fringes of Deal. Whilst there are some other properties within the immediate vicinity, the area has a predominantly rural and open countryside character and is outside of any defined settlement.
5. Policy CP1 of the Core Strategy 2010 (CS) establishes the settlement hierarchy for the District and where new development should be focussed. The areas it

identifies for new development includes the built-up parts of Sholden. In support of this strategy, Policy DM1 of the CS does not permit development outside defined settlement boundaries unless justified by other development plan policies or if it functionally requires such a location. As neither of these exceptions apply, the proposed dwellings would be at odds with these provisions.

6. The Council's position is that Policy DM1 is out of date when judged against the National Planning Policy Framework (the Framework) because of its limiting effect on the supply of housing. Nevertheless, the proposal would undermine the existing spatial strategy and this is a matter that counts against it.
7. The Draft Dover District Local Plan (DDLP) has been submitted for examination. Draft Policies SP1, SP2 and TI1 broadly seek to reduce the need to travel, encourage sustainable travel options and ensure development is well served by services and facilities. Collectively they help support Draft Policy SP4, which sets out appropriate locations for windfall residential development either within or immediately adjoining settlement confines. However, the proposal would not comply with the relevant criteria for development outside settlements. Having regard to paragraph 48 of the Framework, these policies have limited weight as it is unknown whether they will be found sound. However, the overall policy approach advocated in the DDLP does not favour the proposal.
8. There is a dedicated path that would enable future residents to access facilities in Sholden, but this is likely to be a round trip of over 3km. Furthermore, the inclination to walk or cycle is not solely related to distance, but also the quality and character of the route and how it would be experienced. In this case the route is unlit and the speeds of vehicles using the adjacent A258 are likely to be close to the 50mph limit for much of the route. During inclement weather or in the hours of darkness the route would be particularly unattractive. Despite the Appellant's assertions that pedestrians and cyclists do use the route, there is little substantive evidence to indicate that the site's location would encourage walking or cycling to Sholden or beyond.
9. Betteshanger Park is closer but aside from offering recreation facilities, a café/restaurant and a shop, there is little to suggest it would offer the services and facilities future residents would need on a regular basis. The Coach Pub is walkable from the site but again offers a limited range of facilities.
10. There is a bus stop close to the site, but I have not been provided with any information or indication as to the regularity of any service. Nevertheless, it may provide some opportunity to travel by means other than the car. However, it seems to me that for more substantive shopping trips and to access a range of employment, education, health and leisure facilities it would be necessary for future occupants to travel further afield, and this is likely to be by private car.
11. The change from car wash to housing may result in a reduction in the number of vehicles accessing the site. However, there is no substantive evidence to indicate that there would be fewer car journeys along the A258 as a direct result of the proposal.
12. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and is therefore not as restrictive as Policy DM11 of the CS. Nevertheless, on a small scale, the

proposal would not be likely to promote sustainable transport, and this is a further objection to its location.

13. The Framework encourages housing to be located where it would enhance or maintain the vitality of rural communities in order to promote sustainable development in rural areas. However, the appeal site is divorced from any sizeable community and there is no substantive evidence as to how and to what extent the proposal would contribute in this way. Any benefits, such as future residents using nearby facilities, are likely to be slight.
14. Taking all of the above into consideration, and having regard to Policies CP1, DM1 and DM11 of the CS and Policies SP1, SP2, SP4 and TI1 of the DDLP I conclude that the appeal site is not a suitable location for residential development given the Council's spatial strategy and its approach to managing travel demand and access to services and facilities.
15. The proposal would similarly not accord with the Framework's principles for directing growth to sustainable sites and away from unacceptable countryside locations.

Character and Appearance

16. The main canopy and former cash desk/shop from the petrol filling station remain in situ. However, aside from some small storage facilities to the rear of the site, much of the land is formed of hardstanding and is open.
17. Existing and re-purposed petrol filling stations are not an uncommon sight alongside primary roads, even in the open countryside. They generally have a limited amount of built form and although are designed to have a degree of visibility from the road, their prominence within the wider landscape is often more limited. This is the case here.
18. Whilst layout, scale and appearance are reserved matters, it is difficult in principle, to conceive of any sensible arrangement for five new dwellings on this site that would not appear as a more urbanising form of development; or be able to maintain the prevailing spacious character and limited wider effect on the landscape. Aside from the buildings themselves, there would also be garden areas and paraphernalia that would reinforce a domestic appearance that would severely diminish the rural qualities of the site's surroundings.
19. The development would be contained within the site boundaries. There would also be scope for achieving a high-quality design at the reserved matters stage. However, this would not overcome the increase in the quantum of built form or its visibility and adverse effect on the rural landscape. New planting could help to screen the development. However, this would be a form of mitigation of harm rather than an enhancement of the landscape. In any event the purpose of landscaping is to integrate a development into its surroundings, not to hide something which is otherwise unacceptable.
20. It is said that the scheme would be of exceptional design and so accord with the exception in Paragraph 80 of the Framework which allows for isolated homes in the countryside. However, as the matters of scale and appearance are reserved for subsequent approval, I cannot be sure at this stage as to the final design. Thus, whilst I cannot rule out the possibility of a high-quality design, I cannot be sure that it would be exceptional. Furthermore, there is no

way to guarantee which designer the Appellant would commission. Accordingly, I cannot give these factors weight in this appeal.

21. The Appellant considers that the proposal would remove existing, unsightly buildings. However, in reaching my conclusions on this matter I have taken the current appearance of the site into account and do not find that it outweighs the concerns I have highlighted as to the proposal's effect on the character and appearance of the wider area.
22. As such, there would be conflict with Policies DM15 and DM16 of the CS which amongst other things, seek to protect the character and appearance of the countryside.
23. The proposal would also be contrary to the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character and protect the countryside.

Flood Risk

24. The Framework requires that inappropriate development should be avoided in areas at risk of flooding by directing development away from areas at highest risk. It sets out a sequential test to steer new development to areas with the lowest risk of flooding. Where it is not possible for development to be located in areas with the lowest risk of flooding, the Framework sets out an exception test. This requires that development demonstrates that it would (a) provide wider sustainability benefits to the community that outweigh the flood risk, and (b) that the development will be safe for its lifetime without increasing flood risk elsewhere and, where possible, reducing flood risk overall. Policies SP1 and CC5 of the DDLP contain similar principles.
25. The nature of the proposal and the vulnerability of the site to flooding mean that in this case both the sequential test and exception test must be passed. Following the submission of additional information, the Council is now content that the proposal passes both the sequential test and part (b) of the exception test. I have no reason to reach a different conclusion.
26. However, part (a) of the exception test must also be satisfied. The Planning Practice Guidance (PPG) advises that wider sustainability benefits could include: the re-use of suitable brownfield land as part of a local regeneration scheme; an overall reduction in flood risk to the wider community through flood risk management infrastructure; or the provision of multifunctional sustainable drainage systems. All these benefits would impact in a positive way a substantial number of people or make a substantial environmental difference. The appeal scheme would not result in benefits of this kind.
27. The Appellant indicates a willingness to provide for waste-water treatment works and for sustainable surface water drainage to serve the development. However, such measures are very small-scale and would have only a very localised effect on minimising flood risk.
28. The development would provide a dwelling for the Appellant and four additional 'starter' dwellings to help boost local housing supply. However, the Council indicates it can meet its five-year target of deliverable housing land and so there is no overriding necessity to accept development in unsuitable locations. Even if it cannot meet this target, there is nothing to indicate that the four additional dwellings would be 'starter homes' as defined within Annex 2 of the

Framework or any guarantee that they would be occupied as starter homes. Furthermore, there is no substantive evidence to indicate there exists a particular demand for such accommodation in this location.

29. There may be some temporary and longer-term economic benefits from the scheme but given the scale of the development these would be minimal. The development is on previously developed land but as it would not improve the environment it cannot be said to make effective use of it.
30. Whilst mitigation measures such as raised floor levels would temper the risk from flooding somewhat, due to the small size of the scheme and the other factors outlined above, the sustainability benefits to the community are, at best, limited. I therefore find that, based on the evidence before me, these would not outweigh the flood risk and as a result the first limb of the exception test is not met. Where the tests are applied and not met, the PPG advises that development should not be allowed.
31. I therefore conclude that the proposed development is not acceptable, having regard to the potential for flooding. It would not comply with the relevant DDLP policies SP1 and CC5, or the requirements of the Framework.

Protected Habitats

32. The Council indicates that the site lies within proximity of the Thanet Coast and Sandwich Bay Ramsar site and the Sandwich Bay to Hacklinge Marshes SSSI. In respect of the latter, the appeal site is said to lie within the SSSI Impact Risk Zone identified by Natural England.
33. The need to protect and safeguard these sites means that the development must be considered in the light of the Conservation of Habitats and Species Regulations 2017 (the Regulations). As the 'competent authority' for the purposes of the Regulations, I would be unable to grant planning permission unless I can be certain the proposal, either on its own or in combination with other plans and projects, would not adversely affect the integrity of these protected sites.
34. The Council is particularly concerned that contaminants from the site could enter the watercourses. It seems to me that given the previous and current uses of the site and its relative proximity to the protected habitats, the redevelopment of the appeal site would be likely to have significant effects upon the protected habitats. The Appellant suggests that a suitably worded condition requiring an assessment and mitigation plan/strategy would be sufficient to address such concerns.
35. However, the Regulations mandate that where such protected sites are concerned, it is necessary to undertake an Appropriate Assessment (AA) to determine whether or not the proposal would adversely affect the integrity of the protected habitats, taking into account any mitigation measures. An AA should be undertaken before a project is consented and that the absence of an AA, prevents a competent authority from giving consent, permission, or other authorisation for a project which is likely to have significant effects.
36. Thus, to my mind, not undertaking an AA in a situation such as this, where one would be required, would fail to give the correct protection to a sensitive site. This would potentially undermine and frustrate the purpose of the Regulations and Paragraph 181 of the Framework.

37. As I am unable to undertake an AA given the lack of information from the Appellant, I am unable to conclude that the proposal would not have a likely significant effect on the integrity of the protected sites. This provides a clear reason for dismissing the appeal. Neither the findings of the Appellant's Preliminary Ecological Assessment nor the imposition of a planning condition would overcome this objection.

Other Matters

38. The site falls within the Framework's definition of previously developed land (PDL). Even so, national policy does not favour utilising brownfield land wherever it is found. Rather Paragraph 120 gives substantial weight to the value of using suitable brownfield land within settlements for homes but that does not apply here. The site would not relate well to an existing settlement and would not meet the Framework's environmental dimension. As such, the site being PDL is not a reason to allow the appeal.
39. It is said that the proposal would be acceptable in relation to a number of matters such as access, parking, the effect on neighbours, density etc. Furthermore, existing employees would be relocated to one of the Appellant's other employment sites. However, these factors represent an absence of harm. As such, they do not weigh positively in favour of the scheme.
40. The Appellant refers to the adjacent site which has received planning permission for residential development, but I do not have the full details before me and therefore cannot be sure that it represents a direct parallel. Furthermore, each proposal must be considered on its own merits and based on the evidence available in each case. It does not automatically follow that the same circumstances would apply to other sites and other proposals. I have determined this appeal on its own merits.

Conclusion

41. The proposed development does not pass the exception test for the location of development in relation to flood risk nor does it demonstrate that it would not have a likely significant effect on the integrity of protected sites. Either of these would be sufficient on their own for me to disapply any presumption in favour of sustainable development and dismiss the appeal.
42. However, I have also found the location of the site to be contrary to the spatial strategy for the area and for the proposal to cause harm to the character and appearance of the area. Whilst there would be some beneficial aspects of the scheme, they are not sufficient to outweigh the harms I have identified.
43. Accordingly, the scheme would conflict with the development plan when taken as a whole, and there are no other material considerations, including the Framework, to outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

Stewart Glassar

INSPECTOR