



Appeal Decision

Site visit made on 17 April 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Appeal Ref: APP/X2220/W/23/3327770

Land to the South of East Street Farm, East Street, Ash, CT3 2DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Guildcrest Homes (UK) Ltd against the decision of Dover District Council.
 - The application Ref is 22/00663.
 - The development proposed is demolition of existing storage buildings and the erection of two detached dwellings with associated parking.
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Decision

1. The appeal is dismissed.

Main Issue

2. This is whether the proposed development would be in a suitable location having regard to relevant local and national policies.

Reasons

3. The appeal site contains three former cold stores originally used for the storage of pears grown at East Street Farm. They are now in use for the storage of general building materials and equipment. The buildings are part of the modest collection of houses at East Street which lies to the north of the village of Ash and is separated by the A257. The hamlet is a distinct entity set apart from the main nucleus of Ash and is served by a single-track road.
4. Two of the buildings have a lawful use as a storage depot and the site comprises previously developed land as defined in the Glossary to the National Planning Policy Framework. It has a lengthy planning history but most pertinent is the decision (Ref: APP/X2220/W/21/3274590) to dismiss an appeal in 2021 following the refusal of planning permission for two detached dwellings. The proposal has been revised to overcome the finding that the previous scheme related poorly to its context and adversely impacted the character and appearance of the area.
5. The land is outside the settlement boundary of Ash. Policy DM1 of the Core Strategy of 2010 establishes that development will not be permitted in such locations unless specifically justified by other development plan policies. There are no such policies. That said, the Council's position is that Policy DM1 is out of date when judged against the Framework because of its limiting effect on the supply of housing.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.

6. Policy ANP1 of the Ash Neighbourhood Plan only supports development in the countryside beyond the village settlement boundary in limited circumstances - none of which apply in this case. It also provides that the use of previously developed land and sites which are physically well connected to the village will be encouraged where suitable opportunities exist. The approach enshrined in Policy ANP1 was based on the Core Strategy and the settlement boundary in place at that time. However, given that the appeal site is well outside of Ash, the proposal would conflict with it.
7. The Draft Dover District Local Plan is being examined. Consultation on the Main Modifications began on 11 April 2024. Draft Policy SP4, as proposed to be modified, sets out appropriate locations for residential windfall development either within or adjoining settlement confines. Whilst the consultation process is not complete and the final report has not been received, there is a high probability that this policy will eventually be adopted in that form. Therefore, having regard to paragraph 48 of the National Planning Policy Framework, it can be given a considerable amount of weight.
8. The draft policy loosens the existing approach to development outside settlements. However, the proposed houses would fall foul of the requirement to be adjoining their boundaries, as shown on the Policies Map. The draft policy is quite specific in defining settlements in this way. The Court of Appeal judgment in *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610 discussed what constitutes a settlement. However, this was done for the purpose of deciding whether or not a dwelling would be physically separate or remote from a settlement and therefore "isolated". It therefore does not alter the way that the draft policy should be interpreted.
9. One of the proposed changes to the policy is to delete the word "immediately" before "adjoining". Whilst this alteration would provide greater flexibility when considering proposals on the edge of the settlements listed, it does not assist the appeal scheme given how far it is outside of Ash. Indeed, there is no very close connection between the proposed development and the built form of the existing settlement. Even if the proposal is treated as infilling, it would therefore be contrary to a draft policy that is highly likely to be adopted and this reinforces the objection to its location.
10. Ash is a large rural settlement with shops, community facilities, open spaces and education provision and is served by the bus network. It is a local centre that provides services to its home and adjacent communities. In theory, it would be possible for future residents to walk or cycle there along public rights of way or quiet lanes. Although the bus stops along the A257 and the protected open space at Saunders Wood are closer, the main core of the village is some way to the west. Indeed, the distances involved and the nature of the links are not such as to encourage regular trips on foot or by bike. The need to cross the busy main road would be a further disincentive.
11. It is therefore likely that the majority of trips would be undertaken by car. Policy DM11 provides that development that would generate travel will generally not be permitted outside rural settlement confines. The previous Inspector said there would not be conflict with the aims of Policy DM11 but the proposal would nonetheless fall foul of its wording. However, it is not consistent with the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

12. The last Inspector also found that the proposed residential use would not lead to an unacceptable increase in traffic to and from the site given its current use. The lawful storage facility is not restricted in terms of hours of operation and there are no controls preventing HGV movements. However, there is no evidence of existing traffic levels and the likelihood of an increase in activity is limited by the narrowness of the lane serving the site and its remoteness.
13. In any case, the Framework seeks to promote sustainable transport. It also indicates that the planning system should actively manage patterns of growth in support of that objective and does not refer to historic transport usage. Therefore, on a small scale, the proposal would not align with the aspirations of the Framework in this respect.
14. The 2021 appeal decision concluded that the proposal would not adhere to the development strategy outlined in Policy DM1 but went on to attribute a minimal amount of weight to Policy DM1. The weight to be given to the conflict with the development plan in this appeal will be considered in due course but for now it can be observed that no express finding was made as to whether the proposed houses would be in a suitable location. No specific objection was raised in this respect but neither was it specifically endorsed. The findings in that case are therefore not decisive.
15. To sum up, the proposed dwellings would not be in a suitable location having regard to local development plan and emerging policies regarding settlements and managing travel demand and to national policy.

Material Considerations

16. In order to make effective use of land, national policy does not favour utilising previously developed land wherever it is found. Paragraph 124 c) of the Framework gives substantial weight to the value of using suitable brownfield land within settlements but that does not apply here. In addition, the section on rural housing provides no endorsement of new housing on previously developed land in the countryside.
17. The Ministerial statement of July 2023 sets out a long-term plan for housing and comments that better use should be made of small pockets of brownfield land. However, this is in the context of a commitment to development and regeneration in and around existing town and city centres rather than in rural areas. As a result, this does not support the proposal.
18. The Framework nevertheless 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 Ash and there is no evidence as to how and to what extent the proposal would contribute in this way. Any benefits would therefore be slight.
19. The proposed family houses would add to the stock of housing and increase choice. Potentially they could reduce pressure to release greenfield sites. However, the Council is able to demonstrate 5.31 years of deliverable housing sites in line with Government expectations. In addition, its past record of delivery does not trigger the 20% buffer or the presumption in favour of sustainable development.
20. The existing buildings have a utilitarian appearance and the hardstanding in front of them is somewhat austere. However, they are well-contained in the

wider landscape by vegetation and such structures are not uncommon in rural areas. The advantages of removing them and replacing them with two well-designed properties would therefore not be that great. There is also no evidence that the site is a "busy commercial yard" that adversely affects the living conditions of nearby residents.

21. Landscaping could be secured as part of any permission but there is already a strong tree line along the edge of the lane. Conditions could also require ecological enhancements but the value of these has not been quantified. It is suggested that steps would be taken to improve surface water run-off but there is no indication that this is problematic. Therefore, none of these aspects of the scheme would contribute significantly to the local environment.
22. It is maintained that there would be a reduction in traffic as well as an accompanying lowering of emissions, congestion and disturbance and a consequent increase in safety for users of the lane. However, in the absence of empirical evidence about the level and type of existing movements, it is difficult to give much credence to such claims. In future, as acknowledged by the appellant, the rural highway network would dictate the type and size of vehicles able to visit the site. Furthermore, the lawful use is for storage within Class B8 and the remote location does not suggest that it would be likely to become a major traffic generator over time.
23. The Council does not regard the site as isolated and there are a number of existing buildings around it. The provisions of paragraph 84 of the Framework would therefore not apply if proposals came forward to re-use redundant or disused buildings. Reference is also made to potential permitted development rights in the event that a use within Class E was accepted. However, all of this is speculative and there is no immediate prospect of alternative uses within the existing buildings taking place in the near future.
24. There would be the usual economic benefits associated with new development including the generation of Council tax revenue, New Homes bonus and employment during construction. It is also said that the proposal would enable the existing company to re-locate but no detail is given about the implications of this, why the existing premises are unsuitable or why any move is contingent on the grant of planning permission for housing.
25. The development would be constructed using energy efficient techniques and methods. However, there is no information to show that this would be anything out of the ordinary when compared to current practice.
26. In line with the previous decision, there would be no harm to the setting of East Street Farmhouse which is a Grade II listed building.
27. Of the material considerations referred to above, some do not favour the proposal. Others are matters that are expected of any new development. Whilst several aspects of the scheme are acceptable, they do not weigh positively. There are nonetheless factors which would be beneficial but, even collectively and for the reasons outlined, they are not of significant force.

Final balance

28. The proposed houses would be well outside Ash and not in line with the settlement hierarchy in the Core Strategy. Furthermore, whilst previously developed land, the site is not physically well connected to the existing village

settlement and so it would not conform with the Neighbourhood Plan. Although off-set by the cessation of the lawful commercial use, the new dwellings would generate car travel. The proposal would therefore not accord with the development plan as a whole.

29. The weight to be attached to this in deciding the appeal is qualified by the age of the Core Strategy which pre-dates the Framework. This is counter-balanced by the more recent adoption of the Neighbourhood Plan. Furthermore, it is notable that the policies in the Core Strategy are not preventing an adequate supply of housing. The development plan conflict is therefore of moderate weight. Nevertheless, the most important policies for determining the appeal are not fully reflective of national policy and are out-of-date. The balance in paragraph 11 d) ii of the Framework is engaged as a result.
30. Because the site would not be adjoining the settlement boundary, there would also be conflict with emerging Policy SP4. Because of the advanced stage of the Draft Local Plan this is a significant matter. The policy crystallises the approach to windfall residential development and indicates that the proposal would be at odds with the planned future distribution of development across the District. This is a major objection. Furthermore, the proposal would not promote sustainable transport in line with the Framework and this is a further negative aspect of the proposal although a less important one.
31. There would be slight benefits in adding to housing supply in a rural area but building on previously developed land outside settlements is not supported by national policies that seek to make an effective use of land. There would be other gains associated with bringing a lawful commercial storage use to an end. However, these do not score highly given the paucity of evidence about current activities at the site. Coupled with the other environmental, social and economic advantages associated with the construction of two houses, the overall benefits of the scheme would be modest.
32. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development does not apply.
33. The submitted unilateral undertaking includes an obligation to make a payment to mitigate the effects of recreational disturbance on the Thanet Coast and Sandwich Bay Special Protection Area. However, as the appeal is to be dismissed, there is no need to undertake an appropriate assessment or to have regard to the Conservation of Habitats and Species Regulations.

Conclusion

34. The proposed dwellings would be contrary to the development plan and there are no material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the proposal is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR