



Appeal Decision

Inquiry Held on 4 to 6 December 2018

Site visit made on 6 December 2018

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 19 December 2018

Appeal Ref: APP/X2220/W/18/3200841

**Former Kumor Nursery and 121 Dover Road, Dover Road,
Sandwich, CT13 0DA**

- 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 Ms K Putnam of Westerhill Homes against the decision of Dover District Council.
 - The application Ref DOV/17/00280, dated 8 March 2018, was refused by notice dated 9 November 2017.
 - The development proposed is described as '*erection of 67no. dwellings, single and double garages, new vehicular access, associated parking and landscaping (demolition of 121 Dover Road) amended details and plans received relating to car parking*'.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Westerhill Homes against Dover District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal description used in the above header reflects that on the decision notice and appeal form. The Appellant agreed at the Inquiry that this was the correct description to use. I have therefore adopted it here.

Background and Main Issues

4. The main parties agree that the local planning authority is currently unable to demonstrate a five year supply of housing¹. As such, the 'tilted balance' or presumption in favour of sustainable development set out at Paragraph 11 of the *National Planning Policy Framework*² (the Framework) would typically be engaged.
5. However, the main parties also agree that an 'Appropriate Assessment' is required under the Habitats Regulations³. As such, Paragraph 177 of the Framework is activated. This disengages the 'tilted balance'. Accordingly, it

¹ The agreed figure was in the region of 4 to 4.5 years.

² The revised National Planning Policy Framework was issued in July 2018, and for development management purposes this replaces the 2012 version.

³ See the 'Other Matters' section of this decision for a fuller assessment of this matter.

was a matter of common ground between the parties that the proposal should be considered in the context of a 'flat' or normal planning balance. I see no reason to disagree and have proceeded on this basis.

6. The main issues are:

- The effect of the proposed development on the character and appearance of the area; and
- Whether the proposal would provide an acceptable mix of housing; including the provision of affordable housing.

Reasons

Character and appearance

7. The appeal site is located to the rear of a linear row of dwellings facing Dover Road. It would be accessed off Dover Road by means of a pedestrian access and a separate mixed use access formed by the demolition of 121 Dover Road. The site is broadly located on a northeast-southwest axis. To the west of the site are open agricultural fields, some of which have been considered for allocation for housing under various iterations of the development plan and /or are subject to ongoing planning decisions. Two Public Rights of Way (PROW) numbered ES08 and ES10 are located across the fields in a broad north-south axis.
8. In the main, the appeal site is fairly visually self-contained with a mix of hedges and trees along most of its boundaries. The boundary to the south east and west are formed of hedging of varying heights. The boundary with properties along Dover Road are formed by a mixture of coniferous and deciduous trees. Within the appeal site itself is a low-rise greenhouse-like structure which likely formed part of the previous plant nursery use. The roof of this is only just visible above or through the hedges. Most of the appeal site comprises overgrown grass, scrub and brambles interspersed with some immature self-seeded trees.
9. The main parties agree that the appeal site is not previously-developed land. They also agree that it lies outside of the urban boundaries and rural settlement confines shown on the proposal map – otherwise known as the 'settlement boundaries' as defined by Policy DM1 of the *Dover District Local Development Framework – Core Strategy adopted February 2010 (CS)*. As such it is within the countryside for planning policy purposes. Given what I saw on my site inspection and my observations above I see no reason to disagree.
10. The proposed scheme comprises 67 new dwellings with associated landscaping and access roads. Views from Dover Road would either be by glimpses through the existing built form or across open fields through the existing south western hedge. Whilst it is likely that the roofscape of proposed dwellings would be visible from Dover Road, in the main this would be mitigated by the limited visibility these viewpoints afford from the public realm through existing built form or landscaping.
11. Views from both PROWs, ES08 and ES10, would be possible as shown in the visualisations submitted by Mr Wadsworth⁴. These visualisations compare the

⁴ Appellant's landscape and visual impact witness. See Proof of Evidence, Appendices 10, 11 and 12

- proposed scheme in years 1 and 10 against the existing. It is clear that views from ES08 in particular would be noticeably altered. This evident change would arise in terms of the different nature of the site's use. The proximity of the proposed built form to the edge of the site would further erode the gentle visual transition from the urban to rural form.
12. For example, when looking at the existing built form along Dover Road, the long gardens provide a clear buffer between the built form and the adjoining appeal site as seen within the wider context of the area. The proposal would alter this relationship through the close siting of plots 15, 16, 17, 23, 24, 32, 36 to 39, and 42 for example in relation to the shared boundary. In particular, the built form on plots 15, 24, 32 and 42 would be sited barely a few metres from the boundary with the open field to the north-western edge of the site with little more than a low hedge to provide any visual relief.
 13. This is evidenced in Appendix 12 of Mr Wadsworth's Proof, where viewpoints E, F, G and H clearly show that even with the use of landscaping by year 10 the proposal would be highly and noticeably visible from public vantage points. The proposal would also be visible from PROW ES10, though to a slighter lesser degree given the increased distance. This would mean, even with the proposed landscaping, whereas there is a currently a clear and gradual buffer between the built form and the countryside, with the proposed scheme there would not be.
 14. I note that the evidence of Mr Wadsworth, differs somewhat from the originally submitted LVIA. Mr Wadsworth identifies 'major impacts' which he confirmed under cross-examination confirmed translated into 'major harm' for planning purposes. Whilst noting the differences in the assessments between both LVIA assessments, I am inclined to give more credence to Mr Wadsworth's assessment as he identifies three key viewpoints along PROW ES08, and in doing so he provides a more comprehensive assessment. Importantly, his assessment reinforces my findings in terms of the visual harm arising from the proposal. Whilst there is little visual assessment by the Council, this assessment nonetheless confirms the concerns raised by the Council in its reasons for refusal concerning views.
 15. In this respect, it is not the character and appearance within the site that is of issue here between the main parties, but rather the visual impacts as seen primarily from ES08 due to the way in which the proposal would be located in close proximity to the boundaries of the site – at odds with existing dwellings along Dover Road – and the erosion of the intrinsic character and beauty of the countryside.
 16. Policy DM1 of the CS indicates that development will not be permitted on land outside the settlement boundaries unless specifically justified by other development plan policies, or it functionally requires such location or it is ancillary to existing development or uses.
 17. Policy DM15 seeks the protection of the countryside through not permitting development which would result in the loss of, or adversely affect the character or appearance of the countryside and only being permitted if it meets certain criteria. Under cross-examination Mr Bedford conceded that the proposal would also conflict with Policy DM15 of the development plan as it would cause harm to the character and appearance of the countryside and did not necessarily benefit from any exceptions listed. I concur.

18. Moreover, I consider that it is clear the Policy, when read plainly, broadly accords with the Framework in respect of Paragraph 170. This indicates that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside⁵. My attention has been drawn to various appeal decisions, such as that at Land of Dover Road, Walmer, Deal⁶, where decision-makers afforded 'limited weight' to Policies DM1 and DM15 of the CS due to the lack of housing land supply and their lack of balanced nature.
19. However, in the context of this decision I disagree. Policy DM15, not only permits some limited exceptions, but in the opening sentence provides a balance between the loss of countryside or adverse effects on its character or appearance. When read plainly, it is not an absolute policy that inhibits all development within the countryside of the district. Rather it seeks to protect the intrinsic character and appearance of the countryside; much in the same way the Framework seeks. In this respect, I consider that this Policy is broadly consistent with those of the Framework and should be afforded substantial weight in any planning balance.
20. I therefore conclude that the proposal would have an adverse effect on the character and appearance of the area. Accordingly, it would conflict with Policies DM1 and DM15 of the CS which seek the aforesaid aims. It would also conflict with Policies of the Framework as cited above.

Housing mix

21. Policy CP4 of the CS requires that developments for 10 or more dwellings should develop an appropriate housing mix and design taking account of the guidance in the Strategic Housing Market Assessment. The Council takes no issue with the proposed mix of affordable housing, but is concerned with the proposed mix of the 47 market housing units. In particular, the Council is concerned that the proposal does not contain any 1-bedroom units as per the SHMA Part 2 (February 2017).
22. Mr Bedford pointed out that the broad split for 1-bed homes is about 15%, as contained within the supporting paragraphs to Policy CP4⁷. However, CP4 also requires that it is necessary for such mixes to be adjusted by market information. In this respect, Table 4.4 of page 45 of his proof indicate that the percentage of change required over the next 23 years in most demand is in three bedroom (about 43%) and four bedrooms or more (roughly 32%). However, this negates to recognise that there remains a change of about 4.3% for 1-bedroom dwellings; albeit this is much smaller than three and four bedroom dwellings.
23. Be that as it may, there remains a projected demand for 1-bedroom dwellings which one would legitimately expect a scheme of 67 units to deliver. Mr Bedford pointed to the fact that requiring one-bedroom dwellings on the appeal site would in practice require buildings comprising flats, which would be at odds with the predominantly '*traditional residential area of family homes*'⁸. However, there are many ways in which 1-bedroom dwellings can be designed

⁵ NPPF Paragraph 170, part b)

⁶ Core Document 11 – Ref: APP/X2220/W/17/3183959

⁷ Mr Bedford's POE, page 45, Paragraph 6.7.2

⁸ Mr Bedford's POE, page 45, Paragraph 6.7.5

that they appear as typical houses, even if internally split to provide multiple 1-bedroom dwellings as the LPA point out.

24. The failure to provide an appropriate mix of dwellings, which would reflect that given in Policy CP4 as adjusted by market information including the most recent SHMA of 2017, results in the proposal being contrary to Policy CP4 of the CS.
25. With regard to affordable housing, the appellant has submitted a completed legal agreement under S106 of the TCPA. At the Inquiry the Council submitted document LPA2 which sets out the basis for seeking such contributions. The legal agreement would secure the provision of 30% of the proposed dwellings as affordable housing in accordance with Policy DM5 of the CS. This is a benefit which would accord with the provisions of the CIL Regulations and the Framework Paragraphs 34 and 54, and the tests set out in Paragraph 56. Given the poor level of affordable housing delivery within the district for a number of years it weighs significantly in favour of the proposed development.
26. It would also secure monies for healthcare, primary and secondary education, libraries, social care and towards mitigation measures within the Thanet Coast and Sandwich Bay SPA. These are sought to mitigate the impacts directly arising from the proposed development. However, as I have found the proposal unacceptable on the substantive matters, it is not necessary to consider these any further.

Other Matters

27. The appeal site is located near to the Sandwich Bay SAC, Thanet Coast and Sandwich SPA, and the Thanet Coast and Sandwich Bay Ramsar site, as identified within the submitted *Habitat Regulations Assessment Report (HRAR)* dated October 2018. I call these three collective the 'European sites' for the purposes of this decision.
28. Prior to the Inquiry, in my role as the 'Competent Authority', I sought the advice of Natural England – the government's adviser on the natural environment in England and the Statutory Nature Conservation Body (SNCB) in relation to Section 63 of the *Conservation of Habitats and Species Regulations 2017*. This advice and consultation was necessary given the April 2018 judgement on *Court of Justice of the European Union (CJEU)* in relation to the stage when mitigation measures to address or reduce harmful effects of a project on a European site⁹ should be considered – within an 'Appropriate Assessment' stage, rather than a screening stage that had previously been custom in the United Kingdom.
29. In this case, I concur with the findings of the HRAR in that there would be likely significant effects arising from the proposed development. This would primarily arise from the recreational use and users of the European sites. Accordingly, an Appropriate Assessment would be necessary in this instance. Moreover, as agreed between the main parties, Paragraph 177 of the Framework is thus engaged as the development is one requiring appropriate assessment because of its potential impact on habitats is being determined.
30. Notwithstanding this, as I have found that the proposal would be unacceptable on the substantive matters which would result in its dismissal, I need not

⁹ Including SPAs, SACs and Ramsar sites

consider this matter in further detail. This is because under 63(1) of the Habitats Regulations, an Appropriate Assessment only needs to be undertaken when giving permission or consent, which is not the case here.

31. I note the concerns raised by interested parties primarily in respect of highway safety and parking matters. However, as I have found the proposal unacceptable on the basis of the main issues identified, there is no need for me to consider such matters in further detail. Within the context of this decision they weigh neither in favour nor against the proposal.

Overall Conclusion

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. In this case, I find that the proposed development would be contrary to the adopted development plan when considered as a whole.
33. Material considerations in favour of the proposal include the provision of 66¹⁰ new dwellings; of which 30% would be affordable homes. These are both benefits which accrue significant weight in an area that is currently unable to demonstrate a five year housing land supply and has had a persistent under-delivery of affordable housing for a number of years. Other material considerations which support the grant of permission are the site's sustainable location adjacent to Sandwich, which is a Rural Service Centre; and economic and social contributions to the local economy and community.
34. However, these material considerations do not indicate a decision otherwise than in accordance with the development plan nor do they overcome the harm I have identified. In applying a 'flat' planning balance the harm identified –to the adopted development plan, policies of the Framework, and harm to the character and appearance of the area - is not overcome by the material considerations in this instance.
35. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

¹⁰ No 121 Dover Road would be demolished, so the net gain is 66 dwellings.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Fraser, Barrister Instructed by Mr D Thorman, Solicitor, Dover District Council

He called:

Richard Thompson, Senior Planning Officer, Policy – DDC
MA, Licentiate member RTPI

Luke Blaskett, Principal Planning Officer, DM – DDC
BSc, MA

FOR THE APPELLANT:

Mark Westmoreland Smith, Instructed by Ms K Putnam of Westerhill Homes
Barrister

He called:

Stephen Wadsworth, Director of Landscape, Landscape Collective
Chartered Landscape Architect,
CMLI

David Bedford, Associate Director, DHA Planning
MRTPI

INTERESTED PERSONS:

Andrew Watson Local resident
Councillor Paul Carter Dover District Council - Ward member
Sandwich South
Ms K Putnam* Appellant

*Attended site visit and took part in roundtable discussions on conditions/Section 106

DOCUMENTS SUBMITTED AT INQUIRY

No.	Title/identifier
LPA1	<i>Opening Statement on behalf of Dover District Council by Matthew Fraser, Landmark Chambers; dated 4 December 2018</i>
LPA2	<i>Community Infrastructure Levy 2010 (CIL) Compliance Statement by Dover District Council; dated 5 December 2018 – with attached Kent County Statement</i>
LPA3	<i>Closing statement on behalf of Dover District Council by Matthew Fraser; dated 6 December 2018</i>
APP1	Record of decisions of the meeting of the Cabinet held at the Council Offices, Whitfield on Wednesday, 1 March 2017 at 11.00am.
APP2	Letter and associated paperwork titled ' <i>Dover District Council – Land allocations local plan development plan document – Pre-submission stage representations form – representation on behalf of various clients</i> '; dated 19 February 2013
APP3	Extract of <i>Addendum to the Dover District Land Allocations Pre-submission Local Plan</i> ; dated May 2013
APP4	Appeal decision APP/X2220/W/3202276 – Land east of Woodnesborough Road, Sandwich Kent; dismissed, dated 15 November 2018
APP5	Various emails, starting subject ' <i>Kumor Nursery, Dover Road, Sandwich</i> ' from David Bedford to Mike Ebbs dated 10 October 2018
APP6	Various emails, starting subject ' <i>Dover Road Sandwich – S106 Agreement</i> ' from Nicholas Wookey to Luke Blaskett dated 16 October 2018
APP7	Various emails, starting subject ' <i>Dover Road, Sandwich (ref: 17/00280)</i> ' from K Putnam to various dated 11 October 2018
APP8	Table showing reconciliation of assessments between similar viewpoints within submitted Landscape and Visual Impact Assessment and SW* Visual Assessment - *Mr Wadsworth not South West
APP9	Drawing 05, titled ' <i>Viewpoint location plan and cardinal points</i> ' dated 03/12/2018
APP10	<i>Opening statement on behalf of the Appellant</i> by Mark Westmoreland Smith, Francis Taylor Building; dated 4 December 2018
APP11	Planning Obligation by deed of undertaking under Town and Country Planning Act 1990 Section 106, dated 4 December 2018
APP12	<i>Closing statement on behalf of the Appellant</i> by Mark Westmoreland Smith; dated 6 December 2018
Costs1	Application for full award of costs
Costs2	Dover District Council's response to costs application