



Appeal Decision

Site visit made on 30 September 2015

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

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

Decision date: 16 October 2015

Appeal Ref: APP/X2220/W/15/3103239

Land at Monkton Court Lane, Eythorne, Dover, Kent CT15 4BS

- 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 Mr Ian Bull of Pentland Homes Ltd against the decision of Dover District Council.
 - The application Ref DOV/14/00477, dated 7 May 2014, was refused by notice dated 3 June 2015.
 - The development proposed is described on the application form as 'new residential development of 26 dwellings with associated access, parking and landscaping & allotments.'
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The originally submitted scheme was altered by reducing the number of dwellings from 26 to 20. The description of the proposal for which permission is sought is given on the appeal form as 'Erection of 20 dwellings with associated car parking, access, garaging and landscaping', and I have proceeded on this basis.

Main Issues

3. The main issues are:
 - whether relevant policies for the supply of housing in the district are currently up-to-date, having regard to the five-year supply of housing land, and;
 - the effect of the proposed development on the character and appearance of the area, with particular regard its relationship with Eythorne and the countryside, and;
 - whether there would be a significant loss of the best and most versatile agricultural land, and;
 - whether the proposal would make adequate provision in terms of local infrastructure, and;
 - whether the appeal scheme represents sustainable development, for which the National Planning Policy Framework's 'presumption in favour' applies.

Reasons

Supply of housing policies

4. The main parties agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. There is, however, conflicting evidence in terms of the specific level of shortfall. The appellant contends that there is a shortfall of 1'515 dwellings against the five year requirements of 5'377 dwellings¹. To the contrary, the Council² considers that the requirement is for 10'100 homes to be delivered over a 20 year time horizon (2006-2026), with an annualised yearly requirement of 505 dwellings. In practice, the Council's calculations would mean that 4'705 dwellings are required over the five year period on the basis of 505 dwellings per year over five years, plus all of the current shortfall of 1'956 dwellings, plus an additional 5% buffer of 224 dwellings.
5. On the basis of the evidence before me, it can be reasonably concluded that there is currently a shortfall and accordingly the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) makes it clear that relevant policies for the supply of housing land should not be considered up-to-date in such cases.
6. It is evident that in this case certain adopted development plan policies are solely concerned with the supply of housing. These include Policies DM1: Settlement Boundaries, CP2: Allocating Land, and CP3: Distribution of Housing of the Adopted Core Strategy 2010 (CS). Although these policies remain part of the adopted development plan for the local planning authority area, they should be considered as not up-to-date at this time in view of the shortfall of housing land in the District, and therefore the weight that should be afforded to them is diminished. In the absence of a five year supply of housing sites, I find that Policies DM1, CP2 and CP3 of the CS are currently not up-to-date. That is not to say that the absence of a five-year housing land supply would be conclusive in favour of the grant of planning permission, but it adds weight in favour of the proposal – albeit the provision of twenty dwellings, six of which would be affordable housing, is a modest benefit.
7. Paragraph 14 of the Framework indicates that the 'presumption in favour of sustainable development' means for decision-taking that where the relevant policies are out-of-date granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I now consider these factors in greater detail before coming to an overall conclusion.

Effect on character and appearance

8. The appeal site roughly lies on the eastern edge of Monkton Court Lane, which is a relatively narrow highway without central white line markings and a pavement on the western side. The eastern edge of the lane, including the appeal site, is generally characterised by undeveloped and open agricultural land with sporadic buildings. A low level post and wire fence bounds the site to the east, with this and a few trees providing the only distinctive break between the appeal site and other agricultural land beyond. To the contrary, the

¹ *Assessment of Dover District Council Five Year Housing Land Supply* by Peter Brett Associates, January 2015

² *Annual Monitoring Report 2013/2014*, Dover District Council, December 2014

- western side of the lane is characterised by mainly detached bungalows or some semi-detached houses which front the highway, with a footpath separating them from the road. These dwellings consist of a mixture of styles, but have a roughly uniform building line facing onto the highway, with parking and garden areas to their front.
9. Put simply, the eastern edge of the lane has a clear rural character, with intermittent hedgerows providing views from both dwellings on the western side and the public footpath across the agricultural land and beyond to where it rises with a tree line ridge in the distance. The developed nature of the western side of Monkton Court Lane means that the road provides a clear visual and distinctive break between the built form of the village on one side, and the open countryside on the other.
 10. The proposal seeks the erection of twenty dwellings, which would mainly be bungalows in appearance. The proposal also seeks access roads, tandem parking areas, an allotment with parking bays, with the dwellings served by residential gardens. These dwellings would be accessed off Monkton Court Lane through a single access/entrance point. The introduction of residential dwellings and associated paraphernalia; including boundary treatments, hardstanding areas for parking and turning, and the loss of the existing hedgerows along the lane would erode both the rural character of the appeal site and also the clear distinction between the built up area of the village on one side and the countryside on the other of Monkton Court Lane. This would be exacerbated by the fact that the main residential part of the proposal would be accessed by a single point in a cul-de-sac arrangement, which is uncharacteristic of the prevailing pattern of development in the area where dwellings normally face directly onto the highway.
 11. Furthermore, whilst bungalows have been proposed, the site is elevated above the lane, which would further compound the visual incongruity of the proposal. More widely, the site is highly visible within the landscape, with views not only from the Lane, but also on Kennel Hill and from public footpaths or bridleways nearby. I acknowledge the appellant's suggestion that landscaping could be used to mitigate in part the visual intrusion of the proposed development into the countryside. I also note the findings of the Landscape Visual Impact Assessment, which found that the harm to the landscape would be minor-adverse overall, but major-adverse to major-moderate in close proximity to the site. Moreover, the fact would remain that the currently open nature of the site would be eroded by an uncharacteristic cul-de-sac type of development. This would adversely affect both the appeal sites character and that of the street scene through the loss of countryside and the resultant negative impact on the wider landscape. The result is a development that would fail to both recognise the intrinsic character and beauty of the countryside and to respond to the local character and history of the village.
 12. I therefore conclude that the proposed development would have a materially harmful effect on the character and appearance of the area, with particular regard its relationship with the settlement of Eythorne and the countryside. Accordingly, the proposed development is contrary to Policies DM15 and DM16 of the CS and Policy CO8 of the DDLP, and also the Policies of the Framework, which amongst other aims seek to prevent developments that would adversely affect the character and appearance of the countryside.

Agricultural land

13. The principal parties agree that the appeal site is classified as Grade 1; that is the Best and Most Versatile Land (BMVL) of the Agricultural Land Classification. Paragraph 112 of the Framework indicates that local planning authorities should take into account the economic and other benefits of BMVL and where significant development of agricultural land is demonstrated to be necessary, they should seek to use areas of poorer quality in preference to that of a higher quality. There is no evidence before me that demonstrates that areas of poorer quality have been considered in relation to the appeal scheme. Furthermore, the proposal would result in the complete redevelopment of the appeal site, meaning that agricultural activities would not be able to take place in the future.
14. I note that the appellant points to the fact that the Dover District benefits from some of the highest levels of Grade 1 land outside of other parts of the country. However, the potential excess of this grade of land within one district does not diminish its status as BMVL, which is a finite national resource. It has been suggested that the site has been let at a peppercorn rate, thus reducing its economic benefit. However, the *Agricultural Land Classification (ALC) Report* submitted 6 November 2014 indicates that the site 'comprises very gentle graded land and offers no restriction to agricultural use and cropping potential and that there are no overriding limitations caused by individual soil factors and no indications that the site suffers any wetness limitations that would affect land quality'. The logical conclusion of such factors is that the economic and other benefits of the BMVL in its present state, as envisaged by Paragraph 112 of the Framework, are not currently fulfilled in this case.
15. Due to its complete redevelopment of the 1.91ha site, the proposed development would result in the significant development of BMVL agricultural land. The necessity of the development of this site over others of poorer quality has not been demonstrated in this case. Although the resultant loss of the BMVL would be modest taking into account the quality of agricultural land within the wider district, it would be a dis-benefit of the proposal that must be weighed into the overall balance of the decision.
16. I have been directed to a number of another appeal decisions³ some of which have been dismissed and others allowed. The full details of those appeals are not before me. However, it is clear that these relate to other sites, some of which lie outside the district, and also involve different scales of development to that here. Moreover, the various main issues in those cases do not entirely reflect those in this case, which I have considered on its own planning merits. I do not, therefore, find that these provide a justification to alter my findings in terms of the impact on agricultural land in this case.

Local infrastructure

17. At the appeal stage the appellant has submitted a signed and completed unilateral undertaking which includes a number of obligations that could come into effect if planning permission were granted. The infrastructure contributions would cover a range of matters by securing monies for library services (£2'105.20), a play area (£9'699), and the Thanet Coast Mitigation

³ APP/K2230/A/12/2169209, APP/X2220/A/12/2189030, APP/R0660/A/13/2204723, APP/V2255/A/14/2212592 and APP/V2255/A/14/2224509

Strategy (£1'338.56). I have considered these in light of the Community Infrastructure Levy (CIL) Regulations 2010.

18. In local policy terms, Policy CP6 of the CS seeks to ensure that development will only be permitted if a reliable mechanism to ensure that the required infrastructure will be provided. There is limited information to demonstrate whether five contributions, or more, have been pooled in respect of the library and play area contributions. Section 7 of the undertaking provides a mechanism that would prevent contributions being required if more than four other contributions have already been pooled. However, there is a lack of evidence before that provides justification that the monies sought for library services and play area directly relate to the development, or are necessary to make the development acceptable in planning terms. Therefore, without further refinement of the information to support this case, I consider that there is a tension with the tests in Regulation 122 of the CIL Regulations 2010. I am therefore unable to take these elements of the undertaking into account in determining this appeal.
19. In terms of the monies for the Thanet Coast Mitigation Strategy (TCMS), planning contributions may still be used to secure contributions for Special Protection Areas, which the TCMS seeks to achieve, so long as this does not involve funding or provision of an infrastructure project. In this case, there is a lack of cogent evidence that demonstrates whether the monies sought would be for infrastructure, or the operation or management of the SPA, and therefore I cannot be sure that the monies sought are necessary to make the development acceptable in planning terms. However, as I am dismissing the appeal for other reasons, Regulation 122 makes it clear that an obligation may only constitute a reason for granting planning permission if it meets the tests, and in this case the appeal is dismissed. I have not, therefore taken this element of the obligation into account.
20. The planning obligation would also secure six affordable housing units; four being affordable rented housing and two being intermediate affordable housing. Policy DM5 of the CS seeks to secure a provision of 30% affordable housing on sites of 15 dwellings or more, which the proposal would achieve in this case. This requirement is based on an adopted development plan policy, in which the evidence base for such a level will have been examined and scrutinised prior to adoption. In these circumstances, I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory CIL Regulations tests.
21. I therefore conclude that the obligations relating to library services, play area and the TCMS in this case fail to meet one or more of the tests set out in the CIL Regulations 2010. I am unable to take them into account in determining the appeal. Nonetheless, I give moderate weight to the obligation for affordable housing.

Whether sustainable development

22. Paragraph 14 of the Framework makes it clear that there is a 'presumption in favour of sustainable development'. Paragraphs 7 and 8 of the Framework explain that sustainable development comprises three mutually dependent roles; economic, social and environmental. Elements of the economic role would be met in this case through the delivery of jobs during the construction phase. However, given my findings in respect of affect on the countryside and

that the land is agricultural BMVL, I do not consider that it has been demonstrated that this is land of the right type, in the right place, at the right time to support growth; even though I acknowledge that there is a shortfall in housing provision within the district. Subsequently, this limits the contribution the proposal makes to the economic role that the planning system seeks to achieve.

23. In terms of the social role, the proposal would contribute towards the supply of housing in an area where there is a current shortfall. Furthermore, 30% of the total number of housing units would be affordable housing. These are both social benefits weighing in favour of the proposal. However, the social role also requires that a high quality built environment is created with accessible local services that reflect the community's needs and support its health, social and cultural well-being. In this respect, the site is comparatively poorly served by local services with the principal services in Eythorne being a post office and shop, a Baptist church, a primary school and bus services to larger settlements.
24. The lack of services means that the day-to-day needs of occupiers of the proposed development would require travel to larger towns. In this respect, I saw that certain routes out of the Eythorne settlement, such as that up Kennel Hill, would be via pathless and unlit country roads which would be less than suitable for parents with children, the elderly or less mobile. This would lead to an over-reliance on either private motor vehicles or bus services, thus limiting the ability to access daily services. The inability to easily access to day-to-day services would mean that the proposal would fail to satisfactorily fulfil the social role of planning, even though there would be some benefit in the delivery of houses.
25. In terms of the environmental role, the proposal would result in harm to the character and appearance of the area, the erosion of the countryside and the loss of BMVL. As such, it would fail to protect or enhance the natural, built and historic environment. Whilst there would be some potential environmental benefits, for example by building the dwellings to an equivalent standard of Code Level 3 of the Code for Sustainable Homes (which has now been replaced by the Optional Building Control Requirements), this does not outweigh the failure to protect or enhance the environment as a whole.
26. I therefore conclude that the proposed development would not constitute sustainable development, as defined by the Framework. The presumption in favour of sustainable development, as set out in Paragraph 14 of the Framework, does not therefore apply. Nevertheless, even if the presumption were applicable, I find that the adverse impacts in terms of the impact on character and appearance of the area and the loss of the BMVL would significantly and demonstrably outweigh the benefits of the contribution to housing supply and affordable housing provision in this case.

Overall Conclusion

27. Although I have concluded that a five year supply of deliverable housing sites cannot be demonstrated at the present time, and that the proposed housing (which includes an element of affordable housing) would make an, albeit modest, contribution to meeting housing need, these factors are outweighed by my conclusions on character and appearance, the loss of agricultural land, and

sustainability. For the reasons given above, and having taken all matters raised into account, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

Richborough Estates