
Appeal Decision

Hearing held on 17 November 2015

Site visit made on 17 November 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: 12 January 2016

Appeal Ref: APP/X2220/A/14/2217154

Land to the rear of Archer's Court Road, Whitfield CT16 3HP

- 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 Suregold Ltd against the decision of Dover District Council.
 - The application Ref DOV/13/00360, dated 19 April 2013, was refused by notice dated 21 January 2014.
 - The development proposed is erection of up to 28 residential dwellings (including 30% affordable).
 - This decision supersedes that issued on 10 February 2015. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Application for costs and Procedural Matters

2. An application for costs was made by Suregold Ltd against Dover District Council. This application is the subject of a separate Decision issued 10 February 2015. A further costs application was made on 12 August 2015. However, the original costs decision remains extant and the appellant has been unable to demonstrate that the aforesaid costs decision fails to have any legal effect at the Hearing. I therefore have no jurisdiction to consider this matter.
3. The proposal has been submitted in outline, with appearance, landscaping, layout and scale reserved matters; that is for full details to be considered by the local planning authority at a later date. I have proceeded on this basis.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the local highway infrastructure, and;
 - The effect of the proposed development on local biodiversity.

Reasons

Local Highway Infrastructure

5. The appeal site is currently an overgrown area located to the rear of dwellings facing Archers Court Road. Following the demolition of No 14, access would be

achieved off Archers Court Road. The appellant has submitted a Transport Statement (dated April 2013) together with a Technical Note (dated 30 June 2014). I heard at the Hearing that these documents build upon wider transport assessments undertaken as part of the wider master planning of the Whitfield Urban Expansion (WUE) scheme. I understand that this comprises two stages: Phase 1 and 1A. Phase 1A is for 74 units which received planning permission in March 2014 and are partially occupied. This is located to the north of Whitfield along Sandwich Road. Phase 1 is located to the east of Whitfield, further along Archer's Court Road. Overall the Phase 1 element would see about 1200 homes built, but at the present time outline permission has been granted for 94 dwellings.

6. I heard that upon commencement of the Phase 1 stage of the WUE, works for a new roundabout at the end of Archer's Court Road connecting with the A256 would start in early 2016. Upon completion of around 600 homes (out of the 1200 proposed) on Phase 1, a bus gate would be provided along Archer's Court Road to prevent traffic, except for public buses, from the Phase 1 development joining the Whitfield roundabout. Clearly, the plan is that traffic from Phase 1 would be directed to the new roundabout for which work is to start in 2016. The Council also indicated that at some future undefined point improvements would be made to the Whitfield Roundabout, such as traffic lights to control traffic flow.
7. The Council is concerned that the proposed development, together with the Phase 1, 1A and other smaller developments in the area, would result in a residual cumulative impact that would be severe, reflecting Paragraph 32 of the National Planning Policy Framework (the Framework). The Transport Statement and Technical Note indicate that the proposal would result in about 19 to 20 two way journeys in the peak hours of 8:00 to 9:00 and 17:00 to 18:00, which I understand reflect the times given in the traffic assessments for the WUE. In practice, this would suggest that a development of 28 dwellings proposed would contribute about one car every three minutes during this period. I also heard that the average count of vehicles using Archer's Court Road by a local resident reflected the figures used to create the Transport Statement and Technical Note.
8. It was made clear at the Hearing that the traffic assessment for the appeal site did not exclude factors such as home working or affordable housing, which can have lower demands on local highway infrastructure. In this respect, the modelling used to support the Transport Statement, and which gives a figure of about one car per three minutes during peak times, is the 'worst case scenario' rather than what is likely to happen in practice depending on the needs of future occupiers. Given these factors, it is difficult to see how this level of additional traffic movements would be severe, even when the wider context of the Phases 1 and 1A of the WUE are taken into account.
9. It is also important to recognise that the new roundabout leading onto the A256, together with longer term improvements to the local highway network such as the bus gate on Archer's Court Road, would help mitigate any additional traffic generated by the WUE and help alleviate the existing traffic movements within the area by providing different accesses into and out of the village. I am reinforced in this view by the lack of objection to the proposal by the local highways authority. What is more, there is no evidence before me

which supports the case that these improvements are unlikely to be implemented within the near future.

10. At the same time, I saw during my site inspection, part of which took place during the afternoon 'school run' on a wet and windy day, and from photos submitted at the Hearing taken the day before around 8:30, that the junction with Archer's Court Road and Sandwich Road does get busy. In particular, this was due to traffic backing up to the north along Sandwich Road wanting to access Whitfield Roundabout rather than traffic building up on Archer's Court Road. Indeed, I saw that traffic on Archer's Court Road was usually delayed for a few minutes whilst waiting for traffic on Sandwich Road to enter the roundabout. I also saw that turning right either onto Archers Court Road or onto Sandwich Road was restricted due to the lack of a formal turning lane on Sandwich Road, and the fact that some drivers were unable to adhere to the 'Keep Clear' road markings at the junction.
11. However, neither of these are factors which, together with the other developments as part of the WUE, would result in a severe cumulative impact on the local highway infrastructure. Furthermore, the Council has been unable to produce any cogent evidence which demonstrates that the local highway capacity is unable to accommodate a relatively small development, which the submitted Transport Statement and Technical Note clearly demonstrate would not have a severe impact on the local highway infrastructure.
12. I therefore conclude that the proposed development would not have a materially harmful effect on the local highway infrastructure. Whilst there do not appear to be any specific development plan policies relating to local highway infrastructure, the proposal would, nonetheless, accord with Paragraph 32 of the Framework, which, amongst other aims seeks to ensure that all developments generating significant amounts of movement should be supported by a transport statement, and development should only be prevented or refused on transport grounds where the residual cumulative impact of development are severe.

Local Biodiversity

13. The *Extended Phase 1 Habitat Survey - A report for 'Plainview Planning'* April 2013 (the Habitat Survey) undertaken by Greenspace Ecological Solutions recommends that '*further surveys to determine the presence/absence of reptiles and/or dormice should be conducted prior to the start of works.*' It goes on to indicate that species specific surveys for dormice, reptiles and bats will be required and to describe the overgrown nature of the site including broad-leaved tree woodland, scattered trees and tall ruderal. I heard that the local planning authority considered that there is reasonable likelihood of such species being present on the appeal site. I also note the concerns raised by local residents in terms of the wider biodiversity that the site may support which includes insects, larger animals and plants, though I cannot be sure which, if any, of these are present on the appeal site.
14. Indeed, it is clear, from reading the Habitat Survey that its purpose was to provide a preliminary view, with further surveys undertaken to establish whether or not protected species were present on or near to the appeal site and factors such as the size of any population. At the hearing I heard that the appellant and Council were content that such matters could be dealt with by condition; this has also been confirmed in writing following the event.

15. However, I saw during my site inspection that the characteristics of the appeal site identified in the Habitat Survey are reflected on the ground, with the site undeveloped and free from significant evidence of human intervention. Indeed these characteristics, together with the details within the Habitat Survey and observations from local residents, lead me to conclude that there is a reasonable likelihood of protected species being present on the appeal site, which may be adversely affected by the proposal. The *Planning Practice Guidance* (the Guidance) indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.¹ The type of development here would require substantial ground works and cover a large area of the appeal site, factors which could reasonably have a significant impact on the currently unmeasured levels of biodiversity on or near to the site.
16. In this respect, I sought further views from the main parties after the hearing, referring both to the advice contained within the Guidance, the Framework and *Circular 06/2005: Biodiversity and geological conservation* (the Circular). I have taken into account the comments provided. In particular the appellant's ecologists advice (dated 6 January 2016) which states that '*Although the presence of protected species is currently unknown, the following is provided as an outline of species specific enhancements which are available within the site*'. Whilst there is some information here, it is of a general nature, with no species specific surveys or assessments of likely population sizes, which in turn would inform any mitigation strategy, were protected species identified on or near to the appeal site.
17. Indeed, the Circular, sets out that that a survey should be carried out before planning permission is granted and that surveys should only be required by condition in exceptional circumstances. No 'exceptional circumstances' have been suggested in this case. Furthermore, there is uncertainty as to whether, and indeed which, protected species are or may be present on the site which could include bats, dormice and reptiles, and if appropriate mitigation measures suggested would be possible. Given this degree of uncertainty, I consider that the use of the suggested condition by the main parties would not be reasonable in this case. Moreover, the absence of this information means that it is not possible to be certain that the proposal would not result in significant harm to biodiversity as envisaged by Paragraph 118 of the Framework; which as a whole is an important material consideration in determining planning applications. For similar reasons the proposal would also fail to achieve one of the core planning principles set out in Paragraph 17 of the Framework, in which planning should contribute to conserving and enhancing the natural environment.
18. I therefore conclude that the proposed development would fail to protect local biodiversity. It would therefore be contrary to the Policies of the Framework identified above, which in addition to the aforesaid aims, include Paragraph 109 which seeks to minimise the impacts on biodiversity and providing net gains in biodiversity where possible, and contributing to the Government's commitment to halt the overall decline in biodiversity.

¹ *Planning Practice Guidance*, Paragraph: 016 Reference ID: 8-016-20140612, Revision Date 12.06.2014

Other Matters

19. The Council considers that development contributions are required for book stock at the nearby Dover library; to provide eight additional primary school places at 'White Cliffs Primary School' (also known as White Cliffs College); for community space (including local equipped play area and management company) and for affordable housing to mitigate the impact of the proposed development. These are sought under Policy CP6 of the Dover District Core Strategy 2010, which seeks to ensure that development will only be permitted if a reliable mechanism to ensure that the required infrastructure will be provided, and Policy DM27 of the Dover District Land Allocations Local Plan 2015, which seeks to ensure new development of more than five units provide or contribute to open space. A signed and completed unilateral undertaking to this effect has been submitted by the appellant. However, as the appeal is to be dismissed on its substantive merits, it is not necessary for me to examine the unilateral undertaking in detail given that the proposal is unacceptable for other reasons.
20. The proposal would also see the provision of at least 30% of the units as affordable housing which would be secured through the submitted unilateral undertaking. Locally this is supported by Policy DM5 of the Dover District Core Strategy 2010 which requires that 30% affordable housing is provided for residential developments of fifteen or more dwellings. This is a modest benefit in favour of the proposed development.
21. The appellant points to the fact that the Council is unable to demonstrate a five year supply of deliverable housing sites. I heard that even with the recently adopted Land Allocations Local Plan 2015 this position remains, although the Council points to the fact that they do not consider that there is a specific objection to the principle of the site for residential development and have not refused permission on the grounds of the supply of housing. The Framework indicates at Paragraph 49 that when a local planning authority cannot demonstrate a five year supply of deliverable housing sites '*relevant policies for the supply of housing should not be considered up-to-date*'. Given the absence relevant policies for the supply of housing in refusing permission or being contested in this case, I do not consider that Paragraph 49 is relevant in this respect.
22. Nonetheless, Paragraph 49 is clear in that housing applications should be considered in the context of the presumption in favour of sustainable development and this is underpinned by Paragraph 14 of the Framework which explains that at the heart of the Framework is a 'presumption in favour of sustainable development'. Paragraphs 7 and 8 of the Framework detail the three mutually dependent roles planning should achieve which are economic, social and environmental.
23. In this case, the proposal could achieve the economic role by providing jobs during the construction phase and ensuring that land of the right type is available in the right places and at the right time to support growth and innovation. The social role could be achieved through providing a supply of 28 dwellings, which would meet the needs of present and future generations by containing a significant element of affordable housing. I also saw that the site is located a short walking distance from the centre of Whitfield, with further

local services available in nearby settlements such as Dover, River, Kearsney, with access possible by nearby bus, cycle and pedestrian routes.

24. In terms of the environmental role, I acknowledge that there could be some benefits through the potential to enhance the area of open space and reducing noise pollution through the erection of sound proof barriers along the boundary with the A2 road. However, the inability to be certain that the proposal would not have an adverse impact on local biodiversity, including the impact on and possible required mitigation strategies for protected species such as bats, dormice and reptiles, means that the proposal would not help protect or enhance biodiversity. As such, the proposal would fail to fulfil the environmental role of sustainable development. In failing to achieve its three mutually dependent roles, the proposal would not represent sustainable development as defined by the Framework. The presumption in favour of sustainable development would not therefore apply in this instance.

Conclusion

25. To conclude; I have found that the proposed development would result in adverse impacts in terms of the proposal failing to protect local biodiversity. Whilst I have found in favour of the appellant in terms of the potential impact on local highway infrastructure, and consider that the provision of housing, including 30% affordable is a modest benefit in favour of the proposal, these would not significantly and demonstrably outweigh the adverse impacts.
26. In accordance with S38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, whilst the proposed development would broadly comply with the policies of the adopted development plan, I attach significant weight to the material consideration in terms of the harm to biodiversity interests, as set out in the Framework. This material consideration indicates that a determination should not be made in accordance with the development plan in this instance.
27. For the above reasons, and having taken into account all matters raised, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Adam Rabone	Agent
Mr James McKechnie	Highways Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Rachel Humber	Principal Planning Officer
Councillor Frederick Scales	Planning Committee Chairman
Councillor James Back	Ward Cllr and Planning Committee member
Ms Benazir Kachchhi	Planning Officer

INTERESTED PERSONS:

Geoff Cole	Whitfield Parish Council
David Morris	Local Resident
Frank Richards	Local Resident
David Harrison	Local Resident
Antony Lamont	Local Resident
Hanna Wright	Local Resident
P Kang	Local Resident
Cllr M Ovenden	Dover District Councillor
Cllr Wendy Bowman	Whitfield Parish Council
Cllr Slim Rashid	Whitfield Parish Council

Documents submitted at Hearing:

1. Copy of page 25 showing Figure 4.4 Highway infrastructure improvements, of the *Whitfield Supplementary Planning Document - Adopted Masterplan 2011*
2. Photos labelled 1-5, hand written dated 16/11/15 @ 8:30 provided by Cllr Back