



Appeal Decision

Site visit made on 8 August 2023

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th August 2023

Appeal Ref: APP/X2220/W/23/3314961

Land southeast of Eastside Farm, The Street, East Langdon, Kent CT15 5JF

- 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 David Woodward against the decision of Dover District Council.
 - The application Ref 21/01744, dated 3 November 2021, was refused by notice dated 29 July 2022.
 - The development proposed is described as an outline planning application, all matters reserved, for the development of up to 10 dwellings on land to the southeast of Eastside Farm, East Langdon, Dover.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr David Woodward against Dover District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The proposal is made in outline with all matters reserved for later consideration. I have therefore treated the detailed plans accompanying the proposal as being for illustrative purposes only.
4. A draft Local Plan was submitted for examination in March 2023. The Council says that representations have been made on all the draft policies relevant to the current appeal. The examination is still at an early stage, and it is possible that modifications may be proposed to the draft Plan as the examination progresses. I therefore place limited weight upon it.

Main Issues

5. The main issues in this appeal are considered to be the effect of the development on:
 - The spatial strategy of the Local Plan as regards the location of new development
 - The character and appearance of the countryside
 - The settings of the grade II listed Eastside Farmhouse and grade II* listed Jossenblock Barn, and the East Langdon Conservation Area and its setting
 - Foul and surface water drainage

- The ecological value of the site
- Affordable housing and infrastructure.

Reasons

Spatial strategy

6. The site lies outside the confines of the rural settlement of East Langdon as defined on the adopted Policies Map. The appellant criticises the settlement boundary as being too tightly drawn, excluding amongst other buildings St Augustine's Church, Eastside Farm and Jossenblock, and failing to reflect the built up area of this part of the village. I have some sympathy with that view as these buildings, including Eastside Farmhouse and the barns formerly associated with it, form part of the historic and visual grouping of buildings around the central green. However, the majority of the appeal site itself lies beyond that building group. Other than for a dilapidated outbuilding, the land is open and separate from the buildings at Eastside Farm and their curtilages. I am therefore satisfied that the appeal site is outside the confines of the settlement for planning purposes.
7. Outside the confines of rural settlements, Policy DM1 of the Dover District Core Strategy 2010 (the Core Strategy) does not permit new development unless it is justified by other policies, functionally requires such a location, or is ancillary to existing development or uses. Policy DM11 resists development that generates travel outside the confines of rural settlements unless justified by other policies. The proposed development does not fall within any of these categories, and it would generate travel by motor car notwithstanding the limited facilities available in the village. Consequently, I conclude that the proposal runs counter to the spatial strategy for the location of new development in the district, and conflicts with Policies DM1 and DM11 of the Core Strategy. I address the weight to be given to these and other policies in the planning balance.

Character and appearance of the countryside

8. The countryside around East Langdon is characterised by a gently undulating landscape of mainly arable fields separated by field hedges, with smaller paddocks or grazing land near to or adjoining settlements, and occasional blocks of woodland.
9. The appeal site is generally open grassland, now unmaintained. It includes a small outbuilding with an area of hardstanding in front of it in the western corner of the site. The appellant asserts that the appeal site is previously developed land. From the evidence before me and from what I saw on site, I do not consider that to be the case. Other than for the outbuilding and area of hardstanding in front of it, which I accept is previously developed, the remaining land was last used as one or more fields/paddocks and its use is therefore agricultural. Part of the land may historically have been used as an orchard when it was associated with Jossenblock Farm, but I could see no fruit trees on it now. Horticultural use is in any case classed as agriculture for planning purposes. Other than for the outbuilding, which previously appears to have been ancillary to Eastside Farm but has now been severed from it, and the shared access track, the site is agricultural in nature and forms part of the countryside.

10. The construction of 10 dwellings on the land would inevitably erode its open and undeveloped character. Although the proposal shows the boundary hedging and field trees to be retained, and matters relating to layout and design are reserved for later approval, the presence of houses, their gardens and associated domestic paraphernalia would be seen from the public footpath that skirts the site and in oblique views across farmland from Pond Lane. The houses would also be visible in views up the access drive and from adjoining properties. The amount of building bulk would be markedly greater and spread over a much larger area than the outbuilding and hardstanding it would replace.
11. A comparison has been made between the appeal site and other recent residential developments in East Langdon¹. These differ materially from the appeal site in policy terms in that Church Farm Mews lies within the confines of the village and is not therefore part of the countryside for planning purposes, and the development at Longhill Lane was on a site allocated in the Dover District Land Allocations Local Plan 2015. While I note the arguments put forward by the appellant as to why the appeal site should also be allocated, that is a matter for the draft Local Plan, and not pertinent to this appeal.
12. However well designed, the proposed residential development would domesticate the site, eroding the character and appearance of the countryside. It would consequently conflict with Policies DM15 and DM16 of the Core Strategy, which seek to protect the landscape and countryside for its own sake.

Heritage assets

13. The site is bordered by the grounds of 3 listed buildings, and also lies partly within the East Langdon Conservation Area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the listed buildings or their settings or any features of special architectural or historic interest they possess. Section 72(1) of the same Act requires special attention to be paid to preserving or enhancing the character or appearance of conservation areas.
14. Eastside Farmhouse lying to the west of the appeal site is grade II listed². It is a late C17 farmhouse in white painted brick and clay tile. Its significance and special interest derive from its simple plan form and vernacular appearance, and its historical association as the principal farmhouse to one of the farmsteads that make up this part of East Langdon. Its grouping with its former barns has been weakened to an extent by the removal of one and the conversion of others to residential use. Nevertheless, the form of the group remains apparent with the farmhouse and former farm buildings served from a single access and facing into what was once the farmyard.
15. Jossenblock Barn is a grade II* listed timber framed barn dated 1725, lying some distance to the north of the appeal site, adjacent to The Street³. Its significance and special interest lies in its impressive size with an uninterrupted hipped roof, now clad in corrugated metal sheeting, over weatherboarded sides set on a brick and flint plinth. Two flat roofed cart entries lie on the south side.

¹ APX Architecture, response to reason for refusal 2

² List entry number 1363358

³ List entry number 1070052

It is part of a group of buildings making up the former farmstead of Jossenblock Farm.

16. Jossenblock, the farmhouse is also grade II* listed. It has a C18 Georgian front with earlier C17 structure behind. Its significance and special interest lies in its built form, development over time and former use as a farmhouse. The Council has not raised concern about the effect of the appeal proposal on its setting. Nevertheless, Jossenblock and Jossenblock Barn form part of the former farmstead of Jossenblock Farm, which therefore have a shared history and links with surrounding farmland. For that reason I have considered them together.
17. The East Langdon Conservation Area covers the village green in East Langdon and the groups of buildings around it. These include the farmsteads or former farmsteads of Langdon Court, Church Farm, Eastside Farm and Jossenblock Farm as well as St Augustine's Church. The Conservation Area includes the western part of the appeal site.
18. Although the Council has not published a conservation area character appraisal, from my observations the East Langdon Conservation Area covers the oldest part of East Langdon, where a series of farmsteads have developed in close proximity to the village church. This historical grouping is readily apparent even though a number of the former farm buildings have been converted to residential dwellings. I consider the value (significance) of the Conservation Area lies in the architectural and historic interest of these groups of buildings, their grouping around what has become the village green, and their intimate association with the surrounding countryside.
19. There are some modern houses within the Conservation Area, including a group to the southwest of Eastside Farm. While these are atypical of the form or materials used in the more historic buildings around the village green, in my view they are not dominant in size or scale. The rural character and appearance of the Conservation Area is therefore remarkably intact, with its farming origins apparent from the historic farmsteads, which remain surrounded by farmland largely uninterrupted by other forms of development.
20. Public views of the appeal site are limited by the boundary hedges and trees, the vegetation along the southern boundary of the grounds to Jossenblock Farm, and the planting that has grown up more recently along the garden boundary with Eastside Farm. However, glimpsed views of these buildings are still available across the site from the public footpath, as are views from within their grounds out across the site. Consequently, the appeal site currently forms part of the countryside setting to the Conservation Area, and also to the settings of Eastside Farmhouse, Jossenblock and Jossenblock Barn. It contributes to the significance of the heritage assets by reinforcing the historical links between the former agricultural purposes of the farmsteads, and the farmland with which they were associated.
21. Although the proposal is made in outline, given the amount of development proposed, the size and shape of the site, and the position of the access point, it is highly likely that the proposed development would result in residential buildings dominating the appeal site, which together with their gardens and associated paraphernalia would domesticate this part of the rural setting of East Langdon. That would erode one of the important characteristics I have identified as being of significance to the Conservation Area. The listed buildings themselves would not be physically affected by the development, but the rural

surroundings in which they are perceived, and which is of relevance to their historic purpose, would be reduced. Such development is highly likely to interrupt views from and towards the listed buildings across open agricultural land. As such the contribution that setting makes to their significance and special interest would be materially eroded.

22. The removal of the dilapidated outbuilding and its hardstanding would be of modest benefit to the appearance of the site. However, that would not compensate for the much greater building bulk introduced by up to 10 dwellings and associated structures on the site, nor the extent of the new roadway and other hard surfaces that such a development would entail. The site is currently covered with uncut grass and encroaching scrub. While this may give it an unkempt appearance, that is due to a lack of use rather than any inherent harm to the countryside. Overall, the net impact of the proposal would fail to preserve or enhance the character or appearance of the East Langdon Conservation Area and its setting, and would fail to preserve the settings of Eastside Farmhouse and Jossenblock Barn.
23. The harm so caused to the heritage assets would be less than substantial, although such harm still attracts great weight. Where a development proposal would lead to less than substantial harm, paragraph 202 of the National Planning Policy Framework (the Framework) says that such harm should be weighed against the public benefits of the proposal. I address this matter later in the planning balance.

Foul and surface water drainage

24. The proposal is made in outline with all matters reserved. Details of foul and surface water drainage are matters that it would normally be appropriate to consider at the reserved matters stage, so long as the principle of such drainage being achieved can be established.
25. Objections have been raised by statutory bodies as regards the lack of any information on foul drainage (Environment Agency) and surface water drainage (Lead Local Flood Authority).
26. In this case, I consider the indication given by the appellant that surface water drainage would be provided using a sustainable drainage system, if necessary including a balancing pond on site, is sufficient at this stage to establish that a suitable surface water drainage system could be achieved. Details of such a system could be the subject of reserved matters or secured by condition as necessary.
27. However, there is no evidence at all about how foul drainage could be achieved. East Langdon is a small village and I have no information on whether there is mains sewerage available or whether properties have individual arrangements, such as a septic tank or cess pool. If individual arrangements are required, I have no indication of how that might be provided on site, whether there would be a need for an outfall, and if so whether that would be achievable within the appeal site.
28. The appellant refers to a recent development in the village where foul and surface water drainage was addressed through condition. I do not have any details of that scheme or the views of the relevant statutory bodies, so can give it little weight.

29. I understand the appellant's position that such matters are usually amenable to an engineering solution and could therefore be dealt with by way of reserved matters or a condition. However, in this case given the lack of any information at all, I cannot be sure that foul drainage could be satisfactorily achieved on the site. In the absence of such information, I conclude that the proposed development would be unsatisfactory because of the risk of pollution to the environment, contrary to paragraphs 167 and 169 of the Framework.

Ecology

30. The application was accompanied by a Preliminary Ecological Appraisal⁴. A Badger Survey also appears to have been submitted but I have not been provided with a copy of it. Setting aside the issue of badgers, the Appraisal did not find any other protected species on the site. However, it does identify that the site is sufficiently close to potential breeding grounds for great crested newts (ponds at Jossenblock and adjacent to the village green) that if they are present, the site is likely to form an important part of their habitat. The Appraisal also notes that the site could provide suitable habitat for reptiles and bats. It therefore recommends that further survey work be undertaken to identify if these animals are using the site⁵. In the case of great crested newts an alternative option is to join a district level licensing scheme.
31. The appellant draws attention to guidance in Circular 06/2005 (Biodiversity and Geological Conservation) that bearing in mind the delay and cost involved, developers should not be required to undertake surveys unless there is a reasonable likelihood of the species being present and affected by development. Reference is also made to the KRAG⁶ database indicating the presence of great crested newts is unlikely.
32. However, in this case, based on the survey work that had been undertaken, and notwithstanding the KRAG database, the Appraisal found that there is a sufficiently reasonable likelihood of protected species being present to necessitate further survey work being carried out. As noted in paragraph 99 of Circular 06/2005, it is essential that the presence or otherwise of protected species is established before planning permission is granted, and that making survey work conditional on the grant of permission should only be done in exceptional circumstances.
33. I do not consider that in this case there are any exceptional circumstances why the recommended additional survey work should not be carried out. In the absence of those surveys to establish whether amphibians, reptiles or bats are using the site as part of their habitat, I am unable to be sure that the proposed development would not cause harm to protected species. The proposal would therefore conflict with national policy in paragraph 174 of the Framework, which seeks to protect sites of biodiversity value.

Affordable housing and infrastructure

34. Policy DM5 of the Core Strategy requires developments of between 5 and 14 homes to make a contribution towards the provision of 30% affordable housing, either on site or by way of an equivalent financial contribution. The Council accepts in its appeal statement that such affordable provision does not

⁴ KB Ecology Preliminary Ecological Appraisal, 2021, partly redacted.

⁵ KB Ecology Preliminary Ecological Appraisal, sections 4.3, 4.4 and 4.8

⁶ Kent Reptile & Amphibian Group

have to be on site. Policy CP6 of the Core Strategy requires development which places demands on public infrastructure to contribute towards its delivery. Policy DM27 seeks similar contributions as regards the provision of open space.

35. The appellant has indicated that if affordable housing or open space contributions can be properly required, then these could be dealt with by conditions. No response is given to the need for infrastructure contributions.
36. I am satisfied that the development would place additional demands on public services and that in the absence of provision on site, financial contributions towards the provision of affordable housing and public infrastructure as set out in the Kent County Council consultation response is necessary, directly related to the development and fairly and reasonably related in scale and kind.
37. However, the payment of financial contributions cannot be secured by condition, as that would be contrary to the advice in the Planning Practice Guidance⁷. Such contributions would normally be secured by way of a planning agreement or unilateral obligation under Section 106 of the Town and Country Planning Act 1990, but no such legal undertaking has been submitted with the appeal. I have considered whether a negatively worded or 'Grampian' style condition should be imposed preventing development until a legal undertaking is submitted, but I do not consider that there are any exceptional circumstances that would justify that approach⁸. Accordingly, there is no mechanism by which the necessary contributions would be secured.
38. In the absence of a suitable legal undertaking, the development would fail to contribute towards the need for affordable housing, and would place additional pressure on public services that would not be adequately mitigated. It would consequently conflict with Policies DM5, CP6 and DM27 of the Core Strategy.

Other Matters

39. The appellant has assessed the impact of the development on St Augustine's Church, which is listed grade II*⁹. Neither the appellant nor the Council raise concerns at the setting of the church being harmed by the development. Given its separation from the appeal site, I consider that the contribution that setting makes to the significance and special interest of the church would be preserved.
40. The appellant has referenced Policy HE1 (development within conservation areas) from the Dover District Local Plan 2002, which has been withdrawn¹⁰. Although it is suggested that this policy may have been saved, the Council has not relied on it in its decision notice, and I have been given no evidence that it remains extant. Even if it is extant, it relies upon the context of historic environment policies in that Plan, which have not been saved. I therefore give it little weight.
41. Natural England has confirmed that the proposal would not have any significant adverse effects on statutorily protected nature conservation sites, such as special protection areas or Ramsar sites. However, that does not alter the need

⁷ Planning Practice Guidance, paragraph 21a-005-20190723

⁸ Planning Practice Guidance, paragraph 21a-010-20190723

⁹ Cornwallis Rumley, Heritage Statement, paragraph 6.10.4

¹⁰ Cornwallis Rumley, Heritage Statement, paragraph 4.1

to take account of local circumstances in relation to safeguarding habitats used by protected species.

42. The site falls within flood zone 1, and therefore it is accepted that development on it would not be at risk from fluvial or other forms of flooding. However, that does not alter my conclusions as regards foul drainage, which is a separate matter from flood risk.

Planning Balance

43. The 2010 Core Strategy is now well over 5 years old and was adopted prior to the publication of the Framework. While it may no longer be up-to-date, paragraph 219 of the Framework says that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Due weight should be given to them according to their degree of consistency with the Framework. Where national planning policy in the Framework is relied upon, those policies carry full weight.
44. The Council is able to demonstrate a housing land supply in excess of 5 years and a housing delivery test of 88%, which is not substantially below that required by national policy. Those policies involving the provision of housing are not therefore deemed to be out-of-date¹¹, and I give them due weight.
45. Having regard to the above, the conflict I have found with the spatial strategy for the location of new development, and harm to the character and appearance of the countryside I give moderate weight. The harm to the East Langdon Conservation Area and its setting, and the settings of Eastside Farmhouse and Jossenblock Barn attracts great weight. I attach significant weight to the failure to provide necessary contributions towards the provision of affordable housing and infrastructure. In the absence of evidence to the contrary, I also attach moderate weight to the harm that would be caused to the ecological value of the site, and as a result of inadequate foul drainage. Having regard to all these issues, I consider that the proposal would conflict with the development plan when taken as a whole.
46. Balanced against those harms, the provision of an additional 10 dwellings would be of benefit in providing new homes. That benefit is tempered by the fact that the development is not required to achieve the necessary housing land supply, the Council being able to demonstrate that there are other sites that can meet that need. There would also be modest economic benefits arising during the construction of the houses, and in the longer term in from the spending power of future residents.
47. Because the harm identified to the heritage assets is less than substantial, it needs to be balanced against the public benefits noted above. In my view, the public benefits fall well short of that needed to balance the great weight assigned to the harm that would be caused to the heritage assets.
48. Paragraph 11 of the Framework says that where the policies which are most important for determining the proposal are out-of-date, permission should be granted unless national planning policies in the Framework provide a clear reason for refusal, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

¹¹ Framework, footnote 8

49. Irrespective of the main parties' views on the age or relevance of current adopted policies, national planning policy aimed at protecting designated heritage assets, as set out in chapter 16 of the Framework, provides a clear reason for refusing the development proposed¹². Consequently, I consider that the presumption in favour of sustainable development (sometimes called the 'tilted balance') as proposed in paragraph 11 of the Framework is not triggered in this case.

50. I conclude that the development conflicts with the development plan, and that the material considerations considered above do not outweigh the harm so caused. Even if the tilted balance were triggered, it is my view that the adverse impacts of the development would significantly and demonstrably outweigh the limited benefits accruing to it. Either way, it follows that the appeal must fail.

Conclusion

51. I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

¹² Framework, paragraph 11 d) ii)