



Appeal Decision

Hearing held on 17 January 2023 and site visit made on 18 January 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/X2220/W/22/3303230

Land at Archers Low Farm, Sandown Road, Sandwich, Kent CT13 9NU

- 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 Fernham Homes Limited and Walker Residential Limited against the decision of Dover District Council.
 - The application Ref 21/00274, dated 22 February 2021, was refused by notice dated 31 March 2022.
 - The development proposed is for the erection of 44 no. dwellings with associated access, parking, open space, landscaping, drainage and infrastructure. (Amended plans and details).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Planning obligations made under section 106 of the Town and Country Planning Act 1990, dated 6 January 2023, were provided at the Hearing. These secure 30% of the scheme as affordable housing, contributions towards education, health and other services and mitigatory payments required under the Thanet Coast and Sandwich Bay Special Protection Area (SPA) Strategic Access Mitigation and Monitoring (SAMM) Strategy.

Background

3. For the purpose of this appeal, the development plan comprises the Core Strategy¹ (CS), the Land Allocations Local Plan² (LALP) and some saved policies from the 2002 Dover Local Plan. The National Planning Policy Framework³ (the Framework) is also a material consideration of great weight.
4. The appeal site comprises a rectangular parcel of farmland of some 2.37 hectares and bounded by varying amounts of tree growth. It is adjacent to the built-up edge of Sandwich, rear of housing along St George's Road, unallocated for development in the LALP and outside the CS settlement boundary. The site had been allocated as part of the LALP Pre-submission Draft (2012) for an estimated capacity of 50 dwellings. However, this was removed following the Examination report of 5 December 2014, where the Inspector found the allocation not to be justified because of visual harm to the character and appearance of the local area.

¹ Dover District Local Development Framework Core Strategy Adopted February 2010

² Dover District Land Allocations Local Plan Adopted January 2015

³ Last updated 20 July 2021

5. The Council is in the process of producing a Dover District Local Plan (DDLPL) to cover the period 2020-2040. The appeal site has been re-considered as a residential allocation, given that housing need has increased since the LALP was adopted in January 2015. Underpinning the Regulation 18 version DDLPL, the 2020 Housing and Economic Land Availability Assessment (HELAA) 'amber rated' the site as a potentially suitable allocation for approximately 40 dwellings. This recognised its previous removal by the Examining Inspector on landscape grounds. However, it found this could be mitigated by reducing the housing to an indicative 40 dwellings with an enhanced landscape buffer to the east, south and west of the site to provide year-round screening.
6. The 2022 HEELA repeated the previous report's landscape conclusions, but this time 'green-rated' an allocation based on a reduced amount of housing. Based on this evidence, the DDLPL Regulation 19 Submission version⁴ proposes the appeal site as an allocation for around 35 dwellings (Policy SAP22). This was subject to public consultation in the latter part of 2022 and is to be submitted to the Planning Inspectorate for Examination later in 2023.
7. Turning to the appeal proposal, the Council made Tree Preservation Orders (TPO) following the planning application, covering the tree belt along two sides of the site, the row of trees along the St George's Road side and two individual trees in one corner; a cedar and a pine. The application was reported to the Council's Planning Committee on 24 March 2022 with an officer recommendation to approve. However, planning permission was refused due to the amount of tree loss and the visual harm caused by the proposal to the countryside and landscape setting of Sandwich, as viewed from Sandown Road.

Main Issue

8. On the basis of the Council's decision, the main issue in the appeal is the effect of the proposal on the character and appearance of the area, with particular regard to the loss of trees.

Reasons

9. The appeal site is behind a section of housing along St George's Road. This is the part that runs from the Sandown Road junction up to a disused field entrance, that provides the scheme's secondary, non-vehicular access. The existing housing would largely screen the proposal from public views along St George's Road. The row of individual trees along this site boundary would be retained and soften rear views of the new housing for neighbouring residents.
10. The scheme extends into largely open countryside and along a section of Sandown Road fronted by a tall, dense tree belt. This tree belt continues around the corner of the site and along its outward edge, adjacent to a farm track with open countryside to the other side, where areas for ecological mitigation and new woodland are proposed.
11. Sandown Road provides the only public access adjacent the site, where the tree belt provides effective screening of views of the open field where the housing is to be. The appellant's Landscape and Visual Impact Assessment⁵ (LVIA) demonstrates that views into the site are negligible from more distant points along Sandown Road and other public rights of way.

⁴ Dover District Local Plan to 2040. Regulation 19 Submission October 2022.

⁵ ETLA February 2021

12. Although the proposal's visual impacts would be localised and confined mainly to the adjacent section of Sandown Road, this tree-lined stretch provides a particularly sensitive gateway into Sandwich. The tree belt along the appeal site makes a strong contribution to the sylvan appearance of the surroundings. The roadside tree growth provides an intimate, enclosed character to the local landscape. This verdant section clearly demarks an end of the suburban part of town and entry into countryside. Through this wooded area, the horizons gradually open up to reveal the more intensively farmed landscape further to the east.
13. I disagree with the LVIA that the site is perceived as within the settlement fringe, as opposed to any wider rural landscape. I agree with the Examining Inspector and consider the appeal site to be an integral part of unspoilt countryside that wraps around this part of Sandwich and makes a significant contribution to the town's setting. In this context, I find the site's sensitivity to be high and the proposal's landscape and visual impacts from Sandown Road greater than the 'moderate averse' found by the LVIA.
14. The layout of 44 dwellings would not retain all trees on this site and, although the majority would remain, a significant number are to be removed. The site access would depend on removing a section of the tree belt along Sandown Road, involving the loss of some 18 individual trees. The appellant's Arboricultural Impact Assessment⁶ (AIA) notes that the tree belt has been largely unmanaged, and that close spacing and the presence of invasive species has compromised the condition and form of individuals. However, as groups these are found visually significant. The access would remove part of a group the AIA assesses as Category A under the relevant British Standard (BS) 5837⁷; comprising individual trees of mixed species and condition which are of a collectively high value.
15. Views through the proposed access would reveal a residential layout occupying the width of the field and extending up to the far site boundary. The layout would bring housing close to the rear edge of the tree belt along Sandown Road and cut into the inner edge of that along the eastern side, involving a further loss of trees, including some mature specimens. This layout would allow little scope for further planting beyond the retained tree belt that might otherwise have helped to reduce views from Sandown Road.
16. The areas containing retained trees, along with the communal open space and landscaping within the housing layout, would be maintained by a management company, under arrangements secured by a proposed condition. These are shown in an indicative land management plan⁸, which also includes the ecological mitigation area and new woodland. Around three quarters of the existing tree growth would remain and be supplemented by the compensatory off-site plantation and landscaping within the development. There would be benefits from the proposed management of the retained woodland in terms of improved species and structural diversity. Whilst this might enhance long-term biodiversity and landscape value, such management would dilute the woodland density. The increase in visual porosity would likely reduce the efficacy of the tree belt in screening views into the site.

⁶ The Urban Forest Consultancy December 2021

⁷ BS 5837: 2012 Trees in relation to design, demolition and construction

⁸ Indicative Land Management Plan (drawing no. 29923A/18 C)

17. The Council's reason for refusal includes potential harm arising from post occupational pressure for further works to or felling of trees. Some of the dwellings would be sited very close to the retained trees and, as such, there would likely be pressure for tree works in relation to concerns over safety or debris. The combination of TPO protection and management company control would provide reasonable safeguards against any unacceptable level of future tree works. However, I agree there would be some residual harm from the close proximity of housing to the retained trees and pressure for works to these.
18. In addition, there would be some pre-construction tree works to accommodate the layout, including the crown lift, lateral reduction and scrub removal summarised in the AIA. During the construction period, because of the need to work in a relatively confined area around the root protection areas of the retained trees, the protective measures set out in BS 5837 would need to be stringently applied via an agreed Arboricultural Method Statement. There might be some further residual harm to trees from construction work taking place in such close proximity.
19. Any development brings about change and, in this case, the housing would be of a good standard of design, in keeping with neighbouring parts of the town. However, the estate road would result in a significant loss to a valuable group of trees, opening up views of the proposed housing. The scheme would be particularly intrusive, due to the need to break into wooded countryside. The expansion of a suburban built form would have a pronounced visual impact on this sensitive location, which is presently enclosed and provides part of an attractive wooded setting to Sandwich.
20. For the above reasons, the proposal would have an adverse effect on the character and appearance of the area, with particular regard to the loss of trees, resulting in a substantial degree of harm. The appeal site is not allocated in the LALP and so the proposal is in conflict with CS Policy DM 1. This is in respect of this not permitting development outside the defined urban boundaries unless specifically justified. The proposal would adversely affect the character and appearance of the countryside, in conflict with Policy DM 15. It would give rise to landscape character harm which would not be avoided, reduced or mitigated to an acceptable level by design measures, in conflict with Policy DM 16.

The Proposal's Benefits

21. The Council can currently demonstrate a 6.03-year housing land supply measured against its local need and has achieved a Housing Delivery Test result of 88%⁹. It is thus in a satisfactory position with regard to meeting Government requirements over the supply and delivery of housing. Nonetheless, this readily deliverable scheme would still provide further benefits towards a general objective for the planning system to help boost housing supply.
22. The scheme would deliver 14 affordable homes, which meets the 30% requirement of CS Policy DM 5. Although satisfying policy demands, this still provides a positive benefit in addressing the needs of a group with specific housing requirements. Furthermore, there is a high need and demand for

⁹ Dover District Council Five Year Housing Land Supply 2022 - 2027 September 2022

affordable rented properties of all sizes in Sandwich. In the above context, the provision of 44 dwellings, of which 14 are to be affordable, would provide quite significant social benefits overall.

23. Sandown Road already connects to St. George's Road and provides an attractive pedestrian route. The informal walking route and trim trail through the development, and new play area, would be of little further general social benefit. The obligations to contribute towards local infrastructure in the area serve mainly to address the additional demand that would be placed on services by this scheme.
24. The economic benefits of the development have been calculated¹⁰. These include the economic activity and employment generated during the construction and by future occupation, including increased consumer spend. The Council would also gain New Homes Bonus payments. The increased Council tax receipts reflect an increased demand on local services and infrastructure, but otherwise the scale of scheme would also deliver quite significant economic benefits.
25. The new woodland plantation, proactive tree management, ecological enhancement and potential biodiversity net gain amount mainly to mitigation of the proposal's effects and secure compliance with policies and legislation that protect species and the natural environment. Similarly, the sustainable location amounts to an absence of harm, rather than a positive benefit. The provision of electric vehicle charging points amount to minor environmental benefits and might be reasonably expected in any new housing.

Planning Balance and Conclusion

26. Emerging DDLP Policy SAP22 allocates the appeal site for an indicative capacity of 35 dwellings. Its criteria include retaining and enhancing existing trees on the site boundaries, with those removed to enable access on Sandown Road kept to the minimum needed and replaced on-site. At the Hearing the Council advised me that it was currently generally giving moderate weight to Regulation 19 DDLP policies in its decisions. Following consultation, this was now due to be submitted to the Planning Inspectorate for Examination without further changes. The appellant made the point at the hearing that this allocation depends upon vehicular access from Sandown Road, which is the main impact of the appeal scheme on the character and appearance of the area. It was also reported to me verbally that the Regulation 19 consultation had resulted in a large number of objections to the Policy SAP22 allocation.
27. Under Paragraph 48 of the Framework, weight may be given to relevant policies in emerging plans according to the stage of preparation, extent to which there are unresolved objections and degree of consistency with the Framework. Although the DDLP is reaching an advanced stage, it has yet to be examined and there are clearly unresolved objections to a relevant policy. On this basis I give no more than limited weight to emerging Policy SAP22, and the greater amount remains with the currently adopted development plan policies.
28. Planning law requires this appeal be determined in accordance with the development plan unless material considerations indicate otherwise. Weight is

¹⁰ Summary of Economic Benefits - Barton Wilmore now Stantec, ref 34418/A5 September 2022

attributed to the development plan policy conflict according to its consistency with the Framework. The conflict with CS Policy DM 1 is given limited weight as it relates to the scheme falling outside a settlement boundary based on a housing requirement which has since increased. Sandwich is a Rural Service Centre, and as such a main focus of development. Future occupiers of the proposed housing would have the same access to services as those within the settlement boundary.

29. CS Policy DM 15 precludes development which would result in the loss of countryside or adversely affect its character or appearance. This is somewhat more restrictive than Framework paragraph 174, which just requires recognising the intrinsic character and beauty of the countryside. This moderately reduces the weight given to the proposal's conflict with DM 15. CS Policy DM 16 resists development that would harm the character of the landscape, unless sited to avoid or reduce this or designed to mitigate the impacts to an acceptable level. Full weight is given to this as it broadly reflects the aim in Framework paragraph 20, to provide for the conservation and enhancement of the natural environment, and in paragraph 130, to ensure that developments are sympathetic to local character, including landscape setting.
30. There appears no internal inconsistency between these policies and others of the development plan, with which I find the proposal to be in conflict with as a whole. The reduced weight given to the conflict with CS policies DM 1 and DM 15 does not alter my overall assessment of substantial harm. However, the main parties have assessed these development plan policies as part of a larger basket of those most important for determining the appeal and consider them to be collectively out of date. I take no issue with this, which means my decision must give weight to Framework paragraph 11 d.
31. With regard to footnote 7 in paragraph 11 d, the application of Framework policies that protect the SPA provide no clear reason for dismissing the appeal. This is because the SMM contribution would mitigate the proposal's in-combination effects on the SPA, over increased recreational disturbance. A condition requiring a Construction and Environment Management Plan would achieve the same over the risk of water course pollution. As there are no other protected areas or assets of particular importance affected by this proposal, the 'tilted balance' in Framework 11 d ii thus applies.
32. The proposal would provide quite significant social and economic benefits. However, the adverse impacts would amount to substantial harm which would significantly and demonstrably outweigh these, when assessed against Framework policies taken as a whole. Because of this, the proposal would not gain the presumption in favour of sustainable development provided by Framework paragraph 11. This would not indicate that this case be decided otherwise than in accordance with the development plan, with which I find there to be conflict as a whole. Therefore, having considered all other matters raised, I conclude the appeal should not succeed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Maurici (Kings Counsel),
Mr Matthew Woodhead Director DHA planning
Ms Joanna Davies (Director, Urban Forest Consultancy), trees
Mr Richard Hammond (Associate, EDLA) landscape/visual impact
Ms Donna Popplewell (Director, Bakerwell) ecology
Mr Chris Loughhead, Fernham Homes
Mr Steve Baughan, Fernham Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mr Adam Reynolds MRTPI, Principal Planning Officer, DDC
Mr Darran Solley, Parks & Open Spaces Manager, DDC
Ms Johanne Daniels, Tree Officer, DDC
Mr Daniel Thorman, Planning Solicitor, DDC

INTERESTED PARTIES:

Councillor Dan Friend, DDC
Mrs Lynne Sarafoglou
Mr Richard Parkinson
Ms Clare Felton
Dr Philip Wilson