

Appeal Decision

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 07 December 2016

Appeal Ref: APP/X2220/W/16/3152817

Land South of New Dover Road, Capel-Le-Ferne, Kent CT18 7LG

- 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 Malcolm Jarvis Homes Ltd against the decision of Dover District Council.
 - The application Ref DOV/15/00525, dated 20 May 2015, was refused by notice dated 28 April 2016.
 - The development proposed is erection of 40 dwellings together with car parking, landscaping and all associated infrastructure.
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Decision

1. This appeal is allowed and planning permission is granted for the erection of 40 dwellings together with car parking, landscaping and all associated infrastructure at land south of New Dover Road, Capel-Le-Ferne, Kent CT18 7LG in accordance with the terms of the application Ref DOV/15/00525, dated 20 May 2015, subject to the conditions set out in the attached schedule.

Procedural matters

2. The planning application was amended to reduce the scheme from 41 to 40 dwellings. The appellant confirmed at the start of the Hearing that it was the amended scheme that was the subject of the appeal and I have therefore altered the banner heading to reflect the change to the original description of development.
3. At the start of the Hearing the Council indicated that following the submission of a signed Unilateral Undertaking which, amongst other contributions, would deliver nine affordable housing units and a financial contribution to off-site provision they no longer wished to defend their second reason for refusal. In light of all I have read, heard and seen I have no reason to disagree with this position and have revised the main issues to reflect this.
4. Prior to the start of the Hearing the Council confirmed that they agreed with the draft Statement of Common Ground submitted by the appellant which set out the matters on which the parties agreed.

Application for costs

5. At the Hearing an application for costs was made by Martin Jarvis Homes Ltd against Dover District Council. This application is the subject of a separate Decision.
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Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the area with particular regard to the effect on the adjoining Area of Outstanding Natural Beauty (AONB) and the Heritage Coast.

Reasons

7. The appeal site is located on the edge of the village of Capel-Le-Ferne and consists of an area of previously overgrown chalk grassland that has recently been cleared. It is bounded by the Old Dover Road and the cliff edge to the south and the New Dover Road to the north. To the east is a mobile home park and to the west the rear gardens of the properties in Helena Road. The site is situated in a gap in the North Downs AONB which is located to the north and south of the site. In addition the cliff and coastline to the south of the site are designated as Heritage Coast and a Site of Special Scientific Interest (SSSI).
8. At the Hearing all parties agreed that the proposal would affect the character and appearance of the area by virtue of introducing housing and its related infrastructure into what is effectively a greenfield site. However, it is the harm that may result from this change and the effect that this would have on the character and appearance of the area that needs to be assessed.
9. The Council confirmed at the Hearing that the site has no specific landscape designation or protection in adopted planning policy terms. However, given the proximity of the Heritage Coast and AONB boundaries the Council considered that the proposal would have an effect on the setting of these designated landscapes.
10. The National Planning Policy Framework (the Framework) advocates that valued landscapes should be protected and enhanced¹, the Heritage Coast should be protected² and that great weight should be given to conserving the landscape and scenic beauty in AONBs³. This is reflected in saved policy CO5 of the Dover District Local Plan (2002) (the LP) that states that development will not be permitted on the Heritage Coast if it would adversely affect its scenic beauty, heritage or nature conservation value.
11. Policy LA 24 of the Dover District Council Land Allocation Local Plan (2015) (the LALP) identifies the site for housing and provides a set of criteria specifically for this site of which (ii) states that development proposals need to be sensitively designed in terms of height and massing in order to ensure that the AONB and countryside would not be adversely affected.
12. When viewed from the adjoining AONB to the north the New Dover Road frontage appears as a gap between the edge of the village and the mobile home park and cluster of two storey houses further to the east. Due to the current vegetation along this frontage the site has a semi-rural character. The proposal would infill this gap. To maintain this character the proposed properties along this frontage, whilst two storey, would be set some distance back from the road and the existing mature landscaping screen would be

¹ Paragraph 109

² Paragraph 114

³ Paragraph 115

retained and reinforced which would screen the proposed development and limit views into the site from the adjoining AONB.

13. At the rear of the site due to the proposal to reinstate an area of chalk grassland the proposed development would be set some distance back from the Old Dover Road. Whilst the proposed units would be two and three storey along this boundary I observed at my site visit that given the proposed location of the development views from the Old Dover Road and the cliff top would be restricted due to the screening provided by the mobile home park to the east, existing houses to the west and the limited width of the cliff at this point.
14. As a consequence while I recognise that the height, design and layout of the proposal differs from the surrounding area I consider that the effect of the development on the character and appearance of the area would be limited. As a result I consider that the proposal would not adversely affect the character and appearance of the AONB or the Heritage Coast and would therefore be in accordance with policy CO5 of the LP, policy LA 24 of the LALP and the Framework.
15. A number of local residents raised concerns that due to the proposed height, design, palette of materials and edge of village location the proposal would not reflect the established character of the village. I observed at my site visit that Capel-Le-Ferne consists of a variety of different house types and architectural styles and that whilst there is not one dominant housing style or local vernacular there are a large number of bungalows.
16. Whilst to a certain extent I agree with local residents that the use of a different palette of materials and a different house style could result in a development that would be more reflective of the existing village this is not the proposal before me. Furthermore, the Framework advocates that planning decisions should not attempt to impose architectural styles or particular tastes to conform to certain development forms or styles⁴. Therefore, I consider that the proposed internal layout which would provide spaces and gaps between the units combined with the existing and proposed landscaping would mitigate the appearance of the new units and their relationship with the existing village. As a result I consider that the design and appearance of the proposed development whilst different from the adjoining housing would not on balance adversely affect the setting of the existing village.

Unilateral Undertaking

17. A signed Unilateral Undertaking (UU) was submitted prior to the start of the Hearing. In addition to delivering nine units of affordable housing and a financial contribution towards off site affordable housing provision the UU would also provide financial contributions towards library provision, improvements to the bridleway, off-site highways works and mitigation measures for the Thanet Coast Special Protection Area (SPA).
18. In order to comply with the Framework and policy DM5 of the Dover District Local Development Framework Core Strategy (2010) (the CS), a percentage of the proposed units would need to be affordable. Under the terms of the UU, nine of the units on-site would be affordable, six of which would be for social rent and three of which would be New Build Home Buy units in addition to a

⁴ Paragraph 60

contribution towards off site provision. Whilst, below the 30% required by policy the Council are satisfied, given concerns regarding the viability of the scheme, with the amount of affordable housing proposed.

19. On the basis of the evidence I have heard and read I am satisfied that the obligations within the UU are necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in kind to the development. As a consequence I consider that they meet the tests within CIL regulation 122 and paragraph 204 of the Framework.

Other matters

20. The Council consider that the proposal would meet the relevant planning standards in terms of layout and amenity space and has been designed in such a way that, subject to a number of appropriately worded conditions that, the living conditions of the occupants of the new and existing units would not be adversely affected. On the basis of what I have read and heard I have no reason to disagree with this position.
21. A number of concerns were raised by local residents regarding the interpretation of policy LA 24 of the LALP with particular reference to the proportion of the site that could be developed. Residents cited paragraph 3.289 of the LALP which advocates that the developable portion of the site amounts to 1.42ha. It was recognised by all the parties that the current scheme would develop a larger area than this. However, policy LA 24 (i) states that the precise boundary between the developed and undeveloped parts of the site will be established on the basis of ecological evidence. An ecological survey was submitted with the application and the Council's environmental experts were satisfied on the evidence that it provided with the extent of the development proposed. Nothing I have read or heard leads me to a different conclusion and therefore whilst I acknowledge that the proposal would develop more than 1.42ha detailed in the supporting text to the policy I consider it would comply with the requirements of policy LA 24 (i).
22. Local residents were very concerned about highway safety in particular on the New Dover Road which at times can take a large volume of traffic. Having observed the traffic flows at my site visit I agree that it appears to be a busy road. However, I note from the evidence submitted that the Council's Highway advisors are satisfied, subject to a number of suggested conditions, that the proposal would not adversely affect highway safety and on the basis of the evidence before me I have no reason to disagree with this position.
23. Concerns were raised at the Hearing as to the need for the mix and type of housing proposed. Whilst it is clear from the evidence that Capel-Le-Ferne does have an aging population and the units proposed would not necessarily meet their needs there is also evidence from the Council for a wider need for this size and type of accommodation.

The Planning Balance

24. The proposal would result in the development outside of the development boundary for Capel-Le-Ferne albeit on a site that has been highlighted by the Council for housing. The site is currently undeveloped and given its proximity to the AONB and Heritage Coast the introduction of buildings and their associated infrastructure would result in moderate harm to the rural character

and appearance of the area. However, this would be mitigated to some degree by the existing and proposed landscaping. Furthermore, balanced against this is the contribution to the supply of housing of up to 40 new homes, 9 of which would be affordable in an area where the Council have acknowledged that they do not have 5 years worth of housing land supply and that there is a demonstrated local need.

25. Therefore, taking all that I have read and heard into account, I conclude that the adverse impacts of granting planning would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the development plan and the Framework⁵ as a whole.

Conditions

26. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against paragraph 206, the advice contained within the Planning Practice Guidance (the PPG)⁶ and the discussions at the Hearing. Where necessary I have adjusted their wording in the interests of clarity.
27. In addition to the standard time condition, it is necessary for the avoidance of doubt and in the interests of proper planning, to define the plans with which the scheme should accord. As details of materials have already been submitted with the original application a condition requiring the provision of samples is not necessary. However, for clarity a condition listing these details is necessary. Whilst the PPG advises against the use of a tailpiece in a condition I consider that given potential issues with supply and ordering materials a tailpiece allowing the Council the opportunity to change these materials should they prove difficult to source is considered reasonable.
28. To minimise the risk of flooding, it is necessary for development to be carried out in accordance with the approved Flood Risk Assessment and that details of a scheme for the disposal of foul sewage and surface water drainage should be agreed with the Local Planning Authority. In the interests of the health of future occupants of the site a condition requiring work to be suspended and the implementation of a remediation strategy if contamination is discovered at the site is considered reasonable.
29. To ensure highway safety, conditions requiring the approved access to be constructed prior to the occupation of the units; visibility splays to be in place and the right hand splitter lane, splitter island and extension of the footpath on New Dover Road are considered necessary. In order to encourage sustainable travel patterns a condition requiring that facilities for the storage of bicycles are considered necessary. To ensure sufficient parking is provided on site to meet the needs of future residents a condition requiring its provision and retention is considered necessary.
30. To ensure the creation of a high quality layout conditions requiring details of the design, provision and retention of refuse storage and boundary treatment are considered necessary.

⁵ Paragraphs 14 and 49

⁶ Planning Practice Guidance ID 21a

31. Given the concerns regarding the proposed height of the new dwellings on the AONB and Heritage Coast a condition requiring details of the existing and proposed finished ground and floor levels is considered necessary.
32. It is necessary in the interests of amenity; to protect the setting of the AONB and Heritage Coast and to ensure that there is adequate protection for the trees and hedges on and adjacent to the site during construction for a landscaping and landscaping management plan to be attached. To minimise the risk to biodiversity it is necessary to apply a conditions in relation to the protection of the habitats of nesting birds, levels of illumination and requiring the retention of the bat boxes that the appellant has already placed at the site.
33. To ensure highway safety, protect the living conditions of the occupants of neighbouring properties during construction and to minimise the impact on the adjacent AONB a condition requiring the submission and approval of a Construction Management Plan, which would control amongst other things working hours, delivery times and routes, construction workers parking, dust suppression measures etc. is considered relevant.
34. Given the proximity of the adjacent AONB, Heritage Coast and SSSI a condition requiring the recommendations and enhancements contained within the submitted Ecological and Landscape Management and Maintenance Plan is considered necessary.
35. A number of conditions regarding the instillation and retention of obscure glazing for specific plots are required to ensure that the living conditions of the occupiers of adjoining residential properties are maintained.

Conclusion

36. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

Jo Dowling

INSPECTOR

APPERANCES

FOR THE APPELLANT

Jonathan Billingsley	The Landscape Partnership
Ian Bull BTP, DMS, RTPI	Ian Bull Consultancy
Thomas Hegan	Turner Morum Chartered Surveyors
Roy Rix RIBA	

FOR THE LOCAL PLANNING AUTHORITY

John Sneddon BSc (Hons) MRTPI

INTERESTED PARTIES

Keith Pilcher	Representing Capel-Le-Ferne Parish Council
Cllr Frederick Scales	Ward Councillor for Capel-Le-Ferne
Jayne Stone	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

Document 1	Email from Maureen Leppard regarding attendance at the Hearing
Document 2	Plan and photomontage showing existing property types prepared by the appellant

Schedule of conditions

1. The development hereby permitted shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 131191/A/01 rev N, 131191/A/07, 13404-TLP-400, 14-0268-50 rev O, CAP/2014/22 M, CAP 2014/23 rev B, CAP 2014/24 rev C, CAP 2014/25 rev B, CAP 2014/26 rev D, CAP 2014/27 B, CAP 2014/28 B, CAP 2014/29 B, CAP/14/50 rev B, CAP/14/51 rev B, CAP/14/55 rev C, CAP/14/56 rev D, CAP/14/57 rev E, CAP/14/58 rev E, CAP/14/59 rev E, CAP/14/60 rev E, CAP/14/61 rev B, CAP/14/62 rev B, CAP/14/63 rev B, CAP/14/64 rev C, CAP/14/65 rev D, CAP/14/66 rev C, CAP/14/67 rev A, CAP/14/68 rev D, CAP/14/69 rev D, CAP/14/70 rev C, CAP/14/71 rev C, CAP/2014/73 rev C, CAP/14/74, CAP/14/75.
3. Unless otherwise agreed in writing the materials for the dwellings shall be:

Roof	Marley Eternit Rivendale slate (synthetic slate)
Boarding	Hardie plank (man-made composite board), five different colours (arctic white, sail cloth – cashmere, light mist, Boothbay blue, Monteray taupe
Brickwork	Yellow stock bricks (Hanson: Village Golden Thatch) with feature red/orange brickwork

4. All existing trees shall be retained, unless shown on the approved drawings to be removed. All trees on and immediately adjoining the site shall be protected from damage as a result of works on the site to the relevant British Standards (e.g. BS5837:2012 Trees in relation to design, demolition and construction) for the duration of the works on site and until the contractual completion of the approved development. In the event that trees become damaged or otherwise defective during such a period the local planning authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree dies or is removed without the prior consent of the local planning authority, it shall be replaced as soon as reasonably practicable and, in any case, by no later than the end of the first available planting season, with trees of such size, species and in such number and positions to be agreed with the local planning authority.
5. No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of soft and hard landscaping. The scheme shall include but not be limited to details of hard surfacing materials; tree/hedge/shrub planting plans; written specifications; schedules of species, sizes and posed numbers/densities. Thereafter the approved landscaping scheme shall be carried out fully within 12 months of the completion of development. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

6. The development hereby permitted shall not be occupied until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas and open space areas, has been submitted to and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the details as approved.
7. The removal of any hedge sections to enable access for construction and delivery vehicles shall only be cut down to ground level between the beginning of November and March and a period of 48 hours shall elapse before plant is deployed.
8. No development shall commence until a detailed scheme for the disposal of foul sewage from the development, together with a programme for implementation and long term maintenance, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented and operational before any of the dwellings hereby permitted is first occupied and shall be maintained in accordance with the approved scheme thereafter.
9. No development shall commence until a sustainable surface water drainage scheme for the site, which is compliant with the non-statutory technical standards for sustainable drainage, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run off generated up to and including the 100 year critical storm (including an allowance for climate change) will not exceed the run off from the undeveloped site following the corresponding rainfall event, and so not increase the risk of flooding both on or off site. The strategy should also include details for the provision of long term maintenance of all surface water drainage infrastructure on the site. The scheme shall subsequently be implemented in accordance with the approved details before the development hereby permitted is completed.
10. If unexpected contamination is found at any time when carrying out the approved development it must be reported in writing to the local planning authority and development shall be suspended. An investigation and risk assessment must then be undertaken and submitted to the local planning authority for its written approval. Where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the local planning authority before development recommences. Any remediation required shall be carried out in accordance with the details approved.
11. The following works must be completed between any dwelling and the adopted highway prior to the first occupation of that dwelling:
 - a) Footways and/or footpaths, with the exception of the wearing course;
 - b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
12. Before any dwellings are first occupied visibility splays if 2.4m x 133m within which there shall be no obstruction to excess of 1.05m in height above the carriageway edge shall be provided either side of the approved vehicular access and the splays shall thereafter be maintained at all times.

13. Pedestrian visibility splays 2m x 2m either side of the vehicular access serving each plot, with no obstruction over 0.9m above the access footway level, shall be provided prior to the first occupation of the dwellings to which they relate and shall thereafter be maintained at all times.
14. No development shall take place above ground until details of bicycle storage facilities for each dwelling have been submitted to and approved in writing by the local planning authority. The approved bicycle storage shall be completed prior to the first occupation of the dwelling to which the details relate and shall thereafter be retained solely for that purpose.
15. No development shall take place above ground until details of refuse and recycling storage have been submitted to and approved in writing by the local planning authority. The approved works shall be provided before the dwelling to which the details relate is first occupied and shall thereafter be kept available for their approved purpose at all times.
16. The area shown on the approved drawings as vehicle parking space, garages and turning space shall be provided, surfaced and drained before the dwelling to which the parking provision relates is first occupied and shall be retained for that use thereafter.
17. No development shall commence until full details of existing and proposed finished ground levels and sections through the buildings, including levels of thresholds, have been submitted to and approved in writing by the local planning authority. The work shall be carried out in accordance with the approved details.
18. No part of the proposed boundary treatment as indicated on drawing 14/0268-50 Rev O (proposed site block plan) shall be constructed until details indicating the design and materials to be used have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be implemented in accordance with the approved details and thereafter retained and not removed without the prior written permission of the local planning authority.
19. No development shall commence until the right hand splitter lane, splitter island and the extension of the footpath on the southern side of New Dover Road (which shall form part of a separate Section 278 application to Kent County Council), have been provided and they shall thereafter be retained.
20. Before any external lighting is installed details shall have been submitted to and approved in writing by the local planning authority. The details shall include heights of columns, light fittings and levels of luminance. The development shall be carried out in accordance with the approved details and prior to the occupation of the first dwelling.
21. Details of the location and specification of the six bat boxes erected within the appeal site shall be submitted to the local planning authority and the bat boxes shall be permanently retained.
22. Prior to the dwelling's first occupation the hallway window at first floor level on the west elevation of the house on plot 1 shall be fitted with obscure glass (without clear views through) and shall be retained as such thereafter.

- 23.No windows shall be inserted into the west elevation of house plots 37 and 38.
- 24.Prior to the dwellings first occupation, the roof windows serving the bathroom and en-suite bathroom in house plots 25, 26 and 27 (house type H) shall be fitted with obscure glass (without clear view through) and shall be retained as such thereafter.
- 25.The development shall be carried out in accordance with the submitted Construction Management Plan dated 16 March 2016.
- 26.The recommendations and enhancements set out in the submitted Ecological and Landscape Management and Maintenance Plan dated 5 November 2016 shall be implemented in full.