



Appeal Decision

Site visit made on 25 September 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/X2220/W/19/3230489

Land On The South East Side Of Marlborough Road, Deal, CT14 9LE

- 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 Charing TN27 Ltd against the decision of Dover District Council.
 - The application Ref 18/00750, dated 13 July 2018, was refused by notice dated 20 March 2019.
 - The development proposed is the erection 9x dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: -
 - The effect of the proposal on the provision of open space in the area,
 - The effect of the proposal on the character and appearance of the landscape, and: -
 - Whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Protected Open Space

3. The site contains land designated as Protected Open Space and is protected by Policy DM25 of the Dover District Council Local Development Framework Core Strategy 2010 (the Core Strategy). This policy sets out that any proposal that would result in the loss of public open space will not be permitted subject to certain exceptions. These exceptions include the situations where there is an identified deficiency of public open space, but the site is incapable of contributing to making it good; or where there is a deficiency that the site is capable of contributing to making it good, but where an alternative suitable area can be made available.
4. The aims of this policy are broadly in accord with Paragraph 97 of the National Planning Policy Framework (the Framework) which requires that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements or the loss resulting from the proposed development would be

- replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
5. The appellants have provided an Open Space Assessment in support of their proposal. However, there is dispute between the main parties as to the methodology and conclusions reached by this assessment.
 6. Whilst the site is not accessible to the public, the supporting text of the Dover District Council Land Allocations Local Plan 2015 (the Local Plan) states in paragraph 2.39 that "Non-accessible open space with current or potential amenity value is also recognised on the map" and that this can include land in private ownership "if it is the only remaining open space in an urban environment". The requirement for existing access does not appear as a pre-requisite for inclusion of land as a strategic asset. I further note that the allocation of the land within the Local Plan was included within the proposals map at the time that the open space standards were tested at the Examination in Public.
 7. The Council have assessed the level of accessible open space provision in the vicinity of the site and identified the nearest accessible open space that meets their standards as being at Cowdray Park, approximately 560 metres from the site, although there are smaller accessible spaces a little over 300 metres away. The appellants' Open Space Assessment makes a more general assessment of available space in the wider area, within a 1km radius.
 8. Whilst the appellants' assessment has shown that there is accessible open space in the wider area, 1km is a much greater distance and less practical for access by pedestrians, particularly mothers with young children, than the distances evaluated within the Council's assessment. It is appropriate in my view to use the Council's requirement of open space within 300m, established within the Local Plan as an indicator of a reasonable distance to travel for neighbourhood provision. I conclude that there is a local deficiency in publicly accessible open space. Whilst the site is relatively small, being less than the Council's size standard of 0.4ha, and currently in private ownership, there is little substantive evidence before me to demonstrate that it could not make some useful contribution to making good the identified deficiency in public open space and contributing towards the needs of the community. No alternative provision has been put forward by the appellants to offset the loss of the protected open space.
 9. To the north-east the abutting parcel of land has an extant planning permission for nine houses, granted under Council Ref: DOV/17/00661 (the 2017 permission). This land is also part of land designated as Protected Open Space. Notwithstanding the seeming disparity between that case and the case before me in the Council's release of that land for development, I have considered this appeal on its own merits.
 10. I conclude that the proposal would result in harm to the provision of open space in the area. It is therefore contrary to Policy DM25 of the Core Strategy and paragraph 97 of the Framework.

Character and appearance of the landscape

11. The appeal site is a roughly rectangular field, mainly grassed, but containing a number of trees and some shrub growth. There is mature planting along the

south-western and south-eastern boundaries of the site. To the west for approximately half of the length of the south-western frontage of the site lies an industrial building and compound and a parcel of land used for the storage of containers, before giving on to open countryside. To the south of the site lies open countryside. Although not public footpaths, there are paths from the end of Marlborough Road which head out across the countryside towards Ellens Road and Cross Road.

12. The proposal is for nine two-storey dwellings in the form of a short terrace and three semi-detached pairs. Access is proposed from Magnus Road through the site which benefits from the 2017 permission. The site lies within the settlement confines of Deal as identified in Policy CP1 of the Core Strategy. However, it is close to the settlement boundary, as the built-up area gives way to open countryside.
13. Policy DM15 of the Core Strategy precludes development that would result in the loss of, or adversely affect the character or appearance of, the countryside, whilst Policy DM16 seeks to prevent development that would harm the character of the landscape. These policies are generally in accord with the aims of paragraph 170 of the National Planning Policy Framework (the Framework) that seeks to conserve and enhance the natural environment, requiring that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
14. The site lies on the edge of the built-up area of Deal, as urban development gives way to open countryside. The land falls away from the site forming a valley. The site is prominent in views from the south from Coldblow Road across the valley, the paths through the countryside and, although screened to a degree by planting, from Ellens Road, together with views from the paths to the south-east. In these views the mature planting on the edge of and within the site forms a prominent green gap between the existing residential development and the commercial buildings to the west and south west of the site. This is a positive contribution to the character and appearance of the landscape.
15. Whilst the industrial building to the west of the site and the storage containers also intrude into the views from the wider area, this emphasises the role played by the gap in separating and breaking up the urban form.
16. The site lies within the area covered by the Ashley to Deal Local Landscape Character Assessment – South Urban Fringe 2018. This assessment identified the distinguishing characteristics of the LLCA as “an unusual urban fringe site, due to its aspect and visibility with the openness of the upper slope set against the urban skyline” and identified concerns regarding “continued development pressure on a highly visual site which, by its openness provides a visual containment to the southward spread of Deal”.
17. The proposal would introduce a prominent urban form into this gap, two storeys in height, and therefore visible behind any screening from retained planting on the south-east and south-west boundaries. This would undermine the green separation between the existing development. In this context, given the importance that I have placed upon the contribution of the site to the softening of the edge of the urban environment and separation of the land uses in the area, that intensification and linking of the built environment would amount to harm to the character and appearance of the landscape.

18. A landscaping scheme is proposed for the development, which indicates some additional planting and close boarded fencing along the boundaries of the site. Whilst planting on the boundary could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm which I have identified, as new planting would take time to establish itself and there is no substantive evidence before me that sufficient screening would be achieved to address the matter successfully.
19. The site has been designated as Protected Open Space on the Policies Map and is, therefore protected by Policy DM25 of the Core Strategy. I have identified above that there is a deficiency in public open space in the vicinity of the site, and that there is little substantive evidence before me to demonstrate that it could not make some useful contribution to making good the identified deficiency in public open space and contributing towards the needs of the community. DM25 does provide an exception to the loss of open space where there is a deficiency that the site is capable of contributing to making it good, but where a suitable alternative area can be made available. However, this includes the proviso that the site should have no overriding visual amenity interest or other environmental, cultural or nature conservation role.
20. The Framework acknowledges that open space can act as a visual amenity. For the reasons above I have found that the site contributes positively to the character and appearance of the area, and that its loss would result in harm to the visual amenity provided by the landscape.
21. My attention has been drawn to the 2017 permission in regard to its status as Protected Open Land. The Council have given permission for a similar development to that which is the subject of this appeal on this land despite the designation. However, in identifying the visual amenity of the appeal site I note that the site of the 2017 permission is on the far side of the current site from the open countryside and would be less prominent in the landscape by virtue of the screening provided by the appeal site itself. Further, the 2017 permission retained a gap between residential and commercial development. I therefore find that the effect of the loss of each of the parts of the protected open space is not directly comparable.
22. I conclude that the proposal would result in harm to the character and appearance of the landscape. It is therefore contrary to Policies DM15, DM16 and DM25 of the Core Strategy and paragraph 170 of the Framework.

Affordable housing

23. There is dispute between the parties whether the development should provide a proportion of affordable housing.
24. Under Policy DM5 of the Core Strategy the Council seek developments of 15 houses or more to provide 30% of the homes as affordable housing and developments of 5 to 14 homes to contribute towards the provision of affordable housing. The policy makes provision, for developments of between 5 and 14 dwellings, for the provision to be made either on-site, or in the form of a broadly equivalent financial contribution, or a combination of both.
25. Policy DM5 has been overtaken by paragraph 63 of the Framework which states that provision of affordable housing should not be sought for residential

developments that are not major developments, other than in designated rural areas.

26. Paragraphs 61 and 62 of the Framework require, where a need for affordable housing has been identified, together with the character of that need, that need should be met on site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified; and the agreed approach contributes to the objective of creating mixed and balanced communities. The Council sets out its identified affordable housing needs within their document Affordable Housing Supplementary Planning Document -2007- and its addendum dated 2011.
27. Although, therefore, not entirely consistent with the Framework in regard to the lower level of development at which contributions towards affordable housing is triggered, Policy DM5 is consistent with those parts of the framework requiring development contributions, including affordable housing, to be provided.
28. For housing, a major development is where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. The appeal proposal is for nine dwellings, and measures 0.32ha. However, the Council argues that the appeal site should be considered in combination with the 2017 permission, aggregating 18 dwellings, as the two sites are, in effect, a single development.
29. Whilst the aggregated site would be formed from two parcels, currently separated by a fence, I am mindful that the appellants own both parcels of land and that a single means of access serves both developments. These are material considerations that, notwithstanding the relatively recent acquisition of the land in title by the appellants and the separation in time between applications, lead me to the conclusion that the two proposals can be deemed to constitute a single development of 18 dwellings on a site of over 0.5ha. The development should provide 30% of the 18 homes as affordable dwellings.
30. I therefore conclude that the proposal fails to make adequate provision for affordable housing. The proposal is therefore contrary to Policy DM5 of the Core Strategy, the Affordable Housing Supplementary Planning Document (including the Addendum to Affordable Housing Supplementary Planning Document) and paragraphs 61 and 62 of the National Planning Policy Framework.

Other Matters

31. The Council considers that the site is located within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar sites which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy incorporates strategic mitigation measures to be delivered to avoid adverse impacts.
32. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.

33. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Planning Balance

34. It is agreed between the parties that policies within the Core Strategy relating to housing delivery are out of date. Paragraph 11 d) of the Framework therefore applies.
35. The development would provide benefits in terms of delivering an additional nine homes to boost local housing supply in a sustainable location. There would be benefits to the local economy in terms of short term employment in the construction industry and longer term support to shops and businesses. The Council would receive additional income based on the additional households. Taken together, given the scale of the development these benefits carry moderate weight.
36. However, I have identified harm to the character of the landscape, the provision of protected open space and the Council's strategy for the provision of affordable housing. These are significant factors weighing against the scheme.
37. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.
38. In conclusion, the identified harm would significantly and demonstrably outweigh the benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.

Conclusion

39. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR