



Appeal Decision

Site visit made on 18 November 2020

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

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

Decision date: 11 December 2020

Appeal Ref: APP/A2280/W/19/3242289

Land east of Mierscourt Road, Rainham, Kent ME8 8JF

- 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 Parmatt Ltd/Montra Invicta Ltd against the decision of Medway Council.
 - The application Ref MC/19/0171, dated 17 January 2019, was refused by notice dated 3 June 2019.
 - The development proposed is described as: 'an outline planning application (with access for approval) for 50 dwellings with new access road, car parking and landscaping – resubmission'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Medway Council against Parmatt Ltd/Montra Invicta Ltd. This application is the subject of a separate Decision.

Procedural Matters

3. The application was in outline with only access to be determined at this stage. An amended indicative layout was submitted with the appeal, (F)006-Rev B. In addition, as part of a supplementary transport statement, a scheme showing a revised site access was presented, 619204-MLM-ZZ-XX-RP-TP-001-Rev P04. The Council has had an opportunity to comment on these plans during the appeal process but contended that it had not been able to consult on them, or the other additional information, with Members or interested parties. However, this is an outline scheme, the amendments are of a minor nature and much of the additional information is of a technical nature. I am therefore satisfied that no-one has been prejudiced by my taking these plans and the additional information into account in my determination of the appeal.
4. The appellant submitted a purported Unilateral Undertaking (UU) in respect of affordable housing with the appeal, dated 20 November 2019. The agreement was not accompanied by a site plan and there was a lack of clarity about the status of the signatures to the agreement which were presented on a separate document. On 2 November 2020 a second UU was submitted relating to contributions to other infrastructure; this had only 2 signatories but was neither dated nor signed. Consequently, I consider that neither UU has been completed correctly. They are therefore ineffective as planning obligations and I am unable to take either of them into account in my decision.

5. The appeal scheme is almost identical to a previous proposal on the site which was dismissed on appeal¹ after the Council had refused this application. The previous Inspector's decision is therefore a material consideration of significant weight in my assessment of the current scheme.

Main Issues

6. The main issues in relation to the proposal are:
- a) the provision of safe and suitable access for vehicles and pedestrians;
 - b) whether the proposal would provide a quality place in which to live;
 - c) its effect on the character and appearance of the area;
 - d) its effect on air quality;
 - e) its effect on flood risk;
 - f) whether the proposal makes adequate provision for affordable housing, local infrastructure and services.

Reasons

Access for vehicles and pedestrians

7. Vehicular access to the appeal site would be provided via a T-junction with Mierscourt Road. The amended scheme shows visibility splays of 2.4m x 54m which, from the advice set out in Manual for Streets, would appear to be adequate but would require land that is currently part of the highway verge. The Stage 1 Road Safety Audit recommended widening the access from 4.8 to 5.5m and amending the diverge tapers to better serve manoeuvres by large vehicles. The submitted scheme did not address these recommendations and there was no evidence that they had been discussed with the highway authority. However, it seems likely to me that a detailed scheme to provide vehicular access could be agreed using land in the appellants' ownership and the highway verge.
8. In order to provide pedestrian access to nearby bus stops a new footway would be constructed on the eastern side of Mierscourt Road. A significant section of this footway would be on land outside the appeal site and which the appellant contends would also be within the highway verge. The extent of highway land shown on the 'highway definitions' plan appears to be very narrow along this part of Mierscourt Road and is described as 'publicly maintained highway grass'. Only the width of the footway is shown on the submitted drawing. However, there is a difference in levels between the road and the highway verge of approaching 0.5m and this bank contains trees and other vegetation which are less than 1m from the existing kerb edge. Even if there is sufficient space for the footway within the highway verge additional land would be required to integrate it into the bank which runs parallel with the rear of the existing footway on the approach to the bus stop.
9. The previous Inspector considered that there was a reasonable prospect that the land needed could be acquired and the improvements could be delivered. However, evidence before me indicates that some of this land is part of the

¹ APP/A2280/W/19/3223080

landscaping scheme associated with the residential development immediately to the north of the appeal site. The retention, augmentation and management of the existing hedgerow and trees is a requirement of a condition attached to the permission granted to Redrow Homes for 134 dwellings². In these circumstances, and in the absence of definitive evidence that the matter has been discussed and agreed with the Council and any third-party landowner, I cannot be certain that the footway could be provided.

10. I am therefore not satisfied that adequate provision for pedestrian access to the site has been demonstrated. The absence of a suitable footway would make walking to Rainham town centre less attractive. It would also reduce access to local bus services, restricting the transport choices available to those living within the development.
11. The development would generate additional traffic on Mierscourt Road which would travel through junctions with the High Street to the north, and Harvester Close to the south. The number of additional movements is predicted to be small. The previous Inspector concluded that there would not be severe residual effects on the operation of the highway network. As nothing has changed since his decision to suggest otherwise, I concur with this assessment and am satisfied that the proposal complies with saved Policy T1 of the Medway Local Plan 2003 (Local Plan) which seeks to ensure the highway network can accommodate any additional traffic safely and efficiently.
12. Notwithstanding my findings on the provision of a vehicular access and the impact of additional traffic on the surrounding highway network, I conclude that the provision of a safe and suitable access for pedestrians has not been adequately demonstrated. Therefore, although the proposal would comply with Policy T1, it would conflict with saved Policies T2 and T3 which require new development to provide safe and attractive facilities for pedestrians. It would also fail to accord with the Framework's objective [paragraph 110 a)] of giving priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second to facilitating access to public transport.

Quality of the development

13. The application seeks permission for 50 dwellings; the indicative layout shows one way in which this could be achieved. The previous Inspector was satisfied that issues relating to provision of parking, manoeuvring space and bin storage could be resolved through the reserved matters. Even though the number of dwellings would be fixed at 50, there would be flexibility about the type and size of dwelling to be provided. I see no reasons to come to a different view.
14. The illustrative layout has been amended to include a small area of open space/play space within the scheme. This appears to have been achieved by removing two detached houses and substituting a pair of semis in a similar location. It has not involved any fundamental change to the layout. However, the fenced Local Equipped Area of Play would be below the minimum recommended requirement of 400sqm and would be situated less than 20m from 4 dwellings. It would therefore neither meet the needs of future residents nor be suitably sited to avoid noise and disturbance to others. The proximity of the site to other nearby play areas is not a justification for not making provision on the site.

² Condition 11 of MC/15/4539

15. The appeal site is close to the existing built-up urban area of Rainham with its range of town centre facilities. However, the layout is predicated on a single access road serving the development. Pedestrian connections to and from the site would be limited to those provided via Mierscourt Road. The site's separation from existing development by the adjoining paddocks to the north would make the provision of other connections to existing development both difficult and unattractive. The development would lack permeability with few connections with its surroundings.
16. As a cul-de-sac the scheme would fail to reflect the patterns of development that are established to the west of Mierscourt Road where streets connect with each other. The illustrative layout has given priority to the needs of vehicles rather than people, making it more likely that future occupants would choose car travel over other more sustainable modes of transport. Consequently, the proposal would function as a separate enclave of housing that would not integrate effectively with the existing urban area.
17. The indicative layout also suggests that some of the plots would be awkward shapes and in places the extent of the rear gardens would be restricted. This would be particularly so on the southern side of the site where the need for vegetation to screen the development from the surrounding countryside would result in the creation of small and enclosed gardens.
18. Taking all these considerations into account, the illustrative layout has failed to satisfy me that the site is capable of accommodating 50 homes in a manner that would deliver a quality place in which to live. I therefore conclude that the proposal would conflict with saved Policies L4 and BNE1 of the Local Plan which require development to make appropriate, practical and attractive provision for open space/play space. It would also fail to comply with the objective of the Framework, set out in paragraph 127 d), to establish a strong sense of place to create attractive, welcoming and distinctive places to live.

Character and appearance

19. The appeal site lies outside any defined settlement in the countryside. Policy BNE25 of the Local Plan only permits development in such locations if it maintains or enhances the character of the countryside, or falls within a limited number of exceptions, none of which apply in this case. The site also lies in the Mierscourt/Meresborough Area of Local Landscape Importance (ALLI). This is characterised by its open, almost flat appearance with occasional hedgerows enclosing large fields. However, it is apparent that this area, which was previously a combination of orchards and arable farmland, has been degraded with the introduction of equine related activities. This has resulted in sub-division of fields, the loss of traditional hedges and the addition of new fencing and conifer belts which are out-of-character with the area's agricultural heritage.
20. For much of its length the eastern side of Mierscourt Road marks the boundary between the urban area of Rainham and the open, undeveloped countryside beyond. The Redrow development immediately to the north has already encroached into this area, but on slightly lower ground. However, its southern boundary, which faces the appeal site, is largely enclosed by vegetation and landscaping. A notable number of mature trees provide a natural barrier between the area that has been developed and the open fields and paddocks of the ALLI.

21. The proposal would replace fields and paddocks with a residential estate of 50 houses, together with their associated domestic gardens and areas of hard surfacing for access and parking. The westernmost part of the proposal would be adjacent to the Redrow development, although separated from it by a landscape buffer with vegetation and trees. However, further east the remainder of the proposal would be separated from the Redrow development by open paddocks and fields on the site's northern boundary. The proposal would therefore further disrupt the field pattern in the ALLI intruding into the countryside rather than being a further extension of the urban area.
22. Except for the buildings associated with the Mierscourt Valley Riding School, much of the southern boundary of the site is little more than a wire fence. There are no natural features, such as hedges or tree belts that would provide a defensible boundary to development. Consequently, the proposal would result in a hard edge to the built-up area in this otherwise open, predominantly flat landscape. Furthermore, the shallow gardens shown on the illustrative layout would provide limited opportunities for landscaping.
23. The loss of this open area would have only a limited effect on the wider countryside of the ALLI. Nevertheless, the site's lack of integration with either the existing development or its immediate surroundings would result in harm to the appearance of the countryside. In the short term this harm would be accentuated by the loss of the site's roadside boundary. However, for much of its length the existing hedge is of modest proportions and most of it could be re-established thereby limiting any lasting detrimental effect on the street scene.
24. However, if the trees and more substantial vegetation that form the buffer zone screening the Redrow development were lost to provide the footway, this would undoubtedly be injurious to the street scene. As landscaping is a reserved matter, I have no details before me which suggest that a suitable means of addressing this harm could be found. The additional information relating to the conditions attached to the adjacent Redrow development have caused me to take a different view on this issue to those of the previous Inspector.
25. For all these reasons I conclude that the proposal would harm the character and appearance of the area. It would be contrary to saved Policies BNE25 and BNE34(i), which seek to resist development beyond settlement boundaries and protect the landscape character and function of ALLIs. I will consider the weight to be attached to the conflict with these requirements of the development plan later in my decision.

Air quality

26. There is an Air Quality Management Area (AQMA) which straddles the A2 at High Street, Rainham a short distance from the appeal site. The source of pollution is traffic on the A2 and the Council's concerns are primarily associated with the levels of Nitrogen Dioxide (NO₂). The previous Inspector dealt with this matter in some detail. He concluded that, notwithstanding shortcomings in the Air Quality Report before him, the matter could be addressed through a contribution to appropriate mitigation secured through planning obligations. This would ensure that the additional traffic from the development would not materially increase the risk of non-compliance with the relevant limit values or national objectives. There is nothing before me to suggest that I should reach a different conclusion.

27. However, although the appellants appear willing to make a contribution, in the absence of a robust UU as a means of securing it, the proposal would adversely affect air quality, contrary to Policy BNE24 of the Local Plan. This only permits development where there would not be unacceptable effects on health, taking account of the cumulative effects of other proposed or existing sources of air pollution in the vicinity.

Flood risk

28. Although the indicative layout has been amended with this scheme, the Flood Risk Assessment and Drainage Strategy, dated 30 November 2018, appears to be the same as that submitted with the previously rejected scheme. The revised layout still relies on soakaways within private land. Their long-term maintenance therefore cannot be guaranteed. The Lead Local Flood Authority (LLFA) has maintained its objection to the proposal. It advises against the use of conditions on the basis that site investigations would be necessary to ensure the design of an appropriate Sustainable Drainage Scheme (SuDS).
29. There is therefore no evidence to demonstrate that the concerns previously identified have been overcome. In the absence of a scheme to deal adequately on site with all surface water, there would be an increased risk of flooding elsewhere. The proposal therefore conflicts with paragraphs 163 and 165 of the Framework which state that development should not result in increased flood risk elsewhere and sustainable drainage systems should be maintained to acceptable standards throughout their lifetime.

Local infrastructure and services

30. The appellants' statement indicated a willingness to provide affordable housing as part of this scheme. The principle of contributions towards a number of local services do not appear to be in dispute. The previous Inspector was satisfied that each of these contributions related directly to the development and would be fairly and reasonably related to the proposal, although they may need to be updated in the light of the most recent information. Nothing appears to have changed to cause me to consider that these contributions are not necessary. The purported planning obligations set out what the appellants were initially willing to offer.
31. The first UU appears to offer 15 units of affordable housing. The second includes a schedule of contributions towards locally based education, open space, waste recycling, public rights of way, sports provision, local health provision, community services and air quality mitigation. It also offers a contribution towards the Strategic Access Monitoring and Management (SAMM) programme to ensure there is no adverse effect on the integrity of the North Kent Marshes Special Protection Area/Ramsar Sites which is a European designated site for over-wintering birds.
32. However, neither of the obligations has been correctly completed and they are therefore not capable of securing either the affordable housing or the contributions necessary to make the development acceptable, even if the precise figures had been agreed. Consequently, the proposal conflicts with the requirements set out in saved Policies H3 and S6 of the Local Plan.

Other Matters

33. The appeal site lies within 6km of North Kent Marshes Special Protection Area (SPA)/Ramsar sites, an area designated for its importance to a variety of bird species. Recreational activities associated with additional residents on this site and in combination with other plans and projects in the area, are likely to have a significant effect on those areas. The Conservation of Habitats and Species Regulations 2017 requires me to undertake an Appropriate Assessment (AA) if I was minded to grant permission to ensure that the proposal would not adversely affect the integrity of the site. I will return to this matter later.

Planning Balance

34. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites (5YHLS) and that the shortfall is significant. The housing delivery test gave a figure of only 46%. Paragraph 11 d) of the National Planning Policy Framework is therefore engaged. Although the Council is progressing its emerging Local Plan and working with the development sector to speed up delivery of sites where permission has been granted, it is likely to be some time before the housing shortage is adequately addressed through these mechanisms.
35. In view of the shortfall in housing supply the social and economic benefits arising from the provision of 50 houses would be very significant. The Framework (paragraph 68) recognises the important contribution that small and medium sized sites can make to meeting housing requirements. The appeal site is available, and the development could therefore be built-out relatively quickly. These benefits of the scheme would be even more significant if 15 of houses were secured as affordable homes. The failure to provide a completed UU has therefore undermined the scheme's credibility.
36. However, the deliverability of a suitable pedestrian access is in doubt arising from land ownership issues and the need to protect existing vegetation and landscaping. Without the provision of safe and suitable access for all users which gives priority to pedestrians and encourages use of public transport the development would fail to comply with these requirements of the Framework. These are significant factors against the scheme regardless of its proximity to the built-up area of Rainham.
37. Furthermore, the shortfall in open space provision within the development, the lack of connection between the site and the surrounding area, and the other shortcomings of the indicative layout I have identified, did not demonstrate that the scheme would deliver a high-quality place. In addition, the inadequate means of addressing surface water drainage throws further doubt on the site's ability to accommodate 50 homes. All these factors diminish the otherwise very significant benefits of the proposal.
38. The harm to the character and appearance of the area and landscape of the ALLI arises primarily due to its location beyond the built-up area boundary of Rainham and a failure to integrate the development satisfactorily into the immediately surrounding countryside. There was no evidence that the proposal would result in the loss of high-grade agricultural land. Consequently, in view of the acute shortfall in housing supply, the harm to the wider character and appearance of the countryside carries only limited weight in my assessment of the scheme.

39. Nevertheless, in order to make the scheme acceptable in planning terms contributions to local infrastructure and services are also required. In their absence there would be unacceptable pressure on other local services and environmental harm arising from adverse effects on air quality.
40. There is support from local people for the riding school which uses the appeal site. However, the generation of funds for investment and on-going maintenance in that business through the sale of the site for housing is not a factor in the scheme's favour.
41. Taking all the above factors into consideration I consider that the cumulative adverse social and environmental impacts of the proposal would significantly and demonstrably outweigh its potentially significant benefits when considered against the Framework as a whole. The presumption in favour of sustainable development therefore does not apply.
42. If I had come to a different conclusion, it would have been necessary for me to undertake an AA to ensure that the application of measures set out in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) would be effective and that a contribution towards its implementation would be secured. However, as the purported UU would not be effective, I cannot be certain the integrity of the North Kent Marshes SPA/Ramsar sites would not be adversely affected. Furthermore, Footnote 6 of Paragraph 11 includes specific reference to habitats sites as protected areas of particular importance. Consequently, harm to the SPA/Ramsar sites alone would have provided a clear reason for dismissing the appeal.

Conclusion

43. The proposal conflicts with the development plan. There are no other considerations, including the advice of the Framework and the acknowledged shortfall of housing provision, that outweigh that conflict.
44. For this reason, the appeal is dismissed.

Sheila Holden

INSPECTOR