
Appeal Decision

Site visit made on 12 July 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2021

Appeal Ref: APP/X2220/W/21/3270876

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 outline planning permission.
 - The appeal is made by Charing TN27 Ltd against the decision of Dover District Council.
 - The application Ref 20/00779, dated 15 July 2020, was refused by notice dated 15 September 2020.
 - The development proposed is for up to 9 new residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the indicative layout option plan as illustrative only.
3. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the revised Framework in reaching my decision.

Main Issue

4. The main issue is the effect of the proposed development on protected open space in the area.

Reasons

5. The land is designated as Protected Open Space on the Proposals Maps. Policy DM25 of the Dover District Council Local Development Framework Core Strategy 2010 (the Core Strategy) indicates that proposals for development that would result in the loss of open space will not be permitted but sets out exceptions. The exceptions include where there is an identified deficiency in public open space, but where the site is incapable of contributing to making it good; or where there is a deficiency the site is capable of contributing to making it good but where an alternative site can be made available.
6. Paragraph 99 of the revised Framework 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 or quality in a suitable location. The aims of Policy DM25 are largely in line with the Framework.
7. I note that the site is not currently accessible by the general public. Nonetheless, 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 this can include land in private ownership "if it is the only remaining openspace in an urban environment".
 8. The Council has made an assessment of the level of accessible open space within the vicinity of the site and highlights the nearest accessible open space to be at Cowdray Square approximately 560m from the appeal site. There are also other smaller open spaces identified at Leivers Road and Betteshanger Sports Ground both just over 300m from the site.
 9. The nearest accessible green space to the appeal site that meets the minimum standard of 0.4ha is located at Cowdray Square, however the Council's Land Allocations Local Plan requires the accessible greenspace to be within 300m of the site which is the Council's adopted standard for assessing accessible green spaces.
 10. The appellant's Open Space Assessment that supports the application does not take into account the Council's adopted standards for accessible green spaces of the Local Plan. Alternatively, it considers deficiency within the Mill Hill Ward and green and recreational spaces within 1km (12.5-minute walk) of the appeal site.
 11. There is a local deficiency in publicly accessible open space. I accept that the proposal would not result in the loss of the open space designation in its entirety, only a proportion of it. Nevertheless, although this site is small and less than the Council's 0.4ha size standards, the space could make some useful contribution to addressing the identified deficiency in public open space and providing open space for the community.
 12. I acknowledge that this site is in private ownership and currently is not accessible to the public for recreational enjoyment. Nevertheless, existing accessibility to the site does not appear to be a pre-requisite of including such land as a designed site. Furthermore, this open space has been through the Local Plan examination process and been included within the Proposals Map. No replacement area of open space is being proposed. Whilst the appellant's assessment has shown there to be accessible open space within the wider area, the Council's requirement of open space within 300m of the site, as established by the Local Plan advocates, in my view, a reasonable travel distance for accessible provision.
 13. It is highlighted that there is countryside land south and east of the site, however the countryside has a different function to that of open space within urban areas and cannot be considered to provide a comparable function. Although, the appellant asserts that the land has no overriding visual amenity interest despite being a vegetated site, the visual or landscaped merits of the site are again not a pre-requisite of including such land as an open space designated site.

14. Both parties have referred me to the emerging Local Plan and the Knight, Kavanagh & Page Ltd Open Space Assessment Report December 2019. However, very limited weight should be given to that plan and its evidence base at this stage, given that it is at a very early stage of preparation and could be subject to change.
15. A previous outline planning permission was granted (Dover Ref: DOV/16/00706) for housing development at the appeal site, however that permission has expired and can no longer be implemented. The Council has explained that at the time of considering that planning application the Council's case officer took the findings of the applicant's submitted Open Space Assessment at face value. It is advised that subsequent proposals, including that of the proposal before me, have been subject to detailed officer open space assessment. It is advocated that there is no substantial material change in the proposals and the previous decision should be a material consideration. However, it appears to me that the later proposals have been more robustly assessed by the Council in respect of the protected open space designation that is in place and is an important consideration.
16. I have been referred to a planning application relating to the appeal site and the adjoining wider land parcel (Dover Ref: DOV/20/01245). A Local Area of Play and amenity space is proposed as part of that proposed housing development. Whilst there would be a quantitative loss of designated open space as part of that proposal, there would be a qualitative benefit to the public having public access to the open space, even if overall there would be a reduction in size of the designated Protected Open Space. The proposal before me would have a quantitative loss of land without any compensatory qualitative open space benefit. Therefore, the considerations relating to the proposal before me are quite different.
17. I have been directed to the emerging Local Plan that would allocate around 200 homes to the southeast of the appeal site. It is suggested that those housing allocations would change the nature of the wider environment of the site and provide the ability to offer specific and useable open space as part of those future developments. However, there is no substantive evidence before me that might indicate that those housing developments would address local open space deficiency at the appeal site.
18. For these reasons, I conclude that the proposed development would be harmful to the provision of open space in the area. The proposal would, therefore, conflict with Policy DM25 of the Core Strategy and paragraph 99 of the revised Framework.

Other matters

19. Despite being able to demonstrate a five-year housing land supply at present, the appellant has highlighted that Dover has been underdelivering in their delivery of housing as shown by the recent Housing Delivery Test Results.
20. Even if the housing shortfall is very significant, a development of up to 9 houses, despite its sustainable location within the settlement boundary and close to existing residential development, would make little difference to the overall supply of housing. The support the extra households would provide to social and local economy would be minimal. Consequently, the adverse impact on the provision of open space in the area would significantly and demonstrably

outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

21. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR