



Appeal Decision

Site visit made on 9 September 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/X2220/W/21/3283789

Site south 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 20/01245 dated 23 October 2020, was refused by notice dated 30 March 2021.
 - The development proposed is described as the erection of up to 9 dwellings.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 9 dwellings at site south of Marlborough Road, Deal CT14 9LE in accordance with the terms of the application, Ref 20/01245, dated 23 October 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The address was originally described as 'Land East of Marlborough Road'. However, the Council's decision notice and the appellant's appeal form refer to it as 'Site South of Marlborough Road'. The appellant's agent has confirmed the latter address is accurate and I have therefore used this site address in the banner heading above.
3. The planning application was submitted in outline form with all matters reserved for future consideration. I have determined the appeal on this basis.
4. The appeal has also been submitted with a Unilateral Undertaking dated 9 December 2021. This includes obligations in respect of the provision of contributions towards community learning, libraries, education, social care and the youth service. It also provides access to the open space. I address this matter later in this decision.

Main Issues

5. The main issues are the effect of the proposed development on the character and appearance of the area including the provision of protected open space.

Reasons

6. The existing development, within the immediate area, broadly comprises residential and industrial uses fronting onto the street. Residential properties are primarily two storey and terraced in character. These terraces of properties give Marlborough Road and Magness Road an urban edge as one approaches the boundary of the settlement.

7. The appeal site is currently in private ownership and is mainly laid to grass with some sporadic vegetation and trees. It sits adjacent to the countryside and acts as a transitional site between the existing urban area and the countryside, contributing positively to the area.
8. The indicative layout shows that the housing would be located adjacent to existing housing with a sizable section of open space retained next to the countryside. This retained open space would be landscaped and managed as part of the proposed development with public access. Consequently, the proposed housing would be viewed within the context and backdrop of existing development.
9. Furthermore, the retained open space would soften and protect the sense of transition from the urban edge to the countryside, particularly given the further industrial building, hardstanding and container storage located between the appeal site and the undeveloped sections of the countryside. While the design and layout of the development is a consideration for the reserved matters stage, the appeal site is of a modest size that could reasonably accommodate up to 9 dwellings based on surrounding housing densities. As a result, the proposal would satisfactorily integrate into the local area and would not cause material harm to its character and appearance.
10. The appeal site is designated as Protected Open Space. 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. However, the policy does include an exceptions list and point iii of the list permits development on open space if the provision of a replacement area with at least the same qualities and equivalent community benefit, including ease of access, can be made available.
11. There is an identified deficiency of open space in the locality and this existing site contributes toward this within the local area. While the development would result in a measurable loss of the appeal site to housing, it would still retain a sizable area of open space. It would also introduce a managed landscape, equipped play area with public access and improved community benefit all of which can be secured by a combination of planning obligation and imposition of conditions.
12. These qualitative improvements would deliver increased opportunities for recreation and visual amenity over the existing space. These compensatory benefits would therefore deliver better qualitative open space provision outweighing the quantitative loss of protected open space.
13. Therefore, for the reasons above, I conclude that the development would not lead to any unacceptable harm to the character and appearance of the area or the provision of protected open space. The proposed development would consequently accord with the relevant provisions of Policies DM15, DM16, DM25 and DM27 of the Core Strategy and Paragraphs 99 (previously Paragraph 97) and 174 (previously Paragraph 170) of the National Planning Policy Framework (the Framework) all of which, amongst other things, seek to ensure development proposals do not unacceptably harm the character and appearance of the area or result in the loss of open space.

Other Matters

14. Concerns have been made about increased traffic and the potential for impacting upon the safe / efficient operation of the highway network and noise. In this case the Highway Authority raised no objection, subject to conditions, and the development would be modest in size. There is no substantive evidence before me that the proposal would result in an unacceptable highways impact or unacceptable noise impacts. Any construction impacts would also be controlled via planning conditions.
15. Interested parties objected to the original application in respect to the capacity of the sewers and flooding in the area. In response the Council queried this with Southern Water who confirmed there would be capacity for this development. Additionally, it is proportionate to require full details of surface water and foul water drainage to be agreed as conditions.
16. Any removal of private signs would be a private matter between interested parties. The proposed development would also not be major development and therefore falls below the requirements to provide affordable housing as set out at paragraph 64 of the Framework.
17. Detailed design of windows and the potential for overlooking would be considered at the reserved matters stage. From the evidence before me, I am satisfied that up to 9 dwellings could be integrated into the appeal site without unacceptable overlooking occurring to neighbouring occupants.
18. Given the modest scale of the development, any works by statutory undertakers are likely to be temporary and any inconvenience proportionate to the modest scale of the development. While this inconvenience would carry some, albeit limited weight, it does not outweigh the benefits of the development proposal.

Planning Obligation

19. A Section 106 unilateral undertaking has been submitted with the appeal. This includes contributions towards community learning, libraries, education, social care and the youth service. It also secures the provision of the improved open space land together with public access to it.
20. The proposal would lead to an increase in the population accessing local services for which there is insufficient capacity. Overall, the obligations included are necessary to make the development acceptable in planning terms, are directly related to the proposed development and are fairly and reasonably related in scale and kind to the development in line with paragraph 57 of the Framework.

Conditions

21. The Council has suggested 20 conditions, the appellant has taken the opportunity to comment on these suggested conditions and I have had regard to the submissions. Where necessary and, in the interests of precision, I have amended or merged the suggested conditions to accord with Planning Practice Guidance (PPG). The suggested landscaping condition has also not been included as landscaping is a reserved matter.

22. The standard condition relating to the submission of details of the reserved matters are attached [1]. I have imposed a condition specifying the timeframes for the reserved matters submission and commencement of development [2]. A programme of archaeological work [5] is necessary to preserve any heritage assets. Agreement of tree protection [8], external lighting [13] and boundary treatments [14] are necessary to protect the character and appearance of the area.
23. Details of drainage and foul sewage [6] and [7] are necessary to manage these in a sustainable manner. In the interests of ecology and biodiversity, it is necessary to ensure that the development secures a scheme for the enhancement of biodiversity on the site [3]. A Construction Management Plan [4] is also necessary in the interests of highway safety and to protect the living conditions of existing occupiers and the provision for future electric vehicle charging point [15] is necessary in the interests of environmental sustainability.
24. Details of the Local Area of Play (LAP) and Amenity Green Space [10] is necessary to protect the character and appearance of the area and deliver community benefits and to comply with Policy DM25. A connection to the highway footway is necessary [9] to ensure the safety of all highway users. Refuse/recycling and cycle storage [11] and [12] are also necessary to ensure that satisfactory provision is afforded for future occupiers. It is also necessary that the development is carried out in accordance with the approved layout plan, for the avoidance of doubt and in the interests of certainty [16].
25. Given the nature of some matters such as ecology protection, archaeology investigation and tree protection, which are required before and / or throughout the development. As well as construction management during development and agreement of drainage details before above ground works commence, it also necessary for these to be pre-commencement conditions (conditions 3, 4, 5, 6, 7 and 8).

Conclusion

26. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal should succeed subject to the conditions in the attached schedule.

N Praine

INSPECTOR

SCHEDULE OF CONDITIONS (16 in total)

(1) Approval of the details of the layout, means of access, scale, landscaping and appearance (hereafter called "the Reserved Matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

(2) An application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission and the development shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.

(3) No development shall take place until a scheme for the enhancement of biodiversity on the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall include a timetable for implementation and incorporate elements from the following list:

- Native species planting
- Nectar rich plant species for pollinators
- A range of bird boxes for different species on both trees and buildings
- Positive management for wildlife
- Bee bricks
- Bat boxes
- log piles
- native species of climbing plants

The development shall be carried out in accordance with the approved details and retained thereafter.

(4) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The said plan shall include details of: loading and unloading of plant and materials; on site parking for construction workers; measures to prevent dirt or other debris from being deposited upon the public highway; hours of construction working; machine operated plant to be used; temporary lighting; measures to control the emission of dust, dirt, noise or vibration during construction; and temporary hoarding/fencing. The approved Construction Management Plan shall be fully complied with throughout the construction period.

(5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. Once approved the programme of archaeological work shall be undertaken in accordance with the written specification and timetable.

(6) No development shall take place until details of site drainage works for the disposal of the site's surface water and designed in accordance with the principles of sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out before any of the dwellings hereby permitted are first occupied and the works shall thereafter be maintained in accordance with the approved scheme.

(7) No development shall take place until a detailed scheme for the disposal of foul sewage works on site and off site, 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 are first occupied and shall be maintained in accordance with the approved scheme.

(8) The approved development shall be carried out in such a manner as to avoid damage to the existing trees, including their root systems, and other planting/hedges to be retained by putting in place the following measures prior to commencement of the development:

- All trees to be preserved shall be marked on site and protected during any operation on site by temporary fencing in accordance with BS 5837:2005 (or as may be subsequently amended). Such tree protection measures shall remain throughout the period of construction
- No fires shall be lit within the spread of branches or downwind of the trees and other vegetation;
- No materials or equipment shall be stored within the spread of the branches or root protection area of the trees and other vegetation;
- No roots over 50mm diameter shall be cut, and no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches or root protection areas of the trees and other vegetation at any time;
- Ground levels within the spread of the branches or root protection areas (whichever the greater) of the trees and other vegetation shall not be raised or lowered in relation to the existing ground level;
- No trenches for underground services shall be commenced within the root protection areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained. Such trenching as might be approved shall be carried out to National Joint Utilities Group recommendations.

These measures shall be retained as such for the duration of the construction period.

(9) No development shall take place above ground level until a scheme has been submitted showing a connection between the site access and the existing highway footway in Marlborough Road and the removal/relocation of the existing industrial estate signage and provision of a section of kerbed footway in the highway verge. The development shall be carried out in accordance with the approved details prior to occupation and retained thereafter.

(10) No development shall take place above ground level until details of the Local Area of Play (LAP) and Amenity Green Space shown on the Indicative Layout Plan – Drawing No A1465-100/P2, including the proposed timing of its provision, management responsibilities and future maintenance, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details before first occupation of the dwellings, retained as such and the amenity space shall not be used for any other purpose.

(11) No development shall take place above ground level until details of refuse/recycling storage has 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.

(12) No development shall take place above ground level until details of cycle 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.

(13) No development shall take place above ground level until details of all external lighting (including to the amenity space, car parking and residential areas) have been submitted to and approved in writing by the Local Planning Authority. The said details shall include heights of columns, light fittings and levels of luminance. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwellings and retained as such. No further lighting, whether temporary or permanent shall be installed or brought on to the site.

(14) No development shall take place above ground level until a plan and details indicating the positions, design, materials and type of boundary treatments to be erected has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out before first occupation in accordance with the approved details and retained thereafter.

(15) Prior to the first occupation of the development hereby approved, cable ducting and electrical wiring suitable to facilitate any subsequent installation of a 7kW 32amp OLEV compliant wall or ground mounted charge point(s) adjacent to the car parking spaces proposed shall be installed and shall thereafter be retained such that it remains capable of providing the electricity required by any future electric vehicle charging point.

(16) The area shaded in green within the Indicative Layout Plan – Drawing No A1465-100/P2 shall be retained for the purposes of landscaping and provision of open space (LAP and accessible amenity green space) in accordance with the approved details.