



Appeal Decision

Site visit made on 11 October 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Appeal Ref: APP/U2235/W/21/3283952

River Wood, Chegworth Lane, Harrietsham, Maidstone, Kent ME17 1DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Dixon against the decision of Maidstone Borough Council.
 - The application Ref 20/503651/FULL, dated 4 August 2020, was approved on 1 April 2021 and planning permission was granted subject to conditions.
 - The development permitted is construction of 6no. one bedroom tourist lodges.
 - The condition in dispute is No.11 which states that:
Prior to the commencement of development details of a widened site access shall be submitted to and approved in writing by the Local Planning Authority, the approved access arrangements shall be completed and ready for use prior to first occupation of the accommodation hereby approved and retained thereafter.
 - The reason given for the condition is:
In order to provide satisfactory access arrangements.
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Decision

1. The appeal is allowed and the planning permission Ref 20/503651/FULL for construction of 6no. one bedroom tourist lodges at River Wood, Chegworth Lane, Harrietsham, Maidstone, Kent ME17 1DB, granted on 1 April 2021, is varied by deleting condition 11.

Background

2. Planning permission for tourist lodges on the site was granted on 1 April 2021 subject to conditions, of which condition 11 required the widening of the site access prior to the occupation of the site. The Council's statement indicates the condition is necessary to provide suitable and safe access to the appeal site, and in light of concerns relating to the restricted width of the existing access. The appellant disputes the condition as they consider it is not necessary. Concerns are also raised over the ownership of the land to which the access widening relates.
3. An earlier application for planning permission for the erection of 6 one-bedroom tourist lodges on the site was refused by the Council on 31 October 2019¹ and subsequently dismissed at appeal².

Main Issue

4. The main issue is whether the condition is necessary, relevant and reasonable in the interests of highway safety.

¹ 19/500305/FULL

² APP/U2235/W/19/3241982

Reasons

5. The appeal site is in a rural location at the end of a narrow, single-track lane which serves a small number of houses at the northern end of Chegworth Lane. The access onto the appeal site extends from the end of Chegworth Lane as an unmade single track including a 90-degree bend. A post and rail fence and foliage bind the northern and eastern sides of the access track, and a drainage ditch including a culvert runs along its western side.
6. I note there is disagreement between the parties regarding the exact width of the access, particularly at the point adjacent to the culvert. Even if the Council's measurement of 3.1m were used, the tracking diagram suggests that a fire appliance could manoeuvre around the bend, albeit very close to the edge of the culvert. While a greater width would make this manoeuvre more comfortable, I do not have evidence as to why this would be necessary. I also note the lack of objection from the Kent Fire and Rescue Service.
7. If the Council's measurements for the width of the access are used, it would fail to meet the minimum width of 3.7m given in the Building Regulations³ as the minimum width of road between kerbs for typical fire and rescue vehicles. It would, however, meet the minimum width for any gateways, of 3.1m. This is, in any event, a Building Regulations requirement rather than a planning one, and the regulations describe that appliances may differ in size. The regulations state that, in consultation with the Fire and Rescue Authority, the Building Control Body may adopt other dimensions in such circumstances. In light of this, and in the absence of evidence to the contrary, it is likely that a satisfactory solution could be achieved under Building Regulations. In addition, and in any event, the Planning Practice Guidance (PPG) is clear that conditions requiring compliance with other regulatory regimes, such as Building Regulations, will not meet the test of necessity and may not be relevant to planning.
8. The tracking diagrams show that a refuse vehicle would be likely to overhang the edge of the culvert, although the extent of the overhang would be limited. The appellant has provided evidence with the planning application to show how a satisfactory solution could be achieved through, for example, a private waste collection including the use of smaller refuse vehicles, or refuse collection occurring outside the site access. These provisions are not disputed by the Council and I am satisfied that an alternative solution could be achieved for such vehicles.
9. The Council's statement adds that the condition is necessary to avoid potential issues with the increase in the volume of traffic and potential for accidents at the access. While the access does not incorporate space for vehicles to pass each other, it is nonetheless a fairly short track. Vehicles would be likely to be travelling at a low speed and the drainage ditch located within the bend and the set back of the foliage, allow good visibility along the track. Given these attributes, even if two vehicles were to meet on the access, they would only need to reverse a short distance back onto either the appeal site or onto Chegworth Lane. Given the scale of the development, such conflict is likely to be infrequent and it would not cause unacceptable harm to highway safety. In addition, condition 12 of the permission relates to the delivery and retention of turning and parking areas on the appeal site, and would ensure that adequate

³ Building Regulations 2010 Approved Document B5

space is provided for vehicles to manoeuvre on the site and exit in a forward gear. This would ensure that vehicles would not need to park or turn on the access itself.

10. The appellant refers to uncertainty surrounding the ownership of the land adjacent to the access. This draws into question the reasonableness of the Grampian condition, particularly as the PPG states that such Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Imposing a condition which the appellant is potentially unable to address, casts doubt on its reasonableness.
11. Taken together, for these reasons, condition 11 is not necessary or relevant to planning and there are also uncertainties regarding its reasonableness. In the absence of condition 11, the development would comply with Policy DM1 of the Maidstone Borough Local Plan 2017, insofar as it relates to pedestrian and vehicular safety on the local highway network and site access. I do not find conflict with the objectives of the National Planning Policy Framework (the Framework) relating to highway safety.

Other Matters

12. As the appeal does not relate to the delivery of housing, the Council's performance for housing delivery and the implications of paragraph 11 of the Framework, are not relevant to the appeal.
13. I have had regard to the other matters raised by third parties during the planning application. These include a range of issues which were assessed by the Council and which do not provide reason to alter my judgement in respect of condition 11.

Conclusion

14. For the reasons given above, the planning permission should be varied by deleting the disputed condition.

C Shearing

INSPECTOR