



Appeal Decision

Site visit made on 10 October 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Appeal Ref: APP/U2235/W/22/3291603

The Three Ashes, Boxley Road, Walderslade ME5 9JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions.
 - The appeal is made by M Worsfold against the decision of Maidstone Borough Council.
 - The application Ref 21/502307/OUT, dated 27 May 2021, was approved on 1 October 2021 and outline planning permission was granted subject to conditions.
 - The development permitted was described as residential development (consideration of access only).
 - The condition in dispute is No 3 which states that: *"The details submitted pursuant to condition 1 shall show all built development within the developable area shown on the submitted plan to comprise no more than two residential dwellings over a total height of 4.5 metres or within 8 metres of the side boundaries of the application site."*
 - The reason given for the condition is: *"To ensure a satisfactory appearance to the development in its context."*
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Decision

1. The appeal is allowed and outline planning permission Ref 21/502307/OUT for residential development (consideration of access only) at The Three Ashes, Boxley Road, Walderslade ME5 9JG granted 1 October 2021 by Maidstone Borough Council, is varied by deleting condition No 3.

Preliminary Matters

2. The Council has not produced a statement of case, however, the Council's committee report provides reasons for the imposition of condition 3 and I have had regard to this committee report in coming to my decision.

Applications for costs

3. An application for costs was made by M Worsford against Maidstone Borough Council. This application is the subject of a separate decision.

Background and Main Issue

4. Outline planning permission has been granted for a residential development with matters of appearance, landscaping, layout and scale reserved for future consideration. The appellants statement confirms that although layout, amongst other things, is reserved for future consideration, the proposed block plan sought to agree parameters in respect of the potential siting of any built form. The Council's Committee Report also takes this into account. I have therefore considered this plan to be an illustration of how the proposal might be developed.

5. The appeal seeks permission to carry out the development without complying with condition 3. This condition restricts the height, distance from boundaries and the number of proposed dwellings. The main issue is therefore whether condition 3 is necessary and reasonable, in the interests of the character and appearance of the area.

Reasons

6. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
7. The approved plans do show a 'limit of area for buildings'. However, as scale and layout are reserved matters, this information is provided for indicative purposes only and should not be treated as part of the formal proposal. Its purpose is to demonstrate that an acceptable scheme could be brought forward at reserved matters stage.
8. The outline application sought to establish the principle of residential development on this site, and the access to it. In taking this forward at reserved matters stage it is important that development contributes positively to the area's pattern of development and its distinctive character. However, at this outline stage the actual number, size, form and shape of the development are not under consideration. Whilst the appellant has sought to indicate the general parameters for built form, placing specific height and boundary distance restrictions, the Council has sought greater control than is reasonable at this stage.
9. I also note the planning history and sensitivity of the site. However, when future reserved matters application(s) are submitted, details of the scale, appearance and layout would be provided and the effect that development may have on the character and appearance of the area would be considered, and if necessary controlled by the Council, in consultation with interested parties.
10. Furthermore, seeking to restrict the height of the development may cause issues with precision given the sloping nature of the site. Moreover, introducing an 8m separation distance to the boundary could unreasonably restrict the development coming forward, depending on its nature.
11. Therefore, condition 3 is not reasonable or necessary. Consequently, the outline development, without the condition, would not conflict with Policies SS1, SP1, DM1 of the Maidstone Borough Local Plan 2017 which, amongst other things, seek to ensure high quality design.

Conclusion

12. I therefore find that the disputed condition is not reasonable or necessary in the interests of the character and appearance of the area. I shall therefore allow the appeal and vary the original permission by deleting condition 3.

N Praine

INSPECTOR