



Appeal Decisions

Site visits made on 12 September 2023

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal A Ref: APP/T2215/W/22/3303236

Land east of Parkwood Hill and Knockhall Road, Greenhithe, Kent

DA9 9YE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Sevenoaks Property Developments Ltd against the decision of Dartford Borough Council.
- The application Ref DA/21/01308/FUL, dated 11 August 2021, was refused by notice dated 17 May 2022.
- The development proposed is the erection of six residential dwellings, together with associated parking, amenity space and landscaping.

Appeal B Ref: APP/T2215/Q/22/3311653

Former Empire Sports Ground, Knockhall Road, Greenhithe, Kent

DA9 9YE

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by Sevenoaks Property Developments Ltd against the decision of Dartford Borough Council.
 - The development to which the planning obligation relates is for up to 40 residential dwellings, provision of public open space, parking, access and landscaping. As well as the retention of the bowling green and relocation and enhancement of bowling club facilities and car parking.
 - The planning obligation, dated 18 February 2014, was made between Dartford Borough Council/Kent County Council and European property ventures (Kent) Ltd and others.
 - The application Ref 22/00959/S106, dated 5 August 2022, was refused by notice dated 29 September 2022.
 - The application sought to have the planning obligation modified as follows: to exclude the specified land from the open space obligations contained in the Undertaking in the event that the corresponding appeal APP/T2215/W/22/3303236 for the development of 6no. new homes is allowed.
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Decision

1. Both Appeals A and B are dismissed.

Preliminary Matters

2. The site associated with Appeal A is a small parcel of land in the centre of a larger site that was subject to planning permission for 40 dwellings and associated roadways and Public Open Space (POS)(The larger site). This comprised an outline application¹ that was allowed at appeal². Further approvals were granted for Reserved Matters approval³, minor alterations to

¹ Planning Application References DA/12/01325/OUT

² Planning Appeal Reference APP/T2215/A/13/2203710

³ Planning Application References DA/15/01497/REM

the agreed scheme and a landscaping scheme that demonstrated how the POS was to be arranged and planted. The dwellings have since been constructed and the POS has been laid out as approved apart from the area of the site associated with Appeal A. This appeal site is enclosed by construction hoarding and occupied by the former sales office for the housing.

3. The emerging Dartford Local Plan Pre-Submission publication document [2021] (ELP) has been submitted to the Secretary of State for examination. I understand that hearings have now taken place and Stage 2 has recently been completed. The Council has listed a range of emerging policies that it considers to be pertinent to the proposal. This includes ELP policy M9, concerning sustainable housing locations and ELP policy M14 with respect to Green and Blue infrastructure and Open Space provision. Paragraph 48 of the National Planning Policy Framework (the Framework) allows me to ascribed weight to policies in emerging plans dependent on the stage of preparation, the extent of unresolved objection and the degree of consistency with the Framework. Although material, these policies are given only limited weight due to the early stage of adoption of the ELP.

Main Issues

4. The main issues for Appeal A are:
 - Whether the proposed housing would be in a suitable location, with respect to local and national policies, and
 - The effect of the proposal on the quantity and quality of public open space in the area.
5. The relevant test for the purposes of appeal B is section 106A of the Town and Country Planning Act 1990. Under Section 106A(6), the grounds on which an obligation may be discharged or modified are limited. This provides that where an obligation no longer serves a useful purpose, an authority may discharge the obligation, or if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to modifications specified in the application, then it may be modified. The courts have established that in this context 'useful purpose' means useful planning purpose.
6. As such, the main issue for Appeal B is whether the obligation continues to serve a useful planning purpose and/or whether the obligation modified as proposed would serve that purpose equally well.

Reasons associated with Appeal A

Policy context

7. The Dartford Core Strategy [2011] (CS) establishes the Council's approach to the distribution of housing across the borough. CS policy CS1 seeks to focus development in three priority areas: Dartford Town Centre & Northern Gateway, Ebbsfleet to Stone and The Thames Waterfront. In terms of housing provision CS policy CS10 seeks to locate most new housing in the three priority areas. Further housing, up to 2,400, would be located on other sites to the north of the A2 and up to 200 to the south of the A2 within village boundaries. This spatial housing approach is consistent with the aims and objectives of the

- National Planning Policy Framework that seeks to locate new development in locations that can gain access to infrastructure and facilities.
8. In terms of windfall sites, paragraph 4 of CS policy CS10 identifies four considerations for suitable sites. These require such schemes to a) consider the sustainability of the site, b) whether any benefits would outweigh any disbenefits, c) capacity of local infrastructure and d) whether, if capacity is not available, whether additional capacity could be provided by the proposal. Parts (c) and (d) of the policy are not disputed between parties.
 9. Policy DP6 of the Dartford Development Plan [2017] (DDP) relates to sustainable residential locations. Section 2 of this policy is concerned with windfall sites, and this establishes criteria to assess the suitability of a site. The criteria require a site to a) be on 'brownfield land' with greenfield sites only being found to be acceptable if in a highly sustainable location and needed to meet a shortfall in housing supply. The criteria also require at b) for the site to be within easy walking distance of community facilities and at c) to include measures to reduce car use. The accompanying commentary identifies that sites should be within a walking distance of 400m and 800m, to access public transport and community facilities respectively, to be considered as sustainably located.
 10. ELP policy M9, would replace DDP policy DP6. This requires windfall development to meet three criteria including, at (a) to be located on brownfield land, unless meeting a five-year supply shortfall and (b) to be within easy walking distance of community facilities and public transport. As such, whilst affording limited weight to this emerging policy this does not demonstrate a clear change in the Council's approach to future windfall sites.
 11. CS Policy CS14, with respect to Green Space, seeks for the Council and its partners to deliver a multi-functional, high quality, varied and well-managed Green Grid. This requires new development to contribute towards the Green Grid with sites between 20ha and 2ha to provide at least 20% of the site as Green Space.

Previously Developed Land

12. It is disputed between main parties whether the site would consist of Previously Developed Land (PDL). The Framework describes PDL within its glossary as; "land which is or was occupied by a permanent structure, including the curtilage of the development land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: (*inter alia*) parks, recreation grounds and allotments."
13. Historically, the larger site consisted of a bowling green and bowls club at the top of the site, which has been retained and a sports field on the lower land. The previous Inspector noted that there was development on the upper section of the site with the remaining land being undeveloped. He did not conclude that the whole site was PDL. The former construction compound is currently enclosed by fencing and includes hardstanding. These features were clearly for a temporary purpose associated with the construction phase of development and should now be removed to facilitate the delivery of the POS. Accordingly, taking into consideration the former mixed and largely undeveloped character

of the site, I am unconvinced by the submitted evidence that the entire site, including the compound site, should be regarded as PDL.

14. Furthermore, even if the site was historically PDL, the implementation and apparent completion of the redevelopment scheme has established new land use purposes. This has resulted in the provision of both defined areas of development and zones of POS. The purpose for the compound has now been completed and it is now required to be removed by virtue of the S106 planning obligation. As such, the compound site should be removed and laid out as open space. This displaces the assertion that the site would be available for redevelopment due to any former status.

Issue 1 - Suitability of location

15. The Framework includes three objectives to sustainable development, namely economic, social and environmental. Not all development would need to demonstrate benefits in all objectives, but these are interdependent and mutually supportive components of sustainable development.
16. In economic terms, the proposal would deliver 6 dwellings. Being a small-scale scheme, this could be delivered relatively rapidly, quickly contributing to the supply of housing in the district. The homes would deliver an economic lift during construction and would slightly lift local spending by future occupiers, also the average housing income is in the 60-70th income percentile nationally, indicating the above average investment likely within the local area. Nonetheless, these gains would be modest.
17. Although not policy in itself, the distance parameters in the companion commentary to DDP policy DP6, establish a useful indication as to how the Council approaches matters of accessibility. The proposal would only be within 800 metres of some community facilities, with Greenhithe library and surgery being over 900 metres from the site. Furthermore, the nearest bus stop is around 630 metres from the site, in exceedance of the 400 metre threshold. Although these thresholds should not be applied in an overtly prescriptive manner, they indicate that the site is poorly connected to many local essential facilities and services.
18. Furthermore, the site is near the bottom of a relatively steep cul-de-sac road. This may deter future occupiers from leaving the site by foot and limiting access to a choice of modes of travel. This would not support a modal shift from car use as sought by the CS. For these reasons, I find that the site is not in an accessible location. This view is despite the comments made by the previous Inspector who found the site to be accessible following a balanced consideration and was made in a different policy context, prior to the adoption of the DDP. From a social standing, the proposal would provide family accommodation whose occupiers could support the range of community facilities within the area.
19. In terms of environmental benefits, the proposal would deliver housing that would complement the appearance of existing local development. Nonetheless, it would result in the loss of an area of land approved as POS, resulting in a loss of a resource for the local community. The bio-diversity benefits derived from the approved planting scheme could be secured by planning condition to secure an effective alternative had I been minded to allow the appeal.

20. Therefore, whilst including some economic, social and environmental benefits these would be limited and weigh only moderately in favour of the proposal. The overall conclusion of the outputs of the scheme demonstrate that it would not be highly sustainable, on this greenfield site, due to its limited accessibility and its effect on the provision of wholistic green infrastructure.
21. As the site is not PDL and is greenfield in designation, DDP policy DP6(2)(a) requires such windfall sites to only be acceptable if it is in a highly sustainable location and would address a 5-year housing land supply shortfall. As the site is not within a highly sustainable location and the Council has demonstrated that it has a five-year housing land supply⁴, the proposal would conflict with this policy.
22. Accordingly, the proposal would not be a suitable site for residential development and would conflict with CS policy CS10 and DDP policy DP6 (with respect to locational matters). Conversely, the proposal would not conflict with CS policy CS1 as this only seeks to focus development in certain areas and does not preclude development coming forward elsewhere within the district.

Issue 2 - The effect on POS provision

23. The approved outline scheme was subject to an Illustrative Masterplan and a Parameters Plan. These showed the quantity and distribution of POS in relation to development areas. The Landscape Masterplan, submitted with the Reserved Matters application accorded with the agreed Parameters Plan. It is therefore evident that the configuration of development and open areas were conceived with regard to good design practice and influenced by the topography of the site.
24. CS policy CS14 requires new development, on sites that are between 20ha and 2ha, to provide at least 20% of the site area to contribute to the Council's Green Grid Network. The approved Master Plan shows POS gathered in the middle of the site with some pockets of woodland found on the perimeter edge. It is apparent that the quantity of POS exceeds the policy requirement. However, the policy is drafted in a manner that indicates that a greater proportion may be appropriate in some circumstances, hence 'at least' 20%. The POS has largely been delivered on site as approved. This provides open areas that achieve a range of environmental objectives including providing gains for biodiversity, a buffer space to adjacent development and for public amenity use.
25. It is disputed between main parties whether the quantity of POS, in exceeding the 20% threshold, is surplus to requirements and would not make an efficient use of land. Nonetheless, the quantity and distribution of POS should primarily be a consideration at the outline application stage, during the design of its Master Plan. As the scheme has now been largely delivered, the area of development and open areas have been established through the agreed principles of the Master Plan and form a coherent single scheme. Furthermore, whilst POS need not consist of flat and featureless areas, it is important to ensure that different types of POS are available including both those that have amenity value and those that are less accessible, are quiet and secluded. These types would all contribute to the Council's green grid requirements of CS policy CS14.

⁴ Council's Housing Land Supply note December 2022

26. The areas of POS, in the centre of the larger site, create two areas either side of the highway for landscaping and recreational purposes. These areas are generally on gradually sloping land and therefore provide useful amenity value to residents. Outside the central areas of open space, the undeveloped land is more dispersed. Much of these periphery areas are occupied by dense woodland that would primarily offer ecological value rather than public access. Therefore, whilst the POS on the larger site has a multi-functional use, and contributes to the green grid, the inclusion of accessible land within the centre of the site is also important and provides residents with a coherent place for recreation.
27. The proposed exclusion of the appeal site from the area of land approved as POS would remove an area of relatively flat land in a central and accessible part of the site. Accordingly, the proposed scheme would substantially reduce the on-site provision of accessible POS. Its exclusion would also erode the sense of openness conveyed by the approved interconnected spaces that define the central undeveloped land within the larger site. The appeal site, in conjunction with the other surrounding areas of landscaped grassland, provide open areas that are readily accessible by the public. These are distinctly separate to the development blocks and provide open space in a coordinated design setting.
28. The removal of the site as POS would exclude an area that would otherwise be useful for recreation purposes, being relatively flat. Its exclusion would erode the quality of the remaining surrounding areas of open space by compartmentalising the space. This would also prevent the delivery of the approved landscape plan that includes planting and pathways that would connect through the site and enable it to successfully contribute to the multi-purpose role of the POS.
29. Accordingly, the proposed loss of a parcel of POS would erode the overall quality of the surrounding delivered POS. The proposed scheme would result in the overall delivery of less successful, more piecemeal segments of POS and prevent the delivery of the Master Plan. The proposal would therefore conflict with CS policy CS14 and DDP policies DP6 (with regard to open space matters) and DP24. These seek, *inter alia*, for development to contribute toward the provision of a multi-functional, high quality, varied Green Grid and to resist the loss of public amenity space that has qualitative and quantitative value.

Reasons associated with Appeal B

Whether the obligation serves a useful planning purpose

30. A S106 Legal Agreement, in the form of a Unilateral Undertaking, is associated with the approved outline application. This made provision for 30% affordable housing, contributions towards education provision and for adult social services, youth and community services; a Strategic Transport Infrastructure Programme (STIP), for library facilities, and for the provision of POS.
31. During consideration of the outline application, in terms of education provision, the County Council provided a detailed statement and a Commissioning Plan for Education Provision 2013-2018. Also, the STIP was supported by evidence from Kent County Council and Gravesham Council to assemble funding for a joint venture and was found to be in accordance with justification within the CS.

32. The Agreement also provided funding for the bowls club scheme. This scheme provided a contribution towards new changing facilities for the club, a storage building and for the transfer of the land to the club.
33. The evidence demonstrated that the contributions and provisions listed above met the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I see no reason to disagree with the finding of the previous Inspector on these matters.
34. The Open Space, and its associated terms including the 'Open Space Scheme', are defined by paragraphs 1.135-1.138 of the S106. Paragraph 13, of schedule 2, Part 1, requires the owners to provide the POS in accordance with the Reserved Matters. Paragraphs 14-17 relate to the payment of the agreed maintenance contribution, to not to occupy and dwelling until the 'Open Space Scheme' has been approved by the Council, and to practically complete the open space prior to the occupation of no more than 50% of the dwellings. Paragraph 18 requires the owners to provide public access to the open space in perpetuity. The POS is shown on the illustrative Master Plan appended to the Agreement.
35. The distribution and provision of POS, was deemed by the previous Inspector to be acceptable in planning terms, directly related to the development and fairly and reasonably related to the scheme in scale and kind. The area of POS meets the policy requirement for at least 20% to be provided on site for this purpose. The distribution and overall quantity of open space throughout the larger site responds well to its characteristics in both quantitative and qualitative terms created a unified design solution for the site. It follows that the quantity, quality and distribution of POS shown within the approved Master Plan served a useful and proper purpose.

Whether the obligation's purpose would be served equally well if the amount of POS were reduced as proposed

36. A Deed of Variation has already been given for the original S106 Agreement. This sought to make modifications to the Bowls Club Scheme and was agreed in 2018. The Appellant does not seek to make any further modification to this part of the obligation.
37. The Appellant has set out at Annex A, in their Statement of Case, the modifications sought through this S106A application. In summary, these seek to excise the land identified on drawing no PH-001 (showing the site of the 6 proposed dwellings) from the open space obligations outlined at paragraphs 13-18 of Schedule 2, part 1, of the obligation.
38. The proposed modifications would alter paragraph 1.1.35 of the S106, definitions, to include reference to the site plan of appeal A "PH-001" in excluding it from the land defined as POS. This site is also proposed to be removed from the subsequent definitions "Open Space Land" (paragraph 1.1.36), and from the "Open Space Scheme" (paragraph 1.1.37).
39. DDP policy DP24 states that the development of non-designated public amenity space will only be permitted where a convincing case for the loss is made, in both qualitative and quantitative terms. A proposed removal of the site from the area of POS would result in a material reduction of outdoor recreation space available for the community's use. Whilst the area of POS is greater than the

minimum sought by CS policy CS14, the requirement seeks at least 20% of the site for open space and is therefore not capped as a maximum.

40. The derived layout of the larger site provides a good quality useable area of POS in its centre, supplemented by perimeter pockets of land principally occupied by woodland areas. Given the topography of the larger site, the area proposed to be excluded from the POS provision represents an important and integral part of the most useful on-site POS. As such, the retention of this parcel of POS would ensure that the site continues to serve a useful purpose for the larger site and functions well, on a qualitative basis. Therefore, the useful purpose of the modified obligation would be significantly less than that provided for in the original agreement if the area of this site were excluded.
41. I conclude therefore that the obligation continues to serve a useful planning purpose and that it would fail to serve that purpose equally well if subject to the modifications proposed. As such, the proposed modification would conflict with CS policy CS14 and DDP policies DP6 and DP24 for the above reasons.

Other Matters (Appeal A)

42. The proposal would deliver housing of an appropriate density that would be of good design, replicating the general scale and form of existing housing in the area. Furthermore, the dwellings would meet the Nationally Described Space Standards for internal space requirements and would have adequate garden sizes. The scheme would also meet parking standards and would not raise issues with respect to highway safety. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
43. The Appellant has identified an appeal decision⁵ at Brentfield Road. This found that the site was not PDL but was in a sustainable location being within 800 metres of community services and within 400 metres of a bus stop. As such, that site's location was substantially different to the appeal site by being better located for access to facilities.

Planning balance and conclusion of both Appeals A and B

44. The scheme would provide homes that could be delivered rapidly and help boost the supply of housing as sought by the Framework. The Framework recognises that small and medium sized sites can make an important contribution towards meeting the housing requirement in an area. It requires Councils to support the delivery of windfall sites, giving great weight to the benefits of using suitable sites within existing settlements for homes.
45. However, this proposal would not be located in a highly sustainable location and would not be a suitable site for a windfall development. Furthermore, it would result in the loss of a site approved as POS by virtue of a planning obligation and erode the holistic design of the approved outline scheme in conflict with the Master Plan. As such, the completed housing estate on the larger site would not, as a result, function as well having a more segregated green infrastructure distribution than approved. As a result, the benefits of the proposal do not outweigh its disbenefits and the proposal associated with appeal A does not succeed.

⁵ Planning Appeal Reference: APP/T2215/W/17/3189894

46. Accordingly, the loss of the approved POS would be in conflict with the S106 that includes the requirement for the delivery of POS across the larger site. As the provision of POS on the site of appeal A remains a useful purpose, appeal B also does not succeed.

47. For the above reasons, both appeals A and B are dismissed.

B Plenty

INSPECTOR