



Appeal Decision

Site visit made on 17 April 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal Ref: APP/X2220/W/23/3328101

Land Adjoining 1 Malvern Road, Dover, CT17 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr David Andrew against the decision of Dover District Council.
 - The application Ref is 23/00145.
 - The development proposed is erection of 52 no. self-contained flats, vehicle access and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with only the matter of landscaping reserved for future determination.
3. The Draft Dover District Local Plan is being examined. Following the Inspectors' initial advisory letter, consultation on the Main Modifications commenced on 11 April 2024. Whilst that process is not complete and the final report has not been received, there is a high probability that policies will eventually be adopted as originally worded or as proposed to be modified. Therefore, having regard to paragraph 48 of the National Planning Policy Framework, they can generally be given a considerable amount of weight.

Main Issues

4. These are:
 - The effect of the proposed development on the character and appearance of the surrounding area;
 - The effect on the living conditions of adjoining occupiers in Folkestone Road and at 1 Malvern Road with particular reference to privacy and visual impact;
 - Whether living conditions for future occupiers of the flats would be satisfactory having regard to the availability of private amenity space and the outlook from the basement flats; and
 - Whether the potential implications for ecology have been properly considered.

Reasons

Character and appearance

5. The appeal site is unused but previously developed land within the urban area. It comprises concrete hardstandings, storage containers and piles of rubble as well as some ruderal vegetation, scrub and trees. At the time of my visit there was evidence of fly tipping. There is a significant fall of about 4m across the land from south to north along Malvern Road.
6. Indeed, the steep slope up from Folkestone Road is its overriding feature. The street also forms part of a network of roads containing modest terraced housing of two or three stories. These either broadly follow the contours or tumble down the hillside. The appeal site is more closely associated with the pattern and type of development in Malvern Road than the grander properties that flank the busier Folkestone Road.
7. The proposed development would be on seven floors including a basement with a similar footprint to a permitted scheme for 17 flats. It has been reduced in scale compared to a previous refusal and its overall height would match the top of the ridge of the adjoining 1 Malvern Road. The brick element of the front elevation would align with its eaves. To reflect the topography, different materials would be used to articulate the building stepping down the slope. The top floor would be recessed and the windows would have a vertical emphasis to reflect the proportions of the nearby terraces.
8. However, none of these design elements would mask the fact that the physical form of the building pays no heed to the sharp change in levels across the site. The gradient of Malvern Road is such a strong characteristic that it should be respected but the proposed built form would ignore it. As a result, the proposal would be out of place and discordant. Furthermore, the blank northern side elevation would tower over the buildings in Folkestone Road and would be overly dominant. The scale and bulk of the proposed building would therefore be excessive and this would be accentuated by the overhanging upper floors. Overall, the proposal would not fit comfortably into its location but rather would be incongruous.
9. As part of the objective of achieving well-designed and beautiful places, the Framework does not seek to prevent appropriate innovation or change. There is therefore no objection per se to a modern insertion into this dense area and other apartment blocks adjacent to terraced housing have been referred to. However, as well as the fundamental objection to the size and form of the proposal, the use of zinc cladding for a large proportion of the façade would introduce a material that is not found in the locality. This further failure to reflect its surroundings would add to the proposal's alien appearance.
10. In summary on this issue, the proposed development would harm the character and appearance of the surrounding area. Policy PM1 of the Draft Local Plan seeks to foster a positive sense of place by responding, amongst other things, to the context of the area but the proposal would fail in this respect.

Living conditions of adjoining occupiers

11. The buildings in Folkestone Road would be a minimum of about 18m from the side elevation of the proposal. Whilst this separation distance would be similar to the permitted development the proposed building would be higher. It would

occupy the entire width of the sites at Nos 111-115 and 119. Because of its height in relation to the rear facing windows, the proposal would be unduly overbearing in the outlook from them and from the external areas. The effect would be mitigated to an extent by the large tree to the rear of No 119 but the scope for meaningful landscaping within the appeal site would be limited. Consequently, the visual impact on the living environment of adjoining occupiers, especially those at Nos 111-115, would be unacceptable.

12. The balconies would be orientated to the front and rear rather than towards the properties on either side. Screening to the end elevations could be incorporated to minimise the likelihood of overlooking and so protect privacy for those in Folkestone Road and at 1 Malvern Road.
13. There would be no adverse impacts for neighbouring properties in terms of daylight and sunlight. The proposal also avoids windows in the side elevation facing Folkestone Road which were accepted by the 2018 permission.
14. However, the living conditions of the adjoining occupiers in Folkestone Road would be harmed. There would be an unacceptable sense of enclosure contrary to emerging Policy PM2.

Living conditions of future occupiers

15. The windows of the basement flats would face towards, and be close to, a retaining wall that would follow the incline. However, the areas of glazing would be large and the rooms would receive adequate daylight. The small courtyards would provide private and enclosed spaces and the outlook from these flats would not be so curtailed as to be unsatisfactory.
16. Twenty-two of the units would have their own balcony or terrace and an area of communal amenity space could be provided to the rear. There are no specific standards for external areas for flatted accommodation in purpose-built blocks. There are public areas of open space in the vicinity. Given the nature of the scheme, the provision of outdoor areas has been maximised and living conditions for occupiers without their own external space would be adequate.

Ecology

17. The appellant's Ecological Impact Assessment concludes that great crested newts and reptiles are likely to be absent from the site due to the lack of suitable breeding ponds and of habitat connectivity. This is disputed by the Council who refer to previous biological records, the surrounding garden habitats and the suitability of the site for reptiles. Whilst no survey has been undertaken, the appellant's evidence follows an inspection and reptiles have been noted 140m from the site rather than immediately adjacent to it. In these circumstances, the appellant's position is to be preferred and a condition could therefore be imposed requiring a biodiversity method statement.

Other Matters

18. A unilateral undertaking has been submitted. This includes contributions towards infrastructure as expected by Core Strategy Policy CP6. As these are necessary to make the development acceptable in planning terms, they should be taken into account. Whilst required to comply with local policy and to take account of the extra residents, there would also be modest benefits to others due to the expansion of the various services that would ensue.

19. Other points are made by objectors in addition to those covered already. There is no parking objection from the Council and this is a central location where provision can be minimised. There is no evidence that the site would generate more noise than that which emanates from other residential units. The population would increase but there is no evidence that local services would be swamped as a consequence.

Final balancing

20. The only development plan policy mentioned in the reasons for refusal is Policy CP6 which would be complied with. No conflict with other policies is alleged and therefore the proposal would accord with the development plan. That said, no policies have been referred to that deal with design or amenity.
21. Of those referred to in the officer's report, Policy DM1 is not relevant as it seeks to prevent most development outside settlement boundaries. Policy DM11 is to manage travel demand within urban areas and to generally limit it outside them. Policy DM5 has been overtaken by evidence prepared for the Draft Local Plan that it is not viable to provide affordable housing within the urban area of Dover. The parking guidance referred to in Policy DM13 dates from 2008. Whilst provision should be a design led process, this guidance and Table 1.1 are informative and so the policy is also outdated. All in all, the development plan policies that are most important for determining the appeal are out-of-date and so paragraph 11 d) of the Framework is relevant. As the development plan is not up-to-date, paragraph 11 c) does not apply.
22. The Framework gives support to the development of brownfield land within settlements. The Government's objective is to significantly boost the supply of homes and the proposal would make a significant contribution in this respect. However, there is no evidence that either the past delivery or future supply of housing in the District is below the expectations of national policy and guidance. The site is well located for the town centre, railway station and bus routes. Parking would be limited to electric vehicles only and a car club is also proposed in a positive response to the challenge of climate change.
23. However, the proposal would not be sympathetic to local character. Indeed, it would be entirely visually disconnected from the immediate area due to its size and configuration. According to the Framework, the creation of high-quality places is fundamental to what the planning and development process should achieve. That would not be the case. Furthermore, because of the overwhelming visual impact on the outlook from properties in Folkestone Road, the proposed development would not lead to a high standard of amenity for existing users. Also on the debit side is the conflict with the provisions of emerging policies which are likely to be adopted in due course.
24. The principle of new housing here undeniably has support from local and national policies. Indeed, the site is ripe for development and previous schemes going back over many years have not materialised. Several aspects of the proposal are acceptable. However, the objections to it are substantial ones especially as the benefits might also, on the face of it, be realised by an alternative. There is no indication that this is the only option for the delivery of residential units on the land. At the end of the day this is a case where the importance of good design and amenity trumps the provision of 52 flats.

25. Therefore, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

26. The proposal would accord with the development plan although it would conflict with relevant policies in the emerging plan. Having regard to the policies in the Framework relating to design, the objections to the proposal concerning the character and appearance of the area and the living conditions of adjoining residents outweigh the conformity with the development plan. Therefore, material considerations indicate that this decision should not follow it and that, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR