



Appeal Decision

Site visit made on 3 June 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal Ref: APP/L2250/W/23/3334035

High Knocke Farm, Dymchurch Road, Dymchurch, Romney Marsh TN29 0PU

- 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 William Moss of Redbridge Estates Ltd against the decision of Folkestone and Hythe District Council.
 - The application Ref is 21/2525/FH.
 - The development proposed is a residential development of up to 132 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 132 dwellings at High Knocke Farm, Dymchurch Road, Dymchurch, Romney Marsh TN29 0PU in accordance with the terms of the application, Ref 21/2525/FH, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The proposal is for outline planning permission, and the application form makes clear that approval was also sought at this stage for access of the development but not for its scale, layout, appearance and landscaping. During the course of the application, the access element was amended to be considered as a reserved matter. I have considered the appeal on this basis and have therefore altered the description of development in the banner heading and my formal decision accordingly. Drawings have been submitted showing the proposed access along with a layout, which I have treated as being for illustrative purposes.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site is a primarily undeveloped open area of grazing land. The Romney Hythe and Dymchurch Light Railway (the RHDR) and Dymchurch Road (the A259) are immediately beyond the front and rear boundaries of the site. The site is between the residential areas comprising the Marshlands and Seabourne Way area and High Knocke Estate. Development within these areas extends away from the A259 towards the RHDR, which typically truncates the urban area of Dymchurch separating it from the flat and open farmland beyond. Dymchurch is identified as one of the Rural Centres, which are noted

- as being larger and better served rural settlements, supported by a range of everyday facilities and services.
5. The site is within the Romney Marshes National Character Area and the Romney Marsh Local Landscape Area. The area is typified by linear settlements linked by the A259 and interspersed with pockets of farmland that are primarily flat and open. The development of the urban areas is part of the character of the coastal area of Romney Marsh, although several uninterrupted gaps of open land remain.
 6. The agricultural use of the site results in it having an open and largely undeveloped appearance. The raised level of the A259 beyond a wide drainage channel, allows for distant views across the site to the open countryside beyond the RHDR. However, the considerable residential development of Dymchurch, including the High Knocke Estate, alongside the bus stops, shelters and streetlights of the A259, limits the site's contribution to the character of the area and wider landscape.
 7. Despite its proximity to the built-up areas of Dymchurch, there is little public access within the site other than a short section of footpath adjacent to Seabourne Way. There is a limited distance between Marshlands and High Knocke Estate. Consequently, and given the presence of these urban areas, the site does not comprise a significant break in built form amounting to an important area of the undeveloped rural landscape.
 8. The proposal would introduce a considerable amount of built form across the site, filling the gap in development. While the proposal would result in a significant change in the character of the site, the visual effect on the wider landscape would be limited given the context of the site adjacent to the densely packed development forming the urban area of Dymchurch. The flat topography and openness of the area would make the development visible from public vantage points, including the neighbouring residential areas, the A259 and from a distance at St Mary's Road. Nevertheless, the proposal would be viewed against the backdrop of the existing and considerable built form, limiting the visual intrusion on the wider landscape.
 9. Although the submitted layout is indicative and details including the appearance, layout and scale of the development would be addressed by the reserved matter stage, the scheme proposes the construction of up to 132 dwellings. However, the boundaries of the site would contain the development within the context of the urban extent of Dymchurch, which is largely confined by the RHDR, the High Knocke Estate and the Marshlands area. Consequently, the proposal would not result in an incursion into open countryside beyond these defining features and would not be disproportionate in scale given the overall size of the settlement of Dymchurch.
 10. I conclude that the proposal would have an acceptable effect on the character and appearance of the area. The development therefore accords with Policies SS1, SS3 and CSD4 of the Core Strategy Review (2022) (CSR), policies HB1 and NE3 of the Places and Policies Local Plan 2020 and the Framework, which collectively seek to protect the landscape character and require proposals to be of a high quality, make a positive contribution to its surroundings and be designed to directly contribute to the sense of place.

Other Matters

11. Policies SS1 and SS3 of the CSR seek to focus development on the most sustainable towns and villages. Although outside of the defined settlement boundary, the site is in an accessible location with access to the public transport network and future occupants would have the ability to walk and cycle to local facilities and services. In addition, the substantive evidence before me indicates that the traffic generated would not exceed the capacity of the highway network. I am therefore satisfied that there would be no significant adverse traffic impacts associated with the development and no unacceptable risk to road safety.
12. The proposal includes a planning obligation, which would make a contribution towards healthcare and education to mitigate the impact of the development on those services.
13. The site has potential for archaeological remains and land contamination. Conditions are included to ensure any archaeological remains are recorded and that any contamination is adequately dealt with. In addition, the impact of the proposal on wildlife would be mitigated in accordance with an ecology strategy, which would be secured by a condition.
14. The proposal would result in the loss of agricultural land. The land is classified as a mixture of Grade 3 land of good to moderate quality and urban land. Consequently, the proposal would not result in the loss of the best and most versatile agricultural land as required by the Framework.
15. The proposal is in outline form with other matters such as layout and scale being reserved. There is capacity within the site that satisfies me that the proposal could be developed without harming the living conditions of occupants of neighbouring properties with regard to issues including overshadowing.
16. The application was accompanied by a Flood Risk Assessment. The document outlines proposals for measures that would control surface water run-off and result in no increased risk of flooding. I am therefore satisfied that an appropriate surface water strategy can be delivered and secured through conditions.

Planning Obligation

17. The completed section 106 agreement contains a number of obligations. It secures the payment of financial contributions in relation to education, healthcare, open space and play equipment. In addition, the obligation commits to providing a total of 29 affordable homes, no less than 5% of dwellings for self or custom build and the provision of a pedestrian crossing scheme.
18. These contributions are necessary and meet the policy tests set out in the Framework and the statutory test set out in regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The pooling restrictions of regulation 124 of the CIL regulations are also met. I have therefore taken these obligations into account in my decision.

Conditions

19. Suggested planning conditions have been provided by the Council. I have considered the conditions having regard to the Framework and advice contained in the Planning Practice Guidance. I have adjusted the wording of some conditions to improve precision.
20. Given the outline nature of the application, conditions are necessary relating to commencement and the submission of the reserved matters. This is to comply with the requirements of planning legislation. In the interests of certainty, I have added conditions to control the maximum number of dwellings and requiring that the development is carried out in accordance with the approved plan.
21. A condition in respect of land contamination is necessary given the proposed sensitive use for human occupation. A condition requiring the submission of construction management arrangements is required to safeguard the living conditions of local residents and to prevent adverse impacts on the local road network during the construction phase.
22. Drainage and flood mitigation conditions are required to ensure the development does not increase flood risk on or off site. A condition is also required to ensure that any archaeological remains are recorded for the reasons set out above.
23. As the conditions relating to contamination, construction management, drainage, flood mitigation and archaeology would affect the early stages of construction, they need to be discharged prior to the commencement of the development.
24. Conditions are included to ensure that the development meets sufficient water efficiency and carbon emissions standards in the interests of securing a sustainable form of development. I have not imposed the electric vehicle charging point condition because this provision is a requirement of the Building Regulations and the condition is therefore unnecessary.
25. A condition requiring a noise impact assessment to be carried out is required to ensure that suitable living conditions would be provided for future occupants. The quality of the environment would be protected by conditions in respect of external materials, arboricultural matters, the design parameters of self- and custom-build housing and an ecological strategy.
26. I have amended the suggested condition requiring details of roads, visibility, parking including cycle parking, turning, highway drainage, gradients, and footways in the interests of highway safety to ensure that it relates to the relevant reserved matter.
27. A condition requiring connection to the public right of way is included, in order to provide a suitable pedestrian link that would help to promote sustainable modes of transport.
28. A condition requiring details of the location and type of affordable housing is necessary in accordance with the aims of the CS.

Conclusion

29. The proposal would accord with the development plan as a whole. Material considerations do not indicate that a decision should be made otherwise. For the reasons given above the appeal should be allowed.

J Pearce

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be limited to a maximum of 132 dwellings.
- 2) Approval of details of the layout, scale, landscaping, access and appearance (hereafter called "the Reserved Matters") shall be obtained from the local planning authority in writing before development commences and the development shall be carried out as approved.
- 3) Application(s) 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. The development hereby permitted 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.
- 4) The development hereby permitted shall be carried out in accordance with drawing number 19.127.01 Rev A.
- 5) (A) No development shall take place until a desk top study has been undertaken and submitted to and approved in writing by the local planning authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.

(B) If the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority prior to development taking place. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

- (i) A survey of the extent, scale and nature of contamination;
- (ii) An assessment of the potential risks to:
 - Human health;
 - Property (existing or proposed) including buildings; crops, livestock, pets, woodland and service lines and pipes;
 - Adjoining land;
 - Ground waters and surface waters;
 - Ecological systems;
 - Archaeological sites and ancient monuments; and
- (iii) An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

(C) If investigation and risk assessment shows that remediation is necessary, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the local planning authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

(D) No development shall take place until a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

(E) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority, details of how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the local planning authority.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction; and
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works.

7) Development shall not commence in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment prepared by Herrington dated October 2021 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

8) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved in writing by the local planning authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as-built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

9) No phase of the development hereby permitted shall commence until such time as a scheme to ensure the development is flood resilient has been submitted to, and approved in writing by, the local planning authority. The scheme will take account of not only any updated tidal modelling but also the groundwater assessment and surface water drainage strategy to be undertaken as recommended in the submitted Flood Risk Assessment by Herrington Consulting Limited, October 2021.

The minimum finished floor levels for living accommodation should meet the requirements of paragraph 7.2 of the Flood Risk Assessment for the Proposed Development. The minimum level for living accommodation should be 2.84mAOD and the minimum level for sleeping accommodation should be 3.14mAOD.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/ phasing arrangements.

- 10) No development shall take place until a Written Scheme of Investigation detailing archaeological field evaluation works, safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording and a timetable has been submitted to and approved in writing by the local planning authority. The approved scheme of investigation shall be carried out in accordance with the approved timetable.
- 11) No development above ground level shall take place until details to demonstrate that the dwellings hereby permitted shall use no more than 110 litres of water per person per day have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation.
- 12) No development above ground level shall take place until details demonstrating the development as a whole will reduce carbon emissions by a minimum of 10 percent above the Target Emission Rate, as defined in the Building Regulation for England approved document L1A: Conservation of Fuel and Power in Dwellings, (or any document which supersedes or updates that document) have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented prior to occupation and thereafter retained and maintained in perpetuity.
- 13) The reserved matters application(s) to be submitted pursuant to condition 1 above shall include details of a suitable link to be provided from the development onto public right of way HM220. Details shall also be submitted showing how the link to the footpath shall be sign posted throughout the development.
- 14) The reserved matters application(s) to be submitted pursuant to condition 1 above shall include a noise impact assessment highlighting any potential noise problems (namely from the Dymchurch and Hythe Light Railway) and including proposed suitable mitigation and design advice for the building envelope in order to achieve appropriate ambient noise levels inside habitable rooms and outdoor gardens.

This assessment must be carried out by a competent person registered with the Institution of Acoustics or similar and in accordance with the National Planning Policy Framework; the Noise Policy Statement For England; the WHO Guidelines; BS 8233: 2014; and ProPG: Planning & Noise – May 2017.
- 15) No development above ground level shall take place until samples of the materials and details of the windows and doors to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include a schedule and plan indicating the materials to be used for each plot within the phase, or sub-phase. The development shall be carried out in accordance with the approved details.
- 16) The reserved matters application(s) to be submitted pursuant to condition 1 above shall include details of the location of the affordable units, the unit type mix and self-build and custom housebuilding plots. Design parameters for the self-build/custom housebuilding plots shall also be submitted to and approved

in writing by the local planning authority as part of the Design and Access Statement.

- 17) The reserved matters application(s) to be submitted pursuant to condition 1 above shall include details of vehicular and cycle parking, including visitor parking, and turning facilities. The provision of vehicular and cycle parking and turning facilities as approved for each reserved matter and in any phase or sub-phase of the development hereby approved, shall be implemented, in full, prior to the first occupation of the units they serve. These facilities shall be kept available for parking and turning purposes in connection with the units they serve at all times thereafter.
- 18) The reserved matters application(s) to be submitted pursuant to condition 1 above shall include details of the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture. The provision of these as approved for each phase or sub-phase of the development hereby approved, shall be implemented, in full, prior to the first occupation of the units they serve and retained as such thereafter.
- 19) With the first reserved matters application, an Ecological Design Strategy (EDS) and associated Landscape and Ecology Management Plan (LEMP) will be submitted to, and approved in writing by, the local planning authority. The EDS/LEMP shall include the following:
 - a) Purpose and conservation objectives;
 - b) Review of site potential and constraints;
 - c) Detailed design(s) and methodology to achieve stated objectives;
 - d) Extent and location/area of proposed works on appropriate scale maps and plans;
 - e) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - f) Description and evaluation of features to be managed;
 - g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period), and;
 - h) Details of those responsible for future management.

The EDS/LEMP will be updated with all subsequent reserved matters application and be implemented in accordance with the approved details.

- 20) The details submitted pursuant to Condition 1 shall include an Arboricultural Impact Assessment and Tree Protection Plan. This shall take account of the proposed layout and provide a schedule of arboricultural site monitoring for the duration of the development until completion. The development shall thereafter be implemented in accordance with the approved details.

End of Schedule