



Appeal Decision

Hearing held on 14 August 2024

Site visit made on 14 August 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2024

Appeal Ref: APP/W0910/W/24/3341921

Combe House, Central Drive, Walney, Barrow-in-Furness, Cumbria LA14 3HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mullberry Homes Ltd against the decision of Westmorland and Furness Council.
 - The application is Ref B07/2022/0592.
 - The development proposed is 17 no. dwellings, with extensive landscaping, biodiversity enhancements and associated works.
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Decision

1. The appeal is allowed, and planning permission is granted for 17 no. dwellings, with extensive landscaping, biodiversity enhancements and associated works, at Combe House, Central Drive, Walney, Barrow-in-Furness, Cumbria LA14 3HY, in accordance with application Ref B07/2022/0592, dated 8 August 2022, and the submitted details and the schedule of conditions appended to this formal decision.

Procedural Matters

2. The postcode on the application form differs from that stated above. However, it was confirmed at the hearing that the postcode stated on this formal decision is accurate.
3. A Planning Obligation for affordable housing contributions was submitted prior to the hearing. This was not requested by the Council at the application stage, nor did it form a reason for refusing permission. Clarification was sought about this matter prior to the hearing, and the appellant submitted a CIL Regulations conformity statement. This matter was discussed at the hearing.
4. The Council requested an additional period, following the hearing, to finalise the legal agreement. However, it was subsequently stated that the Council's Constitution does not enable officers to exercise delegated power for planning applications refused by Planning Committee. In consultation with the Council, the appellant submitted a legal agreement in the form of a unilateral undertaking. I will consider this later in the decision.
5. The Council has raised concerns about inconsistencies in drawings submitted with the proposal. This matter will also be addressed in due course.

Main Issues

6. The main issues in this case are whether the proposal would:

- Provide satisfactory living conditions for future occupants, having regard to outlook and communal outside space;
- Provide suitable and safe parking for future occupants and the effect of the proposal on highway safety; and
- be acceptable in respect of drainage, green infrastructure and on-site biodiversity having regard for development plan policies.

Reasons

Living Conditions

7. The appeal property is a derelict care home that covers most of a sizeable plot. It is next to a local centre which currently includes a medical centre, pharmacy and play nursery. The site fronts a road that provides access to Barrow town centre, and which is predominantly lined with residential properties.
8. The proposal would replace the derelict building with seventeen family sized dwellings. Seven detached dwellings would front Central Drive. The remaining dwellings, comprising short terraces and semi-detached properties, would be arranged around an internal courtyard.
9. The Council asserts that this courtyard would have a stridently engineered appearance. A significant section of the courtyard would comprise hard standing, including the internal access road, vehicle turning areas and parking bays for six of the proposed dwellings (Plot 10 – 15). However, there would be an attenuation pond at the centre of this layout which would also cover a significant section of the site.
10. The submitted plans show the pond would be surrounded by wildflower grass, and there would be additional space at its southern tip for additional vegetation. This landscaping would considerably soften the appearance of the engineered structure such that this feature would contribute to a sense of nature at the core of the development. This relatively green feature would also provide a pleasant visual break between the parking bays in this part of the site.
11. There would be space at the front of Plots 8 – 17 and at the rear boundary of the wider development for turf and shrubs. This amount of landscaping at the front of these plots would generally reflect the extent of green features that front existing dwellings on Central Drive. Moreover, with the soft landscaping outlined, the proposed parking bays, in this part of the site, would not only be divided into two relatively small areas by the pond, but they would also be significantly edged by green features. As such, the internal layout of the site would comprise a good balance of soft and hard landscaping that in turn would provide an attractive outlook for future residents.
12. It is also contended that this courtyard parking arrangement would be more in keeping with commercial development. While this may be an uncommon arrangement for the type of dwellings proposed in this case, the parking would be part of a housing development accessed by a dedicated road, and therefore would clearly not be commercial in appearance. In any event, having regard to

appearance and how this may impact on future users' living conditions for the reasons outlined above, the layout in this case would not appear overbearing nor would it be unattractive.

13. The Council prefers parking to be located at the side of properties, and it is asserted that the parking arrangement for Plots 10 -15, and 1,2 and 17 could potentially cause conflict between future residents of these properties. However, I find nothing before me requiring parking to be at the side of dwellings or that precludes parking provision outside property curtilages.
14. Indeed, parking at the front of the proposed dwellings would be generally reflective of parking at existing properties opposite the site, where vehicles are parked, off road and at the front of dwellings. In any event, while the parking bays would not be within the curtilage of the new dwellings, they would only be a few metres from the respective properties. As such, this on-site parking provision would be conveniently located for future users and would not provide an outlook considerably different to that which is currently experienced by existing residents in this area.
15. It was agreed by the main parties, at the hearing, that the parking bays could be marked such that it would be clear to future users which space belongs to which property. Moreover, this is a matter which could be secured by condition. This would provide certainty for future residents and visitors. In turn this would minimise the potential for conflict to arise between future users of the site. For these reasons, I find that this parking arrangement would not lead to unacceptable living conditions in this case.
16. The Council raised concerns about the size of the private gardens for the proposed dwellings. This matter did not form part of the Council's reasons for refusing permission. This aside, each proposed dwelling would have a private garden. The proposed gardens would range in size, from small to modest but these would be of a similar size to the gardens of existing dwellings in this area. Also, being relatively regular in shape, these proposed gardens would be a practical shape such that future occupants could sit, hang washing and there would be space for children to play safely. As such, these would be useable and functional outdoor spaces and would contribute to the quality of future occupants' living conditions.
17. It is suggested that the proposed trees specified in this scheme would be unsuitable. However, the Landscape Plan shows trees at well-spaced intervals around the site. It also specifies native species of a relatively modest size. At this size, the green features would add visual interest without harmfully conflicting with the activities of future residents.
18. In summary, and considering the scheme as a whole, there would be space for green features along the majority of the site's boundaries. These green features, in combination with private rear gardens and the additional green space at the front of all dwellings would ensure that the site is not visually dominated by hardstanding and built forms. The evidence advanced shows the proposed coverage and density of development would not be dissimilar to existing surrounding development. Moreover, with the combination of features outlined, the development proposed in this case would not result in a harmful intensification of the site. Indeed, with this reasonable balance of built forms and vegetation, this would appear a well-designed scheme that would not only

be an efficient use of the site but would offer attractive living conditions for its future occupants.

19. In light of the above I find that the proposal would provide satisfactory living conditions for future occupants, having regard to outlook and communal outside space. In this respect, the proposal would accord with Policies DS2, DS5 and H7 of the Barrow Borough Local Plan (Local Plan). These Policies collectively state that new development must be of a high quality design, and require proposals, amongst other matters, to create clearly distinguishable, well defined and designed public and private spaces that are attractive, accessible, coherent and safe and protect the amenity of occupants or users and are acceptable in terms of outlook.
20. The proposal would also accord with provisions of the National Planning Policy Framework (the Framework) which seek well-designed places and a high standard of amenity for existing and future users.

Parking and Highways

21. The Framework states at Paragraph 115 that development should only be prevented or refused on highways grounds if there is an unacceptable impact on highway safety.

Amount of Parking

22. Policy I6 of the Local Plan requires evidence to demonstrate that adequate parking provision has been provided in accordance with the parking standards in the Cumbria Development Design Guide.
23. This Guide advises, in respect of parking numbers, that applications are determined in accordance with the Development Plan and material considerations, which include, amongst other matters, policy set out in the Framework and site-specific circumstances. It goes on to advise, developments may prove acceptable without offering parking levels indicated in the Guide.
24. In respect of local circumstances, the existing dwellings in this area have some off-street parking provision. However, these properties have driveways with access directly onto this part of Central Drive, and this limits space for parking on the road in this area. There is a car park for the community use next to the site, but parking spaces are also limited in number. Also, there are on-street parking restrictions close to the appeal site, in the form of double yellow lines.
25. While on-street parking provision is limited in this area, there is a bus stop close to the site, and it is a relatively short bus journey to the centre of Barrow and the range of services in the town. As already outlined, there are some local services in close proximity to the site and schools are within a reasonable walking distance.
26. The Council states that, taking account of the Design Guide, that the development should make provision for 47 on-site parking spaces. The proposed site layout shows 44 parking spaces on the site, which includes garages for eight of the proposed dwellings.

Suitability of Proposed Parking Spaces

27. It is asserted that the proposed parking spaces at Plots 5 to 7 would not be wide enough for a car door to be opened. Other concerns include, the length of the spaces, proximity to the front door and in respect of Plot 5 and 6 the potential crossing of vehicles over neighbouring spaces. Concerns are also raised about the width of the access roads serving Plots 4 to 7 and how this may impact on parking arrangements and road safety.
28. At the hearing, the Council indicated that the parking spaces for Plot 5 – 7 should be 6m in length. This is significantly longer than that advised in the Council's Design Guide. This aside, the submitted drawings show that the parking spaces at these plots would accommodate the length of a vehicle, leaving minimal space by the front door of the proposed dwellings.
29. However, the drawings also show that the parking area in front of these dwellings would be over 4m wide if the two spaces proposed on the layout are combined. Much of the combined spaces would front the integrated garages. As such there would be space for at least a single vehicle to be parked with plenty of room for occupants to exit or enter the vehicle, and with a reasonable amount of separation between the car and the front door of these dwellings. Moreover, the submitted plans indicate, in keeping with the aim of the Design Guide, that parked cars would not overhang pedestrian footways or the public highway.
30. The width of the internal access roads for Plots 3 to 7 would be narrower than the 4.8m requested by the Council. However, at 4.1m, as illustrated in the Design Guide, this would be sufficient for two cars to pass. Moreover, while the Design Guide advises 4.8m, this is for developments of up to 25 dwellings. This shared access road would serve only four dwellings and would be significantly wider than the width of access advised in the Guide for this scale of development.
31. The main internal road of the development providing direct access to Central Drive, would be 4.8m, and this would accommodate HGV service and emergency vehicles. The access to Plots 4 and 7 would be a short spur of this main internal road, and serving only a small number of properties, the vehicles on this secondary access road would be largely limited to light vehicles. As already outlined, the proposed width of this access road would comfortably accommodate such vehicles. Moreover, this secondary access road would widen at its end, and this would provide some additional spaces for cars to turn, thus ensuring that vehicles can exit the access road safely in forward gear.
32. The parking spaces at Plots 5 to 7 would be almost perpendicular to this secondary access road, and there would only be a small gap between the spaces at Plot 5 and 6. However, being of a reasonable size and with this internal access road being a generous width, as illustrated by the sweep path evidence, the parking spaces in front of these dwellings could accommodate a car without harmfully encroaching on neighbouring properties.
33. It is asserted that the courtyard parking at the centre of the site would be inconvenient and unsafe, particularly for future occupants with small children. I have addressed the matter of convenience under the previous issue and have concluded that this arrangement would be acceptable for future occupants in this respect.

34. The size of the parking bays for Plots 10 – 15 would roughly align with that advised in the Council's Design Guide. Most importantly, taking account of the general width of a light vehicle, as stated in this Guide, these bays would be sufficient in size to open car doors and for passengers to exit and enter vehicles, and therefore would be practical in this regard.
35. The parking spaces serving Plots 11 and 14 would be flanked by the parking bays of neighbouring properties. However, as already stated, there would be room in these bays once a car is parked, and this would allow those exiting the vehicles to move safely between other parked vehicles. Furthermore, there would be additional hardstanding to the front of the parking bays, such that vehicles could unload before being parked.
36. Also, as the parking bays are close to the proposed dwellings, small children could be safely confined at the property to avoid any conflict with other vehicles using this courtyard. Moreover, these parking areas would be small, and this courtyard area would be relatively open with good visibility of other road users. These factors would ensure that this part of the site would be safe for future road users and pedestrians.
37. Parking provision for Plot 1 and 2 would be to the rear of these properties. There is concern that with the proposed direct pedestrian access to these properties from Central Drive, future occupants would be tempted to park on this part of the public highway. However, the on-site parking provision for these Plots would be immediately behind the dwellings, with direct pedestrian access through the rear gardens, and convenient for future occupants in this regard. In any event, as already outlined, there are parking restrictions on this part of the highway, which would prevent this occurrence.
38. It is asserted that the proposed garages would be too small such that they would not provide a suitable space for parking vehicles. In this regard, my attention was drawn at the hearing to Policy H24 of the Local Plan. This Policy seeks to guide housing alterations and extensions and is therefore not directly relevant to this proposal. This limits the weight that this Policy attracts in this case.
39. This aside, the appellant contends that the garages would contribute to on-site parking provision and as such these structures should be suitable for the purpose intended. The submitted drawings show that the integrated garages at Plot 5 – 7, internally, would be 2.5m wide, with a depth of 5.2m. While this would be smaller than preferred by the Council, this would be large enough to accommodate a car¹ with some space around it.
40. The garages elsewhere in the development would be a similar size to this. On this basis, all the garages proposed would be a suitable size to be practical for parking. Also, a condition could be imposed to ensure that the garages are retained for this use in the long term. On this basis it is reasonable that the garages should count towards the parking provision in this development.

Other Parking Issues

41. It is asserted that the out of curtilage parking provision would prevent future occupants having access to electric vehicle charging points. However, there would be space north of the parking bays for Plots 10 – 15, and at the garages

¹ Based on dimensions of a light vehicle as highlighted in the Cumbria Design Guide.

at plots 1, 2 and 17 where charging points could be located. This matter has not altered my findings accordingly.

Summary on Issue of Parking

42. In light of the findings above, each property would have at least two, safe, convenient and useable on-site parking spaces which seems proportionate to the modestly sized family dwellings proposed. There would also be additional parking for disabled persons. The overall on-site parking provision would amount to a very small shortfall under that requested by the Council but would be in keeping with the two parking spaces advised by the Council's Highways Officer. Moreover, this reasonable level of parking provision for each dwelling, would minimise the potential for vehicles to park elsewhere in the internal roads.
43. Also, if I accept the Council's position that 47 spaces should be provided, the shortfall would only be three spaces. Even with limited on-street parking options near the appeal site, such a shortfall would unlikely have a significant harmful effect on parking and road conditions in the wider area. Moreover, this is a modest development, with significant on-site parking provision and favourable local circumstances, including local services in walking distance and good public transport options. These factors significantly counter any limited shortfall, such that I find that the development would provide adequate parking provision.

Access

44. Concern has been raised about the proximity of the junction of the internal access roads, serving Plots 4 – 7, to the main access onto Central Drive, and that this would cause confusion and conflict with road users. While the junctions would be close, the submitted evidence shows that there would be sufficient space for a vehicle entering the site to pause in the event a car is exiting one of the internal access roads at the same time. This would ensure that vehicles entering the site would not overhang the carriageway of Central Drive and in turn would not harmfully interfere with the traffic flows on that public highway.
45. The carriageway, in this part of Central Drive, is relatively straight and the topography of the site and surrounding area is fairly level. As such, road users and pedestrians have good visibility of other road users in this area. Moreover, it is proposed that structures at the proposed main access and internal junctions would be height restricted and this is a matter which could be secured by condition. These factors would ensure that drivers would have clear visibility, therefore avoiding any conflict with other road users.
46. Also, although the respective junctions would be close, traffic flows in the site would be fairly modest given the modest scale of the development. Moreover, the proposed layout of the junctions appear to be relatively formal, and a familiar layout such as this would minimise the scope for confusion. For these reasons, I concur with the Council's Highway Officer view that the layout would not give rise to significant safety concerns, and I find that the development would not have an unacceptable impact on highway safety in this regard.
47. At the hearing, Mr Bannister, a local resident, highlighted that there was congestion on Central Drive, particularly during school term time and when

buses stopped for passengers. As already outlined this modest development would result in a modest increase in vehicles on this part of the highway, and this is confirmed by the submitted Transport Assessment. Given this factor, alongside the adequate on-street parking provision and safe access to the highway, I am content that the proposal would not have a harmful effect on existing traffic flows in the area.

48. In light of the above, I find that the proposal would provide suitable and safe parking for future occupants and would not have a harmful effect on highway safety. In these regards the proposal would be consistent with Policies H7 and I6 of the Local Plan. These Policies collectively require, amongst other matters, that a site is served by a satisfactory access that would not impact unduly on the highway network and development and proposal provide adequate parking provision.
49. The proposal would accord with advice set out in the Cumbria Development Design Guide which seeks, amongst other matters, a well-designed system of parking. The proposal would also accord with the Framework with regards highway matters.

Drainage and Biodiversity

50. The Framework requires that development should be made safe for its lifetime without increasing flood risk elsewhere, and this is in respect of any form of flooding. At Paragraph 175 it is stated that major development should incorporate sustainable drainage systems. The systems used should, amongst other matters, take account of advice from the lead local flood authority, have appropriate minimum standards and where possible provide multifunctional benefits.
51. Consistent with this, Policy C3a of the Local Plan requires that development prioritise the use of sustainable drainage systems and should ensure there is no increase in flood risk from surface water.
52. The Council asserts that insufficient information has been submitted to address this matter. There is also concern regarding proposed runoff into highway drains, and that details of the drainage strategy are yet to be approved. However, the appellant has submitted a Drainage Strategy Report with reference to the surface water hierarchy and priorities set out in local and national policy. Moreover, this Report outlines an approach to surface water management, which includes sustainable drainage systems and that would contribute to the biodiversity of the site.
53. Also, addressing the Council's particular concerns, the Drainage Report includes reference to soakaway testing, and takes account of climate change assumptions as advised in local and national guidance and adopts urban creep with the design at 10%.
54. The evidence shows that the appeal site is within flood zone 1. This previously developed site is already significantly covered by built forms and hard standings. While this development would be very different to the current use of the site, the proposed amount of coverage from built forms and hardstanding would not be dissimilar to the amount of current development that covers this plot. While some drainage details are yet to be clarified and finalised, the evidence advanced indicates that an appropriate drainage system, having

regard to the hierarchy, could be incorporated in the site without increasing flood risk elsewhere. I am content, given the size of the site and scale of development proposed as well as the reasons outlined above that this matter could be dealt with by condition.

55. A Preliminary Ecology Appraisal, which included a nocturnal survey for bats was submitted with the application. This Appraisal concludes that the site provides habitats for nesting birds, hedgehogs and bats. It also highlights that the existing habitats at the site would be lost to the development. However, mitigation measures are proposed to protect species through construction and to ensure biodiversity enhancement of the site in the long term.
56. In respect of bat species, the initial surveys categorised commuting and foraging habitat suitability on the site as low to high, indicating further surveys were necessary. In 2021, surveys concluded that the derelict building on the site had a negligible to low potential for bat roosting and low bat activity was recorded at the site in 2022.
57. The Council raised concern that the surveys are out of date and that an updated bat emergence survey is necessary. The presence of non-native invasive plant species at the site was also highlighted. With regards these matters, site conditions can change over time which necessitates updates of survey work. The appellant did carry out a walkover survey in November 2023, when fire damage to the existing building, as a result of vandalism, was noted.
58. The initial Appraisal also identified invasive species at the site and mitigation for this matter. Moreover, while an updated bat emergence survey was not submitted with the appeal, the appellant clarified that this was due to the appeal being made before the season for conducting such surveys. The Ecology Appraisal also recommends survey work to be updated if development has not commenced by May 2025. Given the above factors, the ecological surveys relating to this site appear to be relatively up to date.
59. There is disagreement between the main parties as to the potential for bat roosts and hibernation at the site. But even if I accept the Council's position on this, the potential is low. As agreed by the Council at the hearing the bat species in question is relatively common. It was also highlighted that the existing habitats could be at risk if further vandalism occurs at this derelict site. Moreover, mitigation measures are identified for the construction phase in respect of this matter, and the creation of bat habitats would be incorporated into the development. Conditions would provide certainty of these outcomes for the long term.
60. The Council has highlighted errors in the biodiversity metric submitted with this proposal. The metric is not mandatory in this case. This aside, while it may contain errors, it does illustrate the potential for significant biodiversity enhancement at the site. In light of the above, I am satisfied that there is sufficient evidence advanced to understand the existing ecology of the site and the potential impacts of this development. Moreover, I am content that mitigation measures during construction and the details of long term enhancements could be addressed by condition. A condition could also ensure that invasive plant species are eradicated at the site.
61. I therefore find that the proposal would be acceptable in respect of drainage, green infrastructure and on-site biodiversity having regard for development

plan policies. In these respects, the proposal would be consistent with Policies H7, C3a and N3 of the Local Plan. These Policies collectively state that, amongst other matters, development will be required to prioritise the use of sustainable drainage and not be at risk of flooding. The Policies also seek development which maintains, protects and enhances biodiversity.

Affordable Housing

62. Policy H14 for the Local Plan states that 10% of dwellings on sites of 10 units or over should be affordable. It goes on to say alternatively contributions to the provision of affordable units off-site will be considered where justified. On and off site provision will be secured through a Section 106 Agreement. As this development would result in 17 new dwellings, two of these homes should be affordable to accord with Policy H14.
63. The appeal site is derelict with vacant buildings on it. In this regard my attention is drawn to Paragraph 65 of the Framework which states that to support the re-use of brownfield land, where vacant buildings are being redeveloped, any affordable housing contribution should be reduced by a proportionate amount. The footnote to this paragraph clarifies that this is equivalent to the existing gross floorspace of the existing building.
64. Applying this Vacant Building Credit, the provision of affordable housing for this development would equate to 0.53 of an affordable dwelling. The appellant has also submitted the formula for calculating the financial contribution towards off-site affordable housing commensurate with the level of provision required to accord with Policy H14 in this case; that is £41,920.
65. Schedule 1 of the submitted legal agreement obligates the appellant to submit the details of this proposed contribution for approval by the Council. In the event the Council does not respond, the above financial contribution would be paid to the Council. The deed also makes provision for the Council's reasonable legal costs in respect of this matter and a sum of £210 towards monitoring the implementation of the deed.
66. Given the policy basis and guidance, a planning obligation addressing this matter in this case is necessary to make the development acceptable in planning terms. Moreover, this financial contribution is directly related to the development proposed and fairly and reasonably relates, in scale and kind, to the proposal. In these regards the planning obligation would comply with Regulations and satisfy the test set out in national guidance.
67. A dated and signed planning obligation in the form of a unilateral undertaking from the appellant to the Council, pursuant with S106 of the Town and Country Planning Act 1990, was submitted following the hearing. This legal agreement references the appeal site and the appropriate application reference. It also obligates those with a title to land (and their successors) to the matter outlined above. On this basis, the planning obligation appears legally sound.

Other Matters

68. Comments were made by the operator of the neighbouring nursery seeking to clarify matters relating to the protection of the shared boundary. This appears to be a party wall matter which is outside the scope of this appeal and has not altered my findings accordingly.

Conditions

69. In addition to the statutory time period, accordance with approved plans is necessary for certainty and to protect the character of the area.
70. In respect of the drawings, Proposed Section AA – EE drawings show a previous iteration of the site layout and is not consistent with the Proposed Site Layout Plan Ref C/120 Rev M. These sections drawings do not form part of the approved plans for this reason. However, the details shown on the section drawings are addressed in other approved plans, in particular, the Site Layout, Proposed Housing Design and Finished Levels drawings.
71. Also, the site layout on the S278 Highway Layout and S278 Highway Details drawings is inconsistent with that shown in Proposed Site Layout Plan Ref C/120 Rev M. However, these drawings relate to works outside the site. In any event, there is a separate condition which addresses these highway matters; these drawings are not part of the approved plans accordingly.
72. This would be a redevelopment of a site, close to a main road and near other sensitive land uses. As stated, ecological consideration during the construction phase have also been identified. A construction management plan is therefore justified and necessary in the interest of the environment. Given the nature of this matter, this needs to be agreed prior to development. It is also necessary, given the existing site condition, to deal with contamination issues at this stage. The appellant has given written agreement for these, and other pre-commencement conditions justified in this case. It is also necessary to control the import of soils to site to protect the environment.
73. Addressing non-native plant species prior to development is necessary given matters already identified, in the interest of the environment. Finalising the drainage strategy is also necessary prior to development as that work would have to be carried out at an early stage of construction.
74. An ecology enhancement management plan is necessary in the interest of the environment and for certainty of biodiversity benefits. The submitted landscaping plan provides details about planting and management of soft landscaping. This said, some refinement is necessary for certainty that this scheme will deliver the identified biodiversity benefits. However, while it is important to agree and implement these plans at an early stage, I find no clear justification that this should be prior to any development on the site.
75. Approving the appearance of external surface materials is necessary to protect the character of the area. Approving boundary treatments is also necessary for this reason. However, no clear justification has been advanced requiring this prior to development.
76. Changes to the pavement at the new site access is necessary to ensure safe movement of pedestrians. This is land outside the control of the appellant. As this is required by the Council, there certainty that this will be delivered. However, there is no clear justification that this is necessary prior to development.
77. Ensuring suitable access, visibility splays and junction intervisibility with the public highway and on internal roads is necessary to protect highway safety. Further details are necessary to ensure the access to Plots 3 and 4 – 7 for this

reason. However, there is no clear justification for this being required prior to development.

78. Details of the parking hardstanding within the curtilage of dwellings are necessary in the interest of appearance and preventing flood risk. Also approving the details, including how parking spaces outside the curtilage of dwellings are marked, is necessary in the interest of future residents living conditions and appearance.
79. The approved plans provide some details about the specification of internal roads and footways. These details need to be confirmed and specification of lighting in the site approved. This infrastructure needs to be in place prior to the use of the development in the interest of living conditions and highway safety.
80. Ensuring that garages are retained for the parking is necessary to protect living conditions and highway safety.
81. The Council has requested the removal of most permitted development rights for dwellinghouses including extensions, roof alterations, porches and incidental buildings. However, Planning Practice Guidance cautions that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Moreover, no convincing justification has been advanced for the removal of these rights in this case. Also, electric vehicle charge points for new dwellings is a matter addressed by a separate regime, and therefore not necessary. These conditions are not imposed for these reasons.

Conclusion

82. For the reasons outlined above, having regard to the development plan and other material considerations, including the Framework, the appeal should be allowed.

A J Sutton

INSPECTOR

List of Participants

For the Appellant

Rawdon Gascoigne	Director, Emery Planning
Alexa Burns	Associate, Emery Planning
Richard Gadsden	Director, Gadsden Consulting
Mike Peet	Director, AMNI Transportation Ltd
Liz Kenyon	Senior Ecologist, Ascertia
Neil Tatton	Director, Resolve 106

For the Council

Carolyn Attwood-Parry	Principal Planning Officer
Helen Renyard	Senior Lead Officer - Flood and Coastal Risk Management
Alistair Blackshaw	Principal Ecologist
Jeremy Hewitson	Strategic Lead – Development & Enabling

Interested Parties

Mr Bannister	Local Resident
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Documents Submitted at and following the Hearing

Appellant

Following Hearing

APP1: Signed Legal Agreement - email dated 28 August 2024

APP2: Written agreement of pre-commencement conditions
email - dated 1 October 2024

Council

At Hearing

LPA1: Copy of Policy H24 of the Local Plan

Following Hearing

LPA2: Electronic copy of Policy H24 of the Local Plan -email dated 1 October 2024

LPA3: Proposed out of curtilage parking condition – email dated 23 August 2024

LPA4: Response to Legal Agreement – email dated 9 September 2024

Appendix

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan Drawing No. CH/100 Rev A;
Proposed Site Layout Plan Drawing No. CH/120 Rev M;
House Type MR Ref 1 Rev X;
House Type KK3S Ref 1 Rev AAL;
House Type JJ3S Ref 1 Rev AH;
House Type JENNER Ref 1 Rev Q;
Landscape Plan Drawing No. WW-L01 Rev J;
Finished Levels Drawing No. 1400 Rev P06
Retaining Wall Details Drawing No. 1420 Rev P01;
S104 Sewer Longsections Sheet 1 Drawing No. 1020 Rev P04;
S104 Drainage Layout Drawing No. 1000 Rev P06;
S104 SUDS Details (1) Drawing No.1070 Rev P01;
S104 SUDS Details (2) Drawing No.1071 Rev P02;
Exceedance Route Drawing No. 1005 Rev P05);
Highways Details Drawing No. 1530 Rev P01);
Highways Longsections Drawing No.1511 Rev P04;
Highways Setting Out Drawing No. 1500 Rev P06;
Highways Surface Finishes and Kerbing Layout Drawing No.1550 Rev P05;
Surface Water Manhole Schedules Drawing No. 1011 Rev P05; and
Topographical Survey Ref 250421/TOP.
- 3) Prior to the commencement of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include:
 - i) pre-construction road condition survey for accommodation works within the highways boundary;
 - ii) details of proposed crossings of the highway and the management of access points and crossings of the public highway and other public rights of way/footway;
 - iii) details of any proposed temporary access points (vehicular / pedestrian);
 - iv) details of retained areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the construction phase;
 - v) details of proposed wheel washing facilities, cleaning of site entrances and the adjacent public highway;
 - vi) a Traffic Management Plan to include all traffic associated with the construction phase of the development;
 - vii) requirement to sheet of all HGVs taking spoil to/from the site;

- viii) method statements to protect protected and notable species during the construction phase (i.e. birds, bats and other mammals) to include:
 - Mitigation measures that avoids harm to protected species during construction; and
 - Details and timetable for ecologist supervision of works where appropriate.
- ix) details of phasing of the construction work including a programme of work for the demolition and construction phase;
- x) construction working and delivery hours;
- xi) procedures to monitor and mitigate noise and vibration from the construction and demolition and to monitor any properties at risk of damage from vibration, as well as taking into account noise from plant, machinery, vehicles and deliveries, with reference to BS 5228 Code of practice for noise and vibration control on construction and open sites. All measurements should make reference to BS 7445 Description and measurement of environmental noise;
- xii) mitigation measures to reduce adverse impacts on residential properties and protected and notable species from construction works including visual impact, dust and light pollution.
- xiii) a written procedure for dealing with complaints regarding the construction or demolition; and
- xiv) details of methods and a timetable for post construction restoration/reinstatement of temporary working areas.

The approved CMP shall be adhered to throughout the construction phase of the development hereby permitted.

- 4) Prior to the commencement of the development hereby permitted, an Invasive non-native plant species management plan (INNPSMP) shall be submitted to and approved in writing with the local planning authority. The approved INNPSMP shall be implemented in accordance with the details and in line with the approved timetable.
- 5) Prior to the commencement of the development hereby permitted, an assessment of the risks posed by any contamination (including gases and water quality) shall be submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination; and
 - ii) 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; and
- archaeological sites and ancient monuments.

- 6) No development shall take place where (following the contamination risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority.

The remediation scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan.

The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The remediation scheme shall be carried out in accordance with the approved details of the scheme [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.

- 7) No soil material is to be imported to the site until it has been tested for contamination and assessed for its suitability for the proposed development. A suitable methodology for testing this material should be submitted to and approved by the local planning authority prior to the soils being imported onto site. The methodology should include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out as per the agreed methodology with verification of its completion submitted to and approved in writing by the local planning authority.
- 8) Prior to the commencement of development hereby permitted, details of a sustainable surface water drainage scheme and a foul water drainage scheme, prepared in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards, shall be submitted to and approved in writing by the local planning authority.

The drainage schemes shall include:

- (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365;
- (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations);
- (iii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;

- (iv) Incorporate mitigation measures to manage the risk of sewer surcharge where applicable;
- (v) Foul and surface water shall drain on separate systems; and
- (vi) a sustainable drainage management plan for the lifetime of the development.

The approved drainage schemes shall be implemented in accordance with the approved details prior to the first occupation of the development hereby permitted and retained thereafter for the lifetime of the development.

- 9) No development above ground level shall take place until a Habitat and Ecology Management Plan (HEMP) is submitted to and approved in writing by the local planning authority. The HEMP shall include and make provision for:
- i. Detailed locations for all enhanced or newly created habitats.
 - ii. Detailed locations of features for all protected species (e.g. bird and bat boxes).
 - iii. Methods for establishment of all enhanced or newly created habitats (including species composition where applicable).
 - iv. Details and timetable of management and aftercare of all on-site and off-site habitats and features for lifetime of the development.
 - v. Details and timetable of ongoing species protection measures (e.g. maintenance of wildlife boxes).
 - vi. A monitoring plan including a mechanism for adaptive management if the HEMP is not meeting target condition for any habitats or features.

The approved HEMP shall be implemented and maintained in accordance with the approved details and the agreed timescale.

- 10) No development above ground level shall take place until a landscape scheme for the site, showing the trees, shrubs and hedgerows, including verges and other open spaces, together with details of a timetable for implementation is submitted to and approved in writing by the local planning authority.

The scheme shall be submitted on a plan not greater than 1:500 in scale and shall contain details of numbers, locations and species of plants to be used, and include measures in consideration of integrating the implementation of the approved INNPSMP and the HEMP as required under Conditions 4 and 9 respectively.

The approved landscape scheme shall be implemented in accordance with the approved details and to current British Standards in the first planting and seeding seasons prior to the first occupation of the development, or in accordance with the phasing and timetable of the approved landscape scheme.

Any trees, plants and shrubs which within a period of five years from the first occupation of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species.

- 11) No development above ground level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the dwellings and garages hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples and retained thereafter.
- 12) Prior to the first occupation of the development hereby permitted details of the positions, height, design, materials and type of boundary treatment, walls and other means of enclosure around residential curtilages and the wider site to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the dwellings hereby permitted are occupied and retained thereafter.
- 13) Prior to the first occupation of the development hereby permitted, a vehicular crossing over the existing footway to the public highway, including the lowering of kerbs for pedestrian crossing over the new site access, shall be implemented in accordance with the details that have first been submitted and approved in writing by the local planning authority.
- 14) Prior to the first occupation of the development hereby permitted, visibility splays providing clear visibility of 43 metres measured 2.4 metres down the centre of the new access road and the nearside channel line of the carriageway edge in both directions shall be provided at the junction of the access road with the public highway.

Nothing shall be erected, sited, retained, planted and/or allowed to grow at or above a height of 0.6 metres above the nearside carriageway level which would obstruct these visibility splays. The visibility splays shall be maintained free of obstruction at all times thereafter.

- 15) Prior to the first occupation of the development hereby permitted, details of measures to provide and maintain for the lifetime of the development adequate intervisibility of accesses for Plots 3 and 4-7 and the public highway shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented prior to the first occupation of the development and adhered to thereafter.
- 16) Prior to the first occupation of the development hereby permitted, a scheme detailing the specification of hard surfaced areas within residential curtilages, associated with vehicle use and parking shall be submitted to and approved in writing by the local planning authority.

The approved scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and retained as such thereafter and for the intended use.

- 17) Prior to the first occupation of the development hereby permitted, a scheme detailing the specification of the courtyard car parking spaces for Plots 10-15 and the visitor/accessible spaces, and the parking spaces for Plots 1, 2 and 17, shall be submitted to and approved in writing by the local planning authority.

The approved scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and retained as such thereafter and for the intended use.

- 18) Prior to the first occupation of the development hereby permitted, a scheme detailing the specifications of internal estate roads, turning areas, footways and street lighting shall be submitted to and approved in writing by the local planning authority.

The approved scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and retained as such thereafter.

- 19) The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.

End of Schedule.