



Appeal Decision

Site visit made on 12 December 2024

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th January 2025

Appeal Ref: APP/A2280/W/24/3341371

18 City Way, Rochester ME1 2AB Easting: 574631 and Northing: 167811

- 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 Marion Bay Holdings Ltd against the decision of Medway Council.
 - The application Ref is MC/23/0038.
 - The development proposed is Construction of a part two storey/ part three storey block of 8 flats with associated external works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a part two storey/ part three storey block of 8 flats with associated external works at 18 City Way, Rochester ME1 2AB Easting: 574631 and Northing: 167811 in accordance with the terms of the application, Ref MC/23/0038, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.
3. The Council changed the description of the proposed development to that shown in the banner heading above. This is a generally accurate description of the development proposed, and is included within the appellant's appeal application form. I have therefore used it in this Decision.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the local area;
 - the significance of the Napoleonic wall and its setting; and
 - the integrity of protected European sites.

Reasons

Character and appearance

5. The appeal site is a long, triangular shaped parcel of disused and overgrown land to the rear of properties on City Way. Due to a significant change in levels, the

gardens and buildings on City Way are elevated above the site and Delce Road, which the appeal site fronts. The site is bound by a Napoleonic wall on the site's northern and eastern perimeters. The site boundary onto Delce Road is lined by boundary fencing and five large advertising boards which are prominent and detrimental features within the street scene. Overall, the appeal site does not make a positive contribution to the character of the area.

6. The street scene on Delce Road is mixed in character. The opposite side of the road from the appeal site features two storey terraced properties often with commercial uses at ground floor, and an open area in use as a builders merchants. To the south of the site, dwellings are located atop a grassed bank which contains the remains of Delce Tower.
7. The building's footprint would follow the tapered shape of the appeal site, avoiding large, blank side elevations. Circulation space and amenity space would be provided along the proposal's elevations, ensuring that the building would be set back from its northern, southern and eastern boundaries, and would not appear excessively large or overbearing. The part three, part two storey design would work with the local topography to create a logical transition in building heights from the significantly taller properties on City Way to the two storey terraced properties on the opposite side of Delce Road. Consequently, the height or scale of the building would not appear excessive or jarring.
8. Whilst the proposal's elevation fronting Delce Road would be long, it would not have a noticeably greater length than the rows of terraces found on the opposite side of the street. The elevation would include design features which would create articulation. These include an attractive corbelled brick surround to the main entrance of the building onto Delce Road. Stepped brick detailing is proposed along the ground floor of the three storey part of the building, and would rise to parapet level across the two storey element, creating visual interest. Each of the three ground floor units would have their entrances taken from Delce Road. The entrances, combined with the windows to the units set back behind planting buffers, would assist in creating a pleasing rhythm along the Delce Road façade.
9. The Council's officer reports confirms that each of the proposed dwellings would meet the necessary space standards, and that future occupiers would be provided with suitable outlook. It also confirms that acceptable outdoor amenity space would be provided for future occupiers and that these spaces could create an intimate courtyard experience with the historic wall in the backdrop. Whilst the internal layout of units 3 and 6 would be slightly elongated, this would not be particularly discernible in external views of the proposal. Similarly, the layout of the external amenity area for unit 2 would not be prominent in public views from Delce Road and the area would be landscaped to soften the connection between the building and the rear historic wall, thereby having a beneficial visual impact.
10. I note that in determining the previous appeal (Ref: APP/A2280/A/11/2157256) the Inspector found that the proposed buildings would be unacceptably dominant and cramped on the site due to the size of their footprint and mass relative to the site's depth and the proximity to all boundaries. Whilst I have viewed the drawings for the appeal proposals, it seems to me that the scheme was inferior in terms of its design quality. In contrast, for the reasons outlined above, I consider that the appeal proposal before me would be beneficial to the character and appearance of the area. Furthermore, Paragraph 125 of the Framework states that planning

decision should give substantial weight to the value of using suitable brownfield land within settlements for homes, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate degraded, derelict land.

11. I conclude that the proposal would make effective use of an underutilised parcel of land in a sustainable location. It therefore complies with Policies H4 and BNE1 of the Medway Local Plan (2003) (Local Plan) which require development to be appropriate in relation to character and appearance, whilst supporting residential development which would be created through infilling in residential areas whilst improving the local environment.

Napoleonic wall

12. The site's north and western boundary walls are surviving sections of Z-shaped defensive walls constructed during the Napoleonic Wars as a direct response to the threat of invasion by the armies of Napoleon. The walls were part of a network of defences within this part of Chatham, which also comprise a nearby guardtower located a short distance to the south, called Delce Tower, which was constructed in the period 1804 to 1812. Delce Tower has largely been demolished, but some external elements of it survive, and below ground elements are understood to be buried within the bank adjacent to Delce Road.
13. Delce Tower has previously been on Historic England's list of sites for consideration for designation. However, neither the Napoleonic wall within the appeal site, or the largely buried remains of Delce Tower are scheduled or statutorily or locally listed and have no statutory protection. Historic England were consulted on the proposals, but confirmed that they were not offering advice. Overall, the submitted evidence does not demonstrate that the Napoleonic wall within the appeal site or Delce Tower remains are of national importance.
14. Whilst not listed or appearing on a local list, the Napoleonic wall is of sufficient historic interest to be considered a non-designated heritage asset (NDHA) by the Council. This is not disputed by the appellant. Paragraph 216 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. In weighing applications that affect directly or indirectly NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
15. In determining the previous appeal, the Inspector concluded that, whilst that proposal would obscure the Napoleonic wall, on balance, the setting would be enhanced through greater definition and articulation of the historic wall. The previous appeal proposal was of a different design. Notwithstanding this, from the drawings included within the submitted evidence, I consider that its effect on the wall would have been broadly similar to the proposal before me. The Council acknowledge the previous Inspector's conclusions but suggest that there is now a greater understanding of the defences at Delce Tower. However, the submitted evidence does not specify any additional detail which has come to light since the previous appeal.
16. It has been put to me that the proposal would obscure the Napoleonic wall and fill the intentionally empty space and that this would harm the ability to understand how the Delce Tower was designed to function defensively, including close defence against infantry.

17. The appellant's Heritage Asset Assessment outlines that the setting of the Napoleonic wall within the appeal site and the views of it from Delce Road has already been significantly altered. This is as a result of alterations which appear to have been undertaken in the Victorian period, such as the creation of an intermediate terrace within the development site, and the construction of a retaining wall adjacent to Delce Road. These features significantly obscure the wall's original height and its defensive Z-form. In addition, the presence of the five large advertising hoardings and thick vegetation engulf views of the wall from outside the appeal site. During my site visit I saw that the Napoleonic wall is barely perceptible within any views from Delce Road, and it is not visible from viewpoints surrounding the Delce Tower remains.
18. I acknowledge that the proposal would substantially obscure views of the wall from Delce Road. However, it would also result in the removal of the intermediate terrace which entirely obscures a large expanse of the wall. The proposed building would be set away from the wall behind circulation and amenity space. This would enhance the setting of the wall, enabling its historic form to be understood, and potentially revealing evidence regarding the construction of the defences. A light tone of brickwork for the new building is proposed in order to contrast with the historic wall which would assist in increasing the wall's prominence when viewed within the proposal. The removal of the advertising boards, fencing and overgrown vegetation would also have the potential to reveal features of significance. On balance, the proposal would enhance the setting of the wall through greater definition and articulation of the wall.
19. In addition, the associated remedial works to the wall, including structural repair works and on-going maintenance would be a public benefit. I agree that there is an incumbent duty on the landowner to carry out a level of on-going maintenance irrespective of whether or not the site is developed. However, it seems to me that, undertaking a detailed archive record of the wall, and the removal of the spoil which could offer potential for uncovering archaeological remains would also be benefits of the scheme which would not come forward without development of the appeal site. These could be secured by planning condition.
20. I acknowledge that footnote 75 of the Framework states that non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets. However, I have found that the proposal would enhance the setting of the wall and would not lead to harm to the heritage asset.
21. Consequently, I conclude that the proposal would comply with paragraphs 212-216, which amongst other things, require the effect of an application on the significance of a non-designated heritage asset to be taken into account in determining the application, requiring a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.

Integrity of protected European sites

22. The coastline of North Kent encompasses three SPAs, which are also Ramsar Sites: the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA, and The Swale SPA. Together, these sites provide an extensive area of on passage, overwintering and breeding habitat for an array of waders and waterfowl of European importance, such as Avocet, Dunlin, Redshank and Cormorant. The

conservation objectives of the SPAs aim to ensure the integrity of the sites is maintained or restored.

23. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPAs and Ramsar sites. The effects arising from the proposal need to be considered in combination with other development in the area, adopting a precautionary approach.
24. The development as a whole would result in eight dwellings with a consequent increase in local residents living within 6km of the SPA and Ramsar sites. This would be likely to result in additional recreational activity in these areas, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar sites. Therefore, the proposed development is likely to have a significant effect on these European Sites. As the competent authority, it is necessary for me to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SPAs and Ramsar sites.
25. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the North Kent SPAs and Ramsar sites. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on these European Sites.
26. The appellant has submitted a Unilateral Undertaking in respect of the requisite contribution to the mitigation measures. The contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites. I therefore find within my AA that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the North Kent SPAs and Ramsar Sites.
27. Accordingly, in this respect, the proposed development would comply with the Habitats Regulations and Policies S6 and BNE35 of the Local Plan which, amongst other things, seek to protect the Council's designated habitats sites from direct or indirect harm. I also find no conflict with the requirements of Paragraphs 193 and 194 of the Framework which, amongst other things, seek to protect sites of importance for biodiversity.

Other Matters

28. Interested parties state that the proposed development would harm highway safety, with concerns raised about an increase in traffic, the potential for additional

on-street car parking, and the effect on pedestrian safety. Concerns in relation to construction traffic and noise have also been raised. Any noise and disturbance associated with construction would be for a temporary period only, and I have imposed a condition requiring the submission of a Construction Environmental Management Plan (CEMP) to manage the highway and noise impacts during construction.

29. The appeal proposal would create eight new dwellings which would result in a limited increase in local traffic. Whilst the proposal would not provide any car parking, the appeal site is within a highly accessible location with good access to a range of local shops and services, as well as local bus and rail services. Future occupiers would therefore benefit from opportunities to travel by modes other than by private vehicles, reducing reliance on these and the requirement for on-site parking. Furthermore, I have imposed a planning condition which requires the provision of a car parking management plan, containing details of how residents will be prevented from applying for parking permits, to ensure that the development does not contribute to increased parking competition in the area. With regard to pedestrian safety, the submitted drawings demonstrate that the proposal would be contained entirely within the appeal site, which does not include the adjoining pavement on Delce Road.
30. In relation to concerns about trees, I note that a small grouping of trees would be removed. However, their amenity value is currently impaired by the existing advertising boards fronting Delce Road. Other higher quality trees within the immediate area would be unaffected by the proposal. Overall, I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters which was that there would be no unacceptable harm in this respect.
31. In relation to the effect on the living conditions of neighbouring occupiers, the difference in land levels and the boundary treatments would be sufficient to prevent any significant impact in terms of light, outlook and privacy. Whilst I note interested parties' concerns in relation to the stability of walls within the appeal site, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects. Consequently, this does not lead me to a different overall conclusion than that the appeal should be allowed.

Conditions

32. I have had regard to the planning conditions that have been suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
33. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty.
34. A condition requiring details and samples of the external materials is necessary in the interests of the character and appearance of the area. For the same reason, a condition related to the approval of hard and soft landscaping is necessary.
35. In order to minimise disruption to surrounding highways and residents it is necessary to approve a Construction Environmental Management Plan. I have

imposed conditions related to sound insulation within the proposal in the interests of future occupiers' living conditions.

36. In the interests of archaeological research and the conservation and maintenance of the non-designated heritage asset I have imposed conditions relating to programmes of archaeological work, building recording and the repair and conservation and ongoing maintenance of the Napoleonic wall.
37. Conditions related to contamination are necessary in the interests of local amenity and safety. A condition requiring details of foul and surface water drainage arrangements is necessary to ensure that the proposal does not harm groundwater resources. A condition related to measures to address energy efficiency is necessary to ensure the development's sustainability.
38. I have imposed a condition related to cycle parking to encourage the use of sustainable modes of transport.

Conclusion

39. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

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: 2018_000 P1 – Site Location Plan; 2018_100 P1 – Proposed Block Plan; 2018_101 P1 – Proposed Ground Floor Plan; 2018_105 P1 – Proposed Street Elevation; 2018_102 P3 – Proposed First Floor Plan; 2018_103 P2 – Proposed Second Floor Plan; 2018_104 P2 – Proposed Roof Plan and 2018_106 P3 – Proposed Rear and Side Elevations
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include, amongst other matters, details of: hours of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures; pollution incident control and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan, unless any variations are otherwise first submitted to and approved in writing by the Local Planning Authority.
- 4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. The approved details shall be adhered to unless any variations are otherwise submitted to and approved in writing by the Local Planning Authority.
- 5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. The approved details shall be adhered to unless any variations are otherwise submitted to and approved in writing by the Local Planning Authority.
- 6) No development shall take place until a programme and timetable for the repair and conservation of the 'Napoleonic defensive walls' and their on-going maintenance has been submitted to and approved in writing by the local planning authority. The programme and timetable shall be informed by the results of the historic building recording works required under condition 5. The repair, conservation and maintenance works shall be carried out in accordance with the approved details.
- 7) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. No

development shall take place until the investigation and risk assessment has been completed. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced.

No development shall take place until the written report has been submitted to and approved by the Local Planning Authority. The report of the findings must 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,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management document (LCRM)'.

- 8) 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 must be prepared and submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must 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.
- 9) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.
- 10) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 8, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 9, which is subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 9 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 9.

- 11) The development shall not progress above slab level until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and samples.
- 12) The development shall not be occupied until details of on-site historical interpretation to be incorporated within the development have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include location, design, dimensions and materials of proposed on-site interpretation works. The approved details shall be implemented in full prior to the first occupation of the development, and retained and maintained thereafter.
- 13) The development shall not be occupied until details of cycle storage facilities have been submitted to and approved in writing by the Local Planning Authority. The cycle storage facilities shall be implemented in accordance with the approved details prior to the occupation of the development and shall thereafter be kept available for the parking of cycles. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land shown for cycle and refuse storage facilities.
- 14) The development shall not be occupied until a scheme of sound insulation works to the floor/ceiling and party wall structures between the separate flats has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the sound insulation works have been implemented in accordance with the approved details. The approved insulation works shall be retained thereafter in perpetuity.
- 15) The design and fabric of the building shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.
- 16) Prior to the occupation of the development, details of a hard and soft landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. This should include all paving and external hard surfacing materials and details of planting plans noting species and plant sizes. The landscaping scheme shall be implemented in the first planting season following the occupation of the first dwelling.

- 17) The development shall not be occupied until a Parking Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Parking Management Plan shall contain details of how residents and their visitors will be prevented from applying for parking permits and measures that will be put in place to promote sustainable modes of transport for new residents. The Parking Management Plan shall be implemented in accordance with the approved details prior to the first occupation of the residential units and shall thereafter be retained.
- 18) The development shall be implemented in accordance with the measures to address energy efficiency and climate change as set out within the applicant's Climate Change Statement. Prior to first occupation of the development a verification report prepared by a suitably qualified professional shall be submitted to and approved in writing by the Local Planning Authority confirming that all the approved measures have been undertaken and will thereafter be maintained.

END OF SCHEDULE