



Appeal Decision

Site visit made on 21 November 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th December 2017

Appeal Ref: APP/Z2260/W/17/3178576

Land south of Briary Close, Margate, Kent CT9 5HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Strategic Land Planning Solutions against the decision of Thanet District Council.
 - The application Ref OL/TH/16/1473, dated 20 October 2016, was refused by notice dated 5 June 2017.
 - The development proposed is outline planning application for the erection of up to 24 dwellinghouses (all matters reserved, except for access).
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Decision

1. The appeal is allowed and planning permission is granted for outline planning application for the erection of up to 24 dwellinghouses (all matters reserved, except for access) at land south of Briary Close, Margate, Kent CT9 5HX in accordance with the terms of the application, Ref OL/TH/16/1473, dated 20 October 2016, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The application was made in outline with all detailed matters reserved apart from access. I have dealt with the appeal on the same basis and treated the layout and site section drawings submitted as being for illustrative purposes only.
3. Subsequent to the Council's decision the appellant has submitted a Unilateral Undertaking (UU) pursuant to Section 106 of the Planning Act. This addresses the Council's second reason for refusal in respect of the failure to enter into a legal agreement to secure 30% affordable housing and the delivery of the necessary planning obligations required in order to mitigate the impacts of the proposed development on the local infrastructure and protected sites and make the development acceptable in all other respects.
4. The UU covers all heads of terms required by the Council which has confirmed that the conflict with Policies CF2, H14 and SR5 of the Thanet Local Plan, the Habitat Regulations and the National Planning Policy Framework (the Framework) is addressed and consequently the second reason for refusal falls away.

Main Issue

5. The main issue is whether the development of this site for 24 dwellings would harm the future quality and infrastructure provision of the draft allocation for the comprehensive, mixed use development of the wider area.

Background

6. A band of continuous development stretches along either side of the Canterbury Road within the coastal zone west of Margate. This includes the suburban parts of Garlinge, Westbrook and Westgate-on-Sea. The appeal site lies adjacent to and south of the suburban area of Garlinge/Westgate and comprises a roughly square area of undeveloped land of slightly more than one hectare.
7. The appeal site abuts farmland on the three other sides and, along with this, forms part of a larger strategic allocation for up to 1000 dwellings (site ST2) proposed in the draft Thanet Local Plan¹ (DLP). This allocation formed part of a DLP Preferred Options Consultation in 2015 and has subsequently been retained following later consultation on DLP Proposed Revisions in January 2017. In 2018 the Council intends to publish and consult upon a final draft of the DLP prior to submission to the Secretary of State.
8. The appeal site is maintained in a naturally overgrown condition and is bounded by varying amounts of hedging and trees. It is centrally positioned between the cultivated land to either side and fronts onto south side of Briary Close. Access for the 24 dwellings is proposed from Briary Close; a cul-de-sac presently serving a similar number of homes. This existing housing includes the frontage development along the northern side of the street opposite to the appeal site, which runs in tandem to that along the main Canterbury Road which Briary Close joins to the east.
9. For the time being the development plan comprises the saved policies of the Thanet Local Plan 2006 (LP). The appeal site, and the draft strategic allocation it forms a part of, remain outside the settlement boundary defined in the LP and unallocated for housing. The proposal consequently conflicts with current LP Policy H1.
10. However, the Council's decision rests on the conflict found with the emerging DLP and it is acknowledged that the policies of the current LP do not provide the 5 year's supply of housing land required by the National Planning Policy Framework (the Framework). Where this is the case paragraph 49 of the Framework deems the relevant policies for the supply of housing in the LP to be not up-to-date. The Council is seeking to meet the Objectively Assessed Need (OAN) for housing required by paragraph 47 of the Framework through the DLP and the strategic allocations this proposes.
11. Because the current LP policies are out-of-date the presumption in favour of sustainable development established by paragraph 14 of the Framework applies as well as the 'tilted balance' for decision-making set out in the fourth bullet point. This would require granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

¹ Draft Thanet Local Plan to 2031 – Preferred Options Consultation January 2015

Reasons

12. The benefits of the proposal would be a readily deliverable residential scheme that would make a modest but positive contribution to the current under supply of housing, including the provision of 30% affordable units which would meet the maximum requirements of LP Policy H14. This would gain the support of part 6 of the Framework in respect of delivering residential development, boosting housing supply and meeting a need for that which is affordable.
13. The development would be located in reasonable proximity to a good range of services and facilities, including public transport. The proposal would gain the support of the Framework core planning principle to actively manage growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
14. Whilst dependent upon the later approval of acceptable reserved matter details, and to satisfying any necessary planning conditions, I am nonetheless persuaded the proposal would itself result in no material harm to the character and appearance of the area, the wider landscape, the living conditions of neighbouring occupiers and the interests of biodiversity and archaeology.
15. The means of access has been agreed by the local highway authority and therefore the proposal would meet the requirements of paragraph 32 of the Framework in respect of providing safe and suitable access for all people. The site is at low risk of flooding and capable of measures to ensure adequate foul and surface water drainage for the development. Overall, the proposal would generally meet the Framework principle to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
16. The adverse impacts of this proposal relate to the conflict found by the Council with DLP policies SP12 and SP15. The DLP remains subject to further consultation over a pre-submission draft and subsequently to Examination. The draft policies cement the means of meeting the OAN for future housing, dependant mainly on four large-scale strategic allocations. It is evident that this approach to addressing the required step-change in housing delivery has gained significant traction. However, due to the stage of preparation of the DLP, any conflict found with the relevant draft DLP policies can be afforded only limited weight at this point in time.
17. DLP Policy SP12 requires that applications to develop the Strategic Housing Site Allocations (SHSA) be accompanied by a detailed development brief including an illustrative site masterplan featuring all elements of the proposal and indicating phasing of development and supporting infrastructure. DLP SP15 provides the site specific policy for the Westgate-on-Sea SHSA within which the appeal site is located.
18. The Council's key concern is that the disposition of uses and open space should be decided by a comprehensive masterplan for the SHSA as a whole. A comprehensive masterplan for the Westgate-on-Sea SHSA has yet to be produced and so it is necessary to assess the potential degree of harm this self-contained proposal for 24 dwellings would have on the policy objectives for the development of the wider area.

19. The site occupies a central part of the northern extent of this main segment of the SHSA. It divides the land leaving two areas either side of a comparable size which could be separately developed as part of a wider masterplan. The appeal site occupies a relatively small part of the overall strategic allocation and one which adjoins the existing built-up area and is not geographically isolated.
20. Whilst this proposal would meet its own needs for open space it would prevent the inclusion of a buffer in this northern part of the SHSA. The Council's future Open Space Strategy might have added greater weight to the case for such as buffer area but this document has yet to be produced. I am not persuaded by any need to buffer this proposal and consider it appropriate that it might integrate with the adjacent housing. The appellant's suggested SHSA site masterplan and that procured from the owners of the remaining land allocation, whilst neither of any approved status, satisfy me that there would be limited harm from this proposal in undermining the future potential to plan an appropriate network of open and green space for the remainder of site ST2.
21. For similar reasons I find limited harm arising from this proposal in prejudicing a strategic plan for internal road, footway and cycle routes. The scheme would take up the current capacity of Briary Close. However, there is no evidence to suggest this would preclude suitable options from which to access the strategic allocation or preclude a satisfactory internal road network for the remaining SHSA. The layout of this proposal is illustrative and there is little evidence to suggest that it could not be arranged to compliment a suitable wider network of footways and cycle routes.
22. This proposal amounts to a small proportion of the overall SHSA on a site which abuts the built-up residential area and which uses the residual capacity of Briary Close. The Council has not persuaded me that this relatively small housing development would undermine the potential to secure a satisfactory masterplan for a comprehensive, mixed use development of the major part of the SHSA that would remain. It is necessary to assess this proposal on its individual merits and I am not persuaded that it would result in a harmful precedent leading to further fragmentation of the strategic allocation. Consequently, I find limited harm to arise from the conflict found with DLP policies SP12 and SP15.

Other Matters

23. Further concerns have been raised by interested parties at both the application and appeal stages. The Council's decision to refuse planning permission was not in respect of the principle of housing on this site, the suitability of Briary Close to safely accommodate additional highway use, the effect on the living conditions of neighbouring occupiers, the effect on the character and appearance of the area, on ecology, archaeology or drainage. Having given careful consideration to the representations made by interested parties over these particular issues I find there to be no grounds sufficient to outweigh the conclusion reached over the main issue in the appeal.

Unilateral Undertaking

24. The UU accompanying the appeal has been considered. This commits to the proposed development providing the financial contributions sought by Kent County Council towards primary education, secondary education and libraries.

The UU also commits a payment to the Council towards the delivery of the Strategic Access Management and Monitoring Plan ('SAMMS contribution') for the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The SAMMS contribution is to mitigate for the effects on the SPA necessary for the development to comply with the Habitats Directive. The UU also provides a financial contribution towards a Traffic Regulation Order on Briary Close in relation to the development should this be required by the County Council as highway authority.

25. I am satisfied that the UU comprises an obligation meeting the requirements of Section 106 of the Town and Country Planning Act 1990. The obligation made in respect of the contributions towards primary education, secondary education, libraries, SAMMS and the TRO meets the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework and has been given weight in arriving at the appeal decision.

Conditions

26. Although the Council provided a brief series of headings, it did not supply a comprehensive list of suggested conditions. I have considered the conditions suggested by the appellant in the light of the Council's later comments and the tests set out in paragraph 206 of the Framework. To provide certainty and in the interests of proper planning I have imposed the standard outline and time limit conditions and specified the approved plans.
27. In the interests of recording any archaeological interest standard conditions are necessary which require agreement to and adherence with a Written Scheme of Investigation. It is necessary in the interests of safe and suitable access that conditions further govern the means of access proposed. Those applied require the construction of the access prior to occupation such that it would accommodate the turning of refuse vehicles, the restriction of parking and provision of dropped kerbs along Briary Close and the provision and maintenance of visibility splays, bound surfacing and footways for the new estate road.
28. Conditions require agreement to and provision of adequate arrangements for foul and surface water drainage prior to occupation. In the interests of the living conditions of neighbouring occupiers a condition requires agreement to and implementation of a Construction Method Statement and details of external lighting on the development.
29. To protect and enhance biodiversity a condition requires the agreement to and carrying out of a programme for the enhancement of protected species and their habitats. To ensure adequate refuse storage areas and cycle parking facilities conditions require these matters to be provided as agreed in advance. In the interests of the satisfactory appearance of the development conditions require agreement to facing materials, landscaping and tree protection measures. To help minimise the risk of crime a condition requires appropriate design measures to be agreed and provided.

Conclusion

30. The Council is unable to provide the five year supply of housing land required under paragraph 47 of the Framework. Paragraph 49 goes on to state that

relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

31. As relevant policies for the supply of housing are out-of-date the presumption in favour of sustainable development set out in paragraph 14 of the Framework applies. This would mean granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 6 of the Framework establishes that the purpose of the planning system is to contribute to the achievement of sustainable development, based on it performing economic, social and environmental roles which should be sought jointly and simultaneously.
32. The proposal would provide modest but positive economic and social benefits through the short term delivery of market and affordable housing without material harm to the local environment. There would be very limited harm to the future quality and infrastructure provision of the draft allocation for the remaining housing in this location. This would not significantly and demonstrably outweigh the benefits found. This development would therefore gain the support of a presumption in favour of development as set out in paragraph 14 of the Framework. Consequently, having taken into account all other matters raised, I conclude that the appeal should be allowed subject to the conditions set out in the Schedule below.

Jonathan Price

INSPECTOR

Schedule of Conditions
Appeal Ref: APP/Z2260/W/17/3178576
Land south of Briary Close, Margate, Kent CT9 5HX

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 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 the following approved plans: 237344 100 site location plan; Final Transport Statement and appendices C&A Consulting Engineers Project No 16-029 October 2016; Arboricultural Report by Curtis Barkel 23 June 2016.
- 5) No development shall take place until a Written Scheme of Investigation of site archaeology shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 6) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 5.
- 7) The access shown on the submitted plans shall be fully constructed prior to the occupation of the first dwelling and the details required by condition 1 shall include provision for turning within the site when layout matters are considered for an 11.2 metre refuse vehicle.
- 8) The applicant shall progress the installation of double yellow line parking restrictions in Briary Close as shown on the submitted drawings (16-029-015) to ensure safe access to the proposed development.
- 9) The reserved matters shall include provision and maintenance of the visibility splays shown on the submitted plans with no obstructions over 0.6 metres above carriageway level within the splays, and the visibility

splays should be provided prior to the occupation of any of the dwellings hereby permitted.

- 10) The reserved matters details shall include provision of a bound surface for the entire length of the access road to the point where it joins the existing highway to prevent deposition of loose material. Footways along the new access road, and within the development, should be a minimum of 1.8 metres wide to meet standards outlined in the Kent Design Guide. The gradient of the access to be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.
- 11) Prior to the occupation of any of the dwellings hereby permitted the pedestrian dropped kerbs in Briary Close shall be provided in accordance with the approved details.
- 12) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 13) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 14) 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 Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from construction works;
- viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 15) Prior to the commencement of the development, a programme and timetable for the enhancement of protected species and their habitats shall be submitted to and approved in writing by the local planning authority. The programme shall be based upon the recommendations of the submitted Extended Phase 1 Habitat Survey, dated May 2016. The approved programme shall be carried out in accordance with the approved details and timetable.
- 16) No development above ground level shall take place until details of all external lighting have been submitted to and approved in writing by the local planning authority. The said details shall include heights of columns, light fittings, cowls and levels of luminance. The development shall be carried out in accordance with the approved details and prior to the first occupation of the development. No further external lighting, whether temporary or permanent, shall be installed or brought onto the land.
- 17) Prior to the first occupation of the development hereby approved, details of refuse storage areas shall be submitted to and approved in writing by the local planning authority. The approved refuse storage areas shall be provided before the dwellings are first occupied and shall thereafter be kept available for these purposes.
- 18) Prior to first occupation of the development hereby approved, full details of the cycle parking facilities for each dwelling shall be submitted to and approved in writing by the local planning authority. The cycle parking facilities shall thereafter be retained for these purposes.
- 19) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 20) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 21) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die,

are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 22) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedges (the tree and hedges protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 23) The development hereby permitted shall incorporate measures to minimise the risk of crime. No development shall take place until details of such measures, according to the principles and physical security requirements of Crime Prevention through Environmental Design, have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented before the dwellings are occupied and thereafter retained in accordance with the approved details.

---End of Conditions---