



Appeal Decision

Hearing (Virtual) held on 1 March 2022

Site visit made on 3 March 2022

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Appeal Ref: APP/V2255/W/21/3272760

Land lying to the south of Dunlin Walk, Iwade ME9 8TG

- 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 BDW Kent against the decision of Swale Borough Council.
 - The application Ref 18/506328/OUT, dated 20 November 2018, was refused by notice dated 18 November 2020.
 - The development proposed is described as 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout.
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Decision

1. The appeal is allowed and planning permission is granted for 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout at Land lying to the south of Dunlin Walk, Iwade ME9 8TG in accordance with the terms of the application, Ref 18/506328/OUT, dated 10 December 2018, and subject to the conditions set out in the schedule to this decision.

Applications for costs

2. Applications for costs were made by BDW Kent and the Council against each other. These applications are the subject of separate Decisions.

Preliminary Matters

3. The appeal is made in outline with all matters except access reserved for future consideration. I have therefore assessed the submitted plans as merely illustrative insofar as they relate to the reserved matters of layout, scale, appearance and landscaping.
4. The site address has been taken from the appeal form and decision notice as the application form only included a grid reference.
5. A signed and dated deed of agreement, made as a Deed on 15 March 2022 pursuant to s106 of the 1990 Act and imposing planning obligations on the site, was submitted with the appeal (s106 agreement). I have had regard to it in reaching my decision.

Main Issues

6. The main issues are:
 - whether the proposed development could be designed at reserved matters stage so that the amount of housing proposed could be acceptably and

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safely accommodated on the site, with particular regard to servicing and parking arrangements; and

- the effect of the proposed development on designated nature conservation sites.

Reasons

Servicing and parking

7. During the appeal and prior to the hearing, the appellant submitted two additional plans Drawings 1810028-TK17-01 Rev B and 1810028-TK17-03 Rev B) showing an alternative indicative layout for the proposed development. The illustrative plans show swept paths for refuse vehicles utilising a turning head at the eastern end of the site. Amongst other aspects, they also show a different indicative mix of units and parking provision compared to the illustrative plans originally submitted with the planning application.
8. At the hearing and after the appellant answered some clarification questions, the Council was able to update its position with respect to servicing in response to the new illustrative plans. The Council clarified that with the additional plans showing that the proposed development could accommodate a turning head at the eastern end on the site, it was satisfied, subject to further detail and design at reserved matters stage, that the appeal proposal could be acceptably and safely serviced. The Council therefore confirmed that the concerns set out in its decision notice and appeal statements with respect to servicing had been resolved. On the basis of the submitted evidence and what I heard at the hearing, I am also satisfied that the appeal proposal could be designed so that the proposed houses could be acceptably and safely accommodated on the site with regard to servicing arrangements, including in relation to refuse collections, emergency services and deliveries.
9. This matter would need to be finalised as part of the layout to be approved at reserved matters stage. From what I heard at the hearing, the Council is clearly of the opinion that a turning head sufficient for vehicles up to the size of a refuse vehicle is necessary in terms of safe servicing of the site and that measures would be needed to ensure that such a turning head would be kept available for its intended purpose and not used for parking. Given its likely proximity to Dunlin Walk – which I observed on my site visit is a well-used route, including by children going to and from the adjacent school – and the southern boundary, I also heard that consideration would need to be given to pedestrian safety and the ecological mitigation proposed. However, these aspects, along with boundary treatment, are covered by the reserved matters and can therefore be dealt with and suitably secured at that stage.
10. With the application made in outline and only access into the site to be approved at this stage, details including the internal layout of the proposed development and the final number of parking spaces are yet to be determined. The various plans showing development across the site are therefore only indicative and show various possible layouts with a varying mix of units. Nevertheless, the Council is concerned that the site would be unable to accommodate sufficient parking for the number of houses proposed.
11. Extrapolating on its concerns, the Council explained at the hearing that it considers that the likely occupiers of the proposed houses would be reliant on

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private vehicles despite the public transport options available and agreeing that the site is in a sustainable location with various services and facilities nearby. Reasons for this relate to there being no supermarket in Iwade, the need to travel to other settlements for leisure attractions, secondary education, employment and healthcare, and the proposed development likely being occupied by families given the indicative unit mixes include three- and four-bedroom houses. On this basis, the Council considers that the development would result in significant parking demand and it is concerned about repeating previous mistakes with housing estates having insufficient parking provision.

12. The Council's Parking Standards Supplementary Planning Document (2020, SPD) provides guidance on parking standards within the borough and aims to establish an appropriate and effective response to parking issues related to new development. Amongst other aspects, it includes recommended parking standards, sets out that parking should be well-designed and usable, and seeks to balance the need to provide an appropriate parking provision, ensure safe highway operation and encourage travel by sustainable modes where practical.
13. The main parties agree that the site is best described as suburban for the purposes of calculating the SPD parking standard. It was agreed at the hearing that the SPD recommended parking range for the development would be between 46/48-60 spaces based on the mix of units set out in the submitted Planning and Design and Access Statements. The appellant also confirmed that a total of 56 parking spaces¹ would be provided under the layout shown in the Indicative Layout (Rev A) plan. In addition, I heard at the hearing that the SPD range for the mix of units that would be provided under the alternative site layout shown on the additional illustrative plans would be 44-60 spaces and that those plans include 49 parking spaces² at least³.
14. Accordingly, the total number of parking spaces proposed (including visitor spaces and all types of resident parking spaces) by the appellant under the various indicative site layouts all fall within the SPD's recommended range based on the related indicative mix of units. However, the Council considers that tandem spaces are unlikely to be used as efficiently as single spaces and that garages are often used for storage. If such spaces were discounted, the parking provisions shown in the different indicative layouts covered above would fall below the SPD's recommended range.
15. However, the mix of units is yet to be finalised and it was put to me at the hearing that the development could be designed at reserved matters stage to involve, for example, twenty two-bedroom houses with a resulting SPD range of 24-44 spaces. In this scenario, it seems to me that it would be entirely feasible to design the proposed development with parking provision well within such a range without having to rely on tandem or garage spaces. Furthermore, although Kent County Council's Interim Guidance Note 3 (2008) Residential Parking (IGN3) document sets out that tandem parking arrangements are often under-utilised, the Council's more recent SPD – which I heard at the hearing takes precedence over IGN3 – does not identify tandem parking as unacceptable subject to appropriate design. Although triple tandem parking

¹ Including 12 tandem spaces, eight garages and four visitor spaces.

² Drawings 1810028-TK17-01 Rev B and 1810028-TK17-03 Rev B show 17 single and 24 tandem spaces, and the appellant explained that the plans also include four car barns/ports and should include four visitor spaces rather than the three currently shown.

³ It was put to me that the 49 spaces in the latest indicative layout could actually total 53 if the double tandem spaces shown near the site access were designed at reserved matters stage as triple tandem spaces.

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may provide a less useable and efficient parking arrangement than double tandem spaces, I have also not been presented with any substantive evidence that indicates that tandem spaces, when associated with a single household and designed appropriately, would be significantly underutilised.

16. Accordingly, the evidence before me does not indicate that tandem spaces would result in an unacceptable parking arrangement and should not be counted as part of the parking provision. Indeed, the Council confirmed at the hearing that double tandem spaces are accepted across the borough. In this case, even discounting garages, sufficient parking within the SPD range could therefore be provided in relation to the indicative layouts discussed above.
17. In relation to garages, some are undoubtedly used for storage and, as the SPD sets out, are often not used for parking when they are for example too small, are part of a tandem arrangement and located in areas without on-street controls. However, the data in IGN3 shows that not all garages are used for storage, with 41% of garages in Sanderling Way being used for parking for example. The appellant also indicated at the hearing that the scheme could be designed at reserved matters stage to provide open-sided car barns/ports rather than fully enclosed garages, and the SPD sets out that such structures are, subject to good design, typically well-used for parking.
18. The Council explained at the hearing that they have had various applications for different uses of car barns and there have been some instances where such structures have been removed from the parking provision by occupiers moving fences to incorporate them into gardens for example. It was put to me that the structure of car barns/ports can also introduce difficulties in relation to electric vehicle charging and that they would be less well used when part of a tandem parking layout. Be that as it may, it seems to me that open sided car barns/ports are much more likely to be used for parking rather than storage and detailed design at reserved matters stage could ensure that any proposed as part of the overall parking provision would provide usable parking space.
19. In addition, the Council could impose conditions at that stage to prevent them from, for example, being enclosed and used for other purposes. The enforcement of such conditions would be a matter for the Council to determine as necessary should the issue arise, but it seems to me that such conditions could pass the relevant tests in the National Planning Policy Framework (Framework). The SPD's photos of good parking examples also include two tandem spaces in front of a garage. Consequently, I am satisfied that detailed design at reserved matters stage would mean that car barns/ports and at least a proportion of any garages proposed could also count towards the development's overall parking provision. In this case, the indicative layouts discussed above provide parking provision well within the SPD range.
20. Setting out that parking is not just a numbers game, the SPD indicates that provision should satisfy reasonable demand bearing in mind the location. In this instance, the submitted census data shows 88% of households in the Iwade ward have two or fewer vehicles. Despite being a few years old, such data provides a useful benchmark and indicates that meeting the lower end of the SPD's range would in this case be sufficient even if several of the units proposed were to be family-sized houses. Furthermore, applying average vehicle ownership levels to the indicative mix of units considered in the

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Council's Railton report (Technical Note 1, dated 12/11/2020) indicates that parking demand on the site would be approximately 1.5 per household.

21. This would equate to a total demand of some 30 residential parking spaces for that scenario and approximately 28 spaces under the indicative layout shown in the additional illustrative plans. The indicative parking provisions before me would therefore exceed likely demand even if many of the proposed houses were to accommodate families and the garages, car barns/ports and tandem spaces shown in the illustrative plans were all discounted⁴. Furthermore, the site's location, near to various local facilities and services and the public bus stops that connect Iwade to larger nearby settlements with a wider range of services and facilities, would serve to check demand to some extent and indicates that future occupiers of the proposed development would not be entirely reliant on private vehicles.
22. Accordingly, there is no reason why the proposal should be required to provide parking provision at the highest end of the SPD range. In coming to this view, I have taken into account that family activities may often involve travel out of Iwade; there are no public car parks in the locality; households increasingly include several generations and are likely to receive more visitors following the easing of Covid restrictions; the lower frequency of buses in the evenings and at weekends; and that some bus services in the wider area may soon be cut.
23. At the time of my site visit, I observed numerous vehicles parked in Sanderling Way and in neighbouring streets, both in designated bays and on the highway. As has been put to me by the Council and various interested parties, the locality is clearly relatively heavily parked. It is therefore evident to me that an insufficient on-site parking provision would lead to overspill parking from into an area which is already experiencing parking stress. This could result in various issues, such as vehicle parking blocking existing residents' access and hindering pedestrian and vehicular movements to the detriment of highway safety, and could also lead to neighbour disputes as safe parking becomes increasingly competitive and difficult.
24. However, the evidence before me, including what I heard at the hearing, indicates that the scheme could be designed at reserved matters stage to provide sufficient on-site parking that would meet likely demand and, subject to suitably designed tandem and any proposed covered parking spaces, also be within the SPD recommended range for the proposed mix of units. For the reasons above, and with neither the layout nor mix of units set at this stage, it is clear that there is significant scope to identify a suitable level of parking provision and arrangement – including in relation to occupiers' access to front doors – as part of the detailed design of the proposed development and for the Council to secure it at that stage. Without being unacceptably cramped or constituting – in the words of the Council – overdevelopment, the proposed development could therefore be accommodated on the site with regard to parking, as the indicative scenarios discussed above demonstrate, and would not lead to overspill parking into the surrounding area.
25. For the above reasons, I conclude that the proposed development could be designed at reserved matters stage so that the amount of housing proposed could be acceptably and safely accommodated on the site, with particular regard to servicing and parking arrangements. I therefore find that it accords

⁴ Although discounting them from the overall provision would be unreasonable given my findings above.

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with Policies CP2, CP4, DM7 and DM14 of the Bearing Fruits 2031, The Swale Borough Local Plan 2017 (Local Plan). Amongst other aspects, these: set out that the Kent County Council vehicle parking standards will be applied until the Council's Parking Standards SPD is adopted; include general development criteria; and seek development to be located where the need to travel will be minimised, provide adequate parking and create safe, accessible places. The proposal would also be consistent with the provisions in the Framework in relation to promoting sustainable transport; and the Parking Standards SPD.

Designated nature conservation sites

26. The site is within the zone of influence of the North Kent designated sites which include the Swale Special Protection Area (SPA) and Ramsar site and the Thames and Medway Estuary and Marshes SPAs and Ramsar sites. The submitted evidence indicates that certain types of development, including all new housing, within 6 kilometres of the SPAs and Ramsar sites add to increasing recreational disturbance at the designated sites, which have been identified as vulnerable to such threats. Alone and/or in-combination with other relevant development in the area, the appeal proposal would therefore be likely to have a significant effect on the designated sites. Accordingly, under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), Appropriate Assessment of the implications of the project for the designated sites in view of the conservation objectives is required. In accordance with Local Plan Policies CP7 and DM28, appropriate mitigation would, where necessary, also need to be secured.
27. Of national and international ornithological importance, the North Kent designated sites qualify as SPAs and Ramsar sites because of the birds that use them throughout the year, both in terms of overall numbers/assemblages and the type and number of Annex I and migratory species. The conservation objectives for the sites seek to ensure that integrity is maintained or restored as appropriate and that the sites contribute to achieving the aims of the Wild Birds Directive by maintaining or restoring the: extent and distribution of the habitats of the qualifying features; structure and function of the habitats of the qualifying features; supporting processes on which the habitats of the qualifying features rely; population of each of the qualifying features; and the distribution of the qualifying features within the sites.
28. The available evidence indicates that without mitigation it would not be possible to ascertain that the proposed development would not adversely affect the integrity of the North Kent designated sites through the indirect effects of increased recreational impacts on the sites' qualifying features. However, the reports by Footprint Ecology and the North Kent SAMMS Project Board⁵ set out that implementing a series of measures to mitigate the disturbance to birds can avoid the adverse effects of development caused by an increase in visitor numbers. Such measures include employing wardens, public engagement exercises, various infrastructure works including for example signage, footpath diversions, provision of alternative natural greenspace sites, and enforcement and monitoring. Collectively, these are known as Strategic Access Management and Monitoring (SAMM) which are being delivered through the Bird Wise project and funded by financial contributions from relevant development.

⁵ The Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy, 2014; and the Bird Wise North Kent Mitigation Strategy, 2018.

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29. Based on the submitted evidence, the securing of the necessary mitigation would be sufficient to mitigate the effects of the development on the designated sites. In this case, the s106 agreement submitted with the appeal includes an index-linked financial contribution, payable prior to commencement of development, and requires the Council to apply the contribution towards the cost of mitigation. Accordingly, I am satisfied that the contribution would mitigate the effects of the development on the designated sites and the necessary mitigation would be provided in a timely manner.
30. On this basis and following consultation with Natural England, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated sites would not be adversely affected by the proposed development. Consequently, I find that the proposal would accord with the Habitats Regulations and Local Plan Policies CP7 and DM28.

Other matters

31. It has been put to me that the proposed dwellings are not required, that the amount of housing proposed is not significant and that the affordable housing provision is likely to become a commuted sum because the small number of on-site units is unlikely to be of interest to a registered provider. It was also suggested at the hearing that the Council tends to find that commuted sums are not enough to cover the delivery of affordable housing elsewhere. However, given the Council's lack of a sufficient supply of housing land and its housing list having over 1000 people, it is clear that the appeal proposal would deliver much-needed housing, while the affordable housing provision would provide a policy compliant level with an acceptable delivery mechanism.
32. The affordable housing would be secured by the s106 agreement, which also includes contributions towards various matters such as off-site open space, highways, education, healthcare and waste facilities. Amongst other aspects, the obligations within the s106 secure the affordable housing provision⁶, the submission of full details of the affordable housing units prior to commencement of development, and various financial contributions⁷.
33. The submitted evidence indicates that the obligations in the Deed are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Accordingly, and for the reasons above, I find that all the obligations meet the tests set out in the Framework and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), represent material considerations and collectively constitute a reason for granting planning permission in accordance with Regulation 122 of the CIL Regulations.
34. I note the concern of third parties and the information submitted, including photographs and plans, with regards to drainage and expansion of the adjoining school. However, although I observed on my site visit that the site was damp underfoot, the Council has not raised any concerns in relation to

⁶ Including one First Homes unit on-site and either: one affordable rented unit on-site or, subject to various requirements, one shared ownership unit on-site, a similar provision on an alternative site within the borough or a commuted sum in-lieu of its on-site provision.

⁷ Including for: SPA mitigation; highways works to the A249/Grovehurst junction; healthcare facilities that would serve the healthcare requirements of the occupiers of the development; open-space facilities in Iwade; library facilities in Sittingbourne and the expansion of primary and secondary education facilities in the area to cover the additional library and educational infrastructure needs that would arise as a result of the development; and the provision of waste bins for the dwellings.

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flooding or drainage and Kent County Council Drainage removed their original objection following the provision of additional drainage details. Planning conditions can also secure a sufficient drainage scheme which includes for climate change adjusted scenarios. In relation to school expansion, despite the original plans for the surrounding housing development showing the site within an area identified as land available as school expansion, the evidence before me indicates that Kent County Council have determined that the school cannot now be expanded any further and have not identified that the current outdoor space is insufficient. It is also common ground between the main parties that the site is not included as part of the designated school future expansion land for Iwade Community Primary School. The proposed development would not therefore impact on the current or future operation of the adjoining school, and any existing school drainage infrastructure that may cross the site can be dealt with at reserved matters stage and through detailed drainage design.

35. The appeal proposal would bring houses closer to the school's northern boundary and it is likely that there would be some views from them across the school grounds. However, it is not unusual for housing to be situated close to schools in general and it seems to me that there is no particular reason why the proposed units would represent any more of an issue than any of the existing houses that border the school. Suitable landscaping and boundary treatment on the boundary can also be secured at reserved matters stage.
36. The site is currently easily accessible from Dunlin Walk. Residents therefore make use of the grassy area as play/open space and it has been put to me that people have previously been told that it would remain available for such recreational uses and was protected from future development. However, with it being privately owned, it seems to me that residents' long running use of the site could be stopped at any time, irrespective of the appeal proposal. Furthermore, although the proposed development would mean residents could no longer make use of it, the site is not identified or formally designated as public open space. The submitted evidence also indicates that there are various existing and planned provisions in the locality which provide sufficient public open space and play facilities.
37. I acknowledge that there is significant concern amongst existing residents about the development risking the safety of highway users, particularly of pedestrians and cyclists using Dunlin Walk but also of vehicles parking and manoeuvring on Sanderling Way and near to the proposed site access. However, the submitted evidence, including the Road Safety Audit, indicate that the proposal can be designed and constructed in such a manner that the safety of highway users, including people using Dunlin Walk, is not put at risk.
38. The proposal has generated considerable interest, with a number of consultation responses submitted in response to the planning application and further representations submitted at appeal. I have taken into account all of the other matters and concerns raised in the submissions which have not been covered above, including on issues such as: the extent of neighbour and interested party consultation on the planning application; part of the site (parcel 1) not being allocated for housing in the Local Plan, loss of a greenfield site and why was it not developed when the other houses were built; other highway issues, including the highway network needing to be upgraded and being unable to accommodate the increased vehicular movements, particularly at school drop off/pick up times, insufficient space and visibility of surrounding

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roads and nearby junctions, and inadequate access for construction, delivery and emergency vehicles; another proposed housing scheme nearby which would also be accessed via Sanderling Way and the need to consider both schemes together, including via a transport statement; air pollution and dust; construction works distracting from school lessons and either temporarily depressing prices or preventing sales of adjoining houses; non-compliance with the Construction (Design and Management) Regulations 2015; the proposed access leading to a loss of parking spaces on Sanderling Way; insufficient water supply; harm to the living conditions of adjoining occupiers, including in relation to overlooking/privacy, loss of outlook and light, overshadowing, noise disturbance and disruption from construction works; anti-social behaviour; pressure on limited, overstretched public services such as health and education; limited/insufficient local facilities; over-population; harm to the character of the village and the appearance of the surrounding area; loss of trees/vegetation and the need to preserve trees; harm to protected species and other wildlife, including through habitat loss and the works proposed on parcel 2 not sufficiently offsetting harm to wildlife from the development of parcel 1; the affordability of the market housing units; and the site could be better used as parking for the school/nursery/shops which do not have enough.

39. However, whilst I take these submissions seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Some of the issues raised would also be covered at reserved matters stage and by condition, while the Highway Authority did also not object to the application or raise concern in relation to highway safety.
40. I have found that the proposed development would not conflict with the development plan policies identified in the Council's Decision Notice. Accordingly, and on the basis of the evidence before me and my findings above, I find that the appeal proposal accords with the development plan as a whole. On this basis, it is not necessary to consider the appeal proposal against the approach set out in paragraph 11 of the Framework.

Conditions

41. I have had regard to the various planning conditions that have been suggested by the main parties and which were discussed at the hearing. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, to ensure that details are submitted to and considered by the Council where relevant, and for clarity and consistency.
42. The first three conditions covering reserved matters are necessary to secure details of the outstanding matters prior to the development proceeding. I have imposed an additional condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty.
43. A condition securing the provision and retention of land for vehicular parking is necessary in order to ensure that adequate parking provision is provided and retained. A condition requiring the submission of an arboricultural report is necessary in order to protect existing trees. Conditions relating to hard and soft landscaping are necessary in the interests of the visual amenities of the area and for wildlife and biodiversity.

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44. Conditions covering surface water and foul drainage are necessary to ensure that the development is served by satisfactory drainage arrangements and to avoid increasing the risk of on-/off-site flooding. A condition relating to archaeology is necessary given the archaeological sensitivity of the locality. A condition securing samples of external materials is necessary in the interests of the character and appearance of the surrounding area. Conditions securing an Ecological Mitigation and Enhancement Strategy and Management Plan, the design of external lighting and fences, and biodiversity enhancement on the site are necessary in the interests of preserving and enhancing biodiversity and protected species. Conditions securing a Code of Construction Practice, completion of the site access and a Construction Method Statement are necessary in the interests of highway safety and the living conditions of adjoining occupiers.
45. Conditions relating to energy efficiency, carbon emissions, construction waste, air pollution, electric vehicle charging and water consumption are necessary in relation to climate change, pollution, limiting the use of resources and sustainable development. A condition relating to the design of the development minimising crime and anti-social behaviour is necessary in relation to good design and the living conditions of residents. A condition relating to the height of the proposed dwellings is necessary in relation to the character and appearance of the surrounding area. Conditions restricting hours of construction and piling are necessary in the interests of surrounding occupiers living conditions. A condition relating to the provision of communication infrastructure to the dwellings is necessary to ensure the timely provision of such infrastructure. A condition covering boundary treatment along the site's southern boundary is necessary to ensure suitable boundary treatment is provided between Iwade primary school and the proposed development.
46. It was suggested during the hearing that an additional condition could be imposed requiring the provision of a turning head at the eastern end of the site, with details included as part of any future reserved matters application(s). However, the Council has made its position clear that it considers that a turning head within the site is necessary and it could refuse any reserved matters application(s) that it considers do not provide sufficient on-site turning space. The proposed development could also be laid out in a number of different ways and it seems to me that the furthest end of the site is not the only place where a turning head could be provided. Accordingly, such a condition is neither necessary nor reasonable. I have thus declined to impose it.

Conclusion

47. For the above reasons, the appeal is allowed.

T Gethin

INSPECTOR

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SCHEDULE OF CONDITIONS

- 1) Details of the landscaping, layout, scale and appearance (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 two years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two 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: Location Plan; Section 104 Agreement - As Built Survey (Drawing No 13024_104); Proposed Highway Arrangement (Drawing 1810028-03, Rev A); and Area Proposed for Adoption as Highway (Drawing 1810028-02, Rev A).
- 5) The details submitted pursuant to condition 1 above shall show adequate land reserved for the parking or garaging of cars (in accordance with the currently adopted Parking Standards SPD 2020) which shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on such land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.
- 6) No demolition, construction or ground works shall take place until an Arboricultural Method Statement in accordance with the current edition of BS: 5837 has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 7) The details submitted pursuant to condition 1 above shall include details of both hard and soft landscape works. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, the retention and reinforcement of vegetation along the southern and eastern boundaries of the site and an implementation programme. The works shall be carried out prior to the occupation of any part of the development and in accordance with the programme that has first been submitted to and approved in writing by the local planning authority.
- 8) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, die, are severely damaged or become seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.
- 9) No development shall take place until the details required by condition 1 above demonstrate that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted

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critical 100 year storm can be accommodated within the proposed development layout.

- 10) Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the principles contained within the Drainage Impact Statement and Design Philosophy (Reference 6960-D007, Revision P4) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on- or off-site. The drainage scheme shall also demonstrate (with reference to published guidance): that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker. The drainage scheme shall be implemented in accordance with the approved details.
- 11) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to and approved in writing by the local planning authority, in consultation with the Lead Local Flood Authority. The report shall demonstrate the suitable modelled operation of the drainage system such that flood risk is appropriately managed and shall contain: information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 12) Construction of the development shall not commence until details of the proposed means of foul sewerage disposal have been submitted to and approved in writing by the local planning authority, in consultation with Southern Water.
- 13) 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 first submitted to and approved in writing by the local planning authority.
- 14) The details submitted pursuant to condition 1 above shall include details in the form of samples of external finishing materials to be used in the construction of the development hereby approved.
- 15) No development shall take place until an Ecological Mitigation and Enhancement Strategy and Management Plan (EMES & MP) has been submitted to and approved in writing by the local planning authority. The EMES & MP shall include the following: a) Purpose and conservation objectives for the proposed works; b) Review of site potential and constraints; c) Detailed design(s) and/or working method(s) to achieve stated objectives; d) Extent and location/area of

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- proposed works on appropriate scale maps and plans; e) Type and source of materials to be used where appropriate, e.g. native species of local provenance; f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development; g) Details of initial aftercare and long-term maintenance; h) Details for monitoring and remedial measures. The EMES & MP shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.
- 16) All external lighting shall be designed and installed in accordance with the details within section 6.3 of the submitted Ecological Assessment (Bakerwell Ltd, November 2018).
- 17) To allow the movement of Hedgehogs through the development area, all ecological measures and/or works shall be carried out in accordance with the details within section 6.4 of the submitted Ecological Assessment (Bakerwell Ltd, November 2018). Prior to the occupation of the development hereby approved, details (including locations and specifications in accordance with section 6.4 of the Ecological Assessment dated November 2018) of the fence holes for hedgehogs shall be submitted to and approved in writing by the local planning authority. The approved details will be implemented prior to occupation and thereafter retained.
- 18) Prior to the commencement of any above ground works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the local planning authority. These shall include the installation of bat and bird nesting boxes and the provision of native planting where possible, and incorporation of recommendations as detailed in section 7 of the Ecological Assessment (Bakerwell Ltd November 2018). The approved details will be implemented and thereafter retained. The provision and installation of enhancements should take place within 6 months of the commencement of works, where appropriate.
- 19) Prior to the commencement of the development, a Code of Construction Practice shall be submitted to and approved in writing by the local planning authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless otherwise previously agreed in writing by the local planning authority. The code shall include: measures to minimise the production of dust on the site; measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s) as necessary; the design and provision of site hoardings; the location and design of site office(s) and storage compounds.
- 20) No dwelling hereby permitted shall be occupied until completion of the access in accordance with the details shown in Drawing 1810028-03 Rev A and hereby approved, and the applicant has secured a Section 278 (or Section 38) agreement with the Highway Authority for Highway Works associated with the connection to the adopted Highway.
- 21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for: a) Routing

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- of construction and delivery vehicles to / from site; b) Parking and turning areas for construction and delivery vehicles and site personnel; c) Timing of deliveries and HGV movements (to be restricted to outside school drop-off/pick-up times); d) Provision of wheel washing facilities; e) Provision of measures to prevent the discharge of surface water onto the highway; and f) Temporary traffic management/signage and the location of temporary vehicle access points to the site including measures to protect and give priority to pedestrians and cyclists using Dunlin Walk (including provision of a banks person).
- 22) Prior to the construction of any dwelling in any phase, details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.
- 23) No development shall commence until details have been submitted to and approved in writing by the local planning authority setting out and quantifying what measures, or offsetting schemes, are to be included in the development which will reduce the transport related air pollution of the development during construction and when in occupation. The details shall include 1 electric vehicle charging point for each dwelling and no dwelling shall be occupied until the charging point for that dwelling has been installed.
- 24) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).
- 25) The details submitted pursuant to condition 1 above shall demonstrate how principles relating to minimising the opportunities for crime and anti-social behaviour have been incorporated in the layout, landscaping and building design.
- 26) The details submitted pursuant to condition 1 above shall show dwellings extending to no more than 2.5 storeys in height.
- 27) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0800 - 1800 hours, and Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the local planning authority.
- 28) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times: Monday to Friday 0900-1700 hours unless in association with an emergency or with the written approval of the local planning authority.
- 29) No development beyond the construction of foundations shall take place until details for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point

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destinations and all buildings including residential has been submitted to and approved in writing by the local planning authority. The details shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The agreed details shall be laid out at the same time as other services during the construction process.

- 30) The details submitted pursuant to condition 1 above shall include a detailed plan regarding the boundary treatment between the southern boundary of the application site and Iwade Primary School.

END OF SCHEDULE

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APPEARANCES

FOR THE APPELLANT

Kate Rowe	BDW Kent
Zack Simons	Landmark Chambers, Barrister
Steve Giles	Motion, Transport
Andrew Watson	Savills, Planning
Graham Wilson	Savills, Planning

FOR THE COUNCIL

Corinna Griffiths	Senior Planning Officer
Andrew Jeffers	Development Manager
Clive Burbridge	Iceni Projects Limited
Cllr Monique Bonney	Cabinet Member for Economy and Property
Cllr Ben Martin	Cabinet Member for Housing

INTERESTED PARTIES

Cllr Hunt
Cllr Baldock



Costs Decision

Hearing (Virtual) held on 1 March 2022

Site visit made on 3 March 2022

by **T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Costs application in relation to Appeal Ref: APP/V2255/W/21/3272760 Land lying to the south of Dunlin Walk, Iwade ME9 8TG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by BDW Kent for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant considers that the Council acted unreasonably by failing to address two key national policy tests, refusing permission on issues which could be addressed by condition at reserved matters stage, and failing to produce evidence to substantiate its decision.
3. The Council's reason for refusal refers to paragraphs in the National Planning Policy Framework (Framework) that are relevant to the specific subject matter. Although the Council's appeal submissions neither use the specific phrasing of Framework paragraph 111 nor refer to the test it contains, the statement by Mr Burbridge refers to safety issues on several occasions and identifies, for example, 'grave concerns' over the accessibility of the site for delivery and servicing. To my mind, that relates sufficiently to the approach of paragraph 111 and the Council's written position is clear that the appeal proposal would, in its opinion, have an unacceptable impact on highway safety.
4. The refusal reason does not refer to Framework paragraph 11d and the Council's written submissions do not directly address the presumption in favour of sustainable development which is triggered in cases such as this where there is not a five year supply of deliverable housing sites. However, with the Council's appeal statement by Councillor Bonney referring to the 'tilted balance', it is clear that the Council was cognisant of this national policy test. Although not explicitly stated by the Council, the evidence before me, including what the Council said during the hearing in relation to matters such as the

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weight it considered should be afforded to the proposal's benefits, also points to it considering that the adverse impacts it alleged would arise in relation to highway safety would significantly and demonstrably outweigh the benefits. Furthermore, it seems to me that this is what Councillor Bonney means in her reference to the 'tilted balance should not apply' as opposed to meaning that the approach set out under paragraph 11d is simply not applicable. While the applicant may disagree with the Council's position and the weight it afforded to the proposal's benefits and alleged harm, this does not mean that the Council failed to have regard to the approach set out in Framework paragraph 11d.

5. With the planning application made in outline with all matters except access reserved for future consideration, the Council's refusal reason covers layout-related issues that would be finalised at reserved matters stage and which could usually be covered by condition. During the hearing, in response to the additional illustrative plans submitted by the applicant, the Council also withdrew its concerns that the appeal proposal could not be acceptably laid out with regards to servicing and confirmed that this matter could now be appropriately addressed at reserved matters stage and dealt with by condition.
6. However, the Council's appeal submissions, including what was said at the hearing, indicate that it considered that it would not be possible to resolve its layout-related concerns via condition/at reserved matters stage. This was because the Council deemed, on the basis of the information available when it made its decision and submitted its written appeal submissions, that the proposed development of 20 dwellings could not be designed and laid out on the site in the manner that would provide acceptable servicing and parking arrangements. The straying into detailed issues that are covered by the reserved matters, such as housing mix and parking numbers, was therefore neither particularly surprising nor unreasonable. Although the additional illustrative plans submitted by the applicant prior to the hearing subsequently demonstrated an acceptable layout could be achieved in relation to servicing, the Council did not have this when preparing its written appeal submissions. The Council also maintained its parking-related concerns were neither resolved by the additional plans nor could be resolved via a different layout.
7. Although such matters can be – and usually are – addressed by condition for outline applications such as this, granting permission for a development that the Council believed would be unlikely to be approved at reserved matters stage and imposing conditions that it considered could not be resolved at that point would, in my view, not have been judicious. Accordingly, it seems reasonable to me for the Council to have refused permission for a scheme that it considered – rightly or wrongly – presents issues that could not be addressed by condition and could thus not actually be delivered. That I have come to a different conclusion and that the Council withdrew its servicing-related concerns during the hearing in response to the additional illustrative plans do not mean that it acted unreasonably in relation to this matter. In coming to this view, I have also taken into account that the Highway Authority had not objected to the planning application.
8. The Council's written appeal submissions, particularly in relation to the matter of parking provision and which Councillors Bonney and Martin focused on, are relatively concise. However, they refer to relevant guidance, are not particularly vague, generalised or inaccurate, and neither their brevity nor a lack of professional qualification or specific expertise in relation to the matter of

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parking mean that the information provided is inherently insufficient to substantiate the Council's position. The Council's servicing concerns were also covered by a suitably qualified professional. In addition, setting out the reason for refusal, the Decision Notice is complete, precise, specific and relevant to the development proposed, and details the alleged harm and the local and national planning policies and guidance that the Council considered the development conflicts with.

9. In this case, the Council's written submissions, combined with what was said during the hearing, sufficiently elaborate its concerns with the proposed development and substantiate the refusal reason. Although I have come to a different conclusion and the Council's concerns relate to reserved matters, this does not mean that its views with respect to parking were unfounded to the point that they are unreasonable. The lack of technical evidence regarding the Council's concerns with parking provision, the lack of objection from the Highway Authority and the Council's concerns being related to a reserved matter do not lead me to a different conclusion.
10. Although I have come to a different overall conclusion to the Council and have allowed the appeal, this does not mean that it acted unreasonably in refusing the planning application. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR



Costs Decision

Hearing (Virtual) held on 1 March 2022

Site visit made on 3 March 2022

by **T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Costs application in relation to Appeal Ref: APP/V2255/W/21/3272760 Land lying to the south of Dunlin Walk, Iwade ME9 8TG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Swale Borough Council for a partial award of costs against BDW Kent.
 - The appeal was against the refusal of planning permission for 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. On the basis of the submitted costs application, I understand that the applicant (the Council) considers that BDW Kent (the appellant) acted unreasonably by submitting the two additional illustrative plans on 31 January 2022 rather than earlier.
3. The appeal resulted from the Planning Committee determining the planning application contrary to officer recommendation. Therefore, when submitting the appeal, the only published detail available to the appellant which set out the Council's official concerns was the reason for refusal on the Decision Notice. Although the refusal reason refers to the lack of a turning area at the eastern end of the site, it was thus not until the Council's appeal statements had been submitted that the appellant had a comprehensive understanding of the Council's position.
4. The appellant could perhaps have provided the additional illustrative plans sooner than it did. However, the appellant's appeal statement sets out why it considered that a turning area at the eastern end of the site was not necessary. It was also not unreasonable for the appellant to submit the additional illustrative plans after it had a more informed understanding of the Council's concerns, even if that meant that the Council had by then engaged the services of a consultant to prepare a written submission to help defend its position at appeal. In addition, the submission of the additional plans did not result in an adjournment of the hearing or any further preparatory work by the Council.

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5. Furthermore, with the appeal proposal made in outline, there was no obligation on the appellant to provide any illustrative plans in any event or to show a turning head solution even if it is common practice to do so. Therefore, while such plans can be helpful, it would not have constituted unreasonable behaviour for the appellant to have not produced the additional illustrative plans that it did. In such circumstances, the Council's servicing-related concerns would presumably have remained unresolved and thus the issue would have taken up more time at the hearing than it did. However, as it happens, the additional illustrative plans submitted prior to the hearing resolved part of the Council's refusal reason. As such, the timing of the submission of the additional plans was not unreasonable and instead saved time at the hearing, benefitting all parties.
6. The appellant could have sought to discuss the Council's concerns in detail after the Planning Committee resolved to refuse the planning application and before the appeal was made. However, it was not incumbent on the appellant to do so. It seems to me that the Council could equally have approached the appellant to discuss potential resolutions to its concerns if it wished to narrow the issues at appeal and avoid engaging a consultant to defend its position.
7. The earlier submission of an illustrative layout showing that a turning area at the site's eastern end could be provided as part of the proposed development could have resolved the Council's servicing-related concerns earlier. This may have meant the Council did not engage the services of a consultant, and indeed the issue may not have arisen at all were such a plan available before the Council made its decision on the planning application. Be that as it may, the illustrative plans showing such a turning area were submitted – not unreasonably – shortly before the hearing, while the lack of such a plan was not unreasonable given the appeal was made in outline. Furthermore, the submission of the additional plans, in an attempt to overcome part of the Council's concerns, was ultimately helpful to all parties at the appeal.
8. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR