



Appeal Decision

Site visit made on 21 September 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2022

Appeal Ref: APP/V2255/W/21/3288665

Land to the rear of 25-29 Station Street, Sittingbourne, ME10 3DU

- 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 Tristan Property (Sittingbourne) Ltd against the decision of Swale Borough Council.
- The application Ref 21/503221/OUT, dated 10 June 2021, was refused by notice dated 21 October 2021.
- The development proposed is for residential development of 9 units including access.

Decision

1. The appeal is allowed and planning permission is granted for residential development of 9 units including access at land to the rear of 25-29 Station Street, Sittingbourne, ME10 3DU in accordance with the terms of the application, Ref 21/503221/OUT, dated 10 June 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with only access to be determined at this stage. Layout, scale, appearance and landscaping are therefore reserved for future determination.
3. Access would be taken from Pembury Street. The development is intended to be car free apart from disabled parking. A single space for this purpose is included on the indicative layout. This also shows 9 studio flats arranged on two floors along the northern side of the site facing Dover Street (A2). This is not a formal part of the proposal but nevertheless illustrates one way that the site could be developed.
4. If the appeal were to be allowed, then planning permission for 9 residential units would exist. Therefore, I need to be satisfied that a suitable scheme could be devised at the reserved matters stage.

Main Issue

5. The main issue is whether the proposal could achieve a satisfactory scale of development having regard to the character and appearance of the area.

Reasons

6. The appeal site of 0.06ha is vacant land previously used as car parking in conjunction with 25-29 Station Street. Existing structures would be removed. It lies above the level of Dover Street which is a busy traffic route through the town and is therefore in a prominent location.

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7. The land is within the central Sittingbourne regeneration area so Policy Regen1 of the Swale Borough Local Plan of 2017 applies. This indicates that proposals which support the objective of consolidating and expanding Sittingbourne's position as the main centre for the Borough will be permitted. Furthermore, because of its condition, the site is a visually poor area where the policy encourages redevelopment with buildings of innovative and sensitive design to create new and improved townscape areas.
8. As part of the scheme, the three-storey building at Nos 25-29 would be retained. Prior approval has been given for a change of use of a shop to 3 dwellings and prior approval is not required for a change of use from offices to 6 residential units. Therefore a total of 9 units could be accommodated as permitted development in the adjoining building at 25-29 Station Street.
9. The reason for refusal alleges that the proposal would not make an effective use of the land. It would achieve a density of 150 dwellings per hectare but the Council does not object in these terms. Indeed, none of the Local Plan policies referred to contain specific density guidelines or contain policy provisions relating to an effective use of land. Policy CP4, for example, requires good design but provides that densities should be determined by the context and the defining characteristics of the area.
10. The National Planning Policy Framework nevertheless refers to ensuring that developments make optimal use of the potential of each site. In this respect, the site is constrained by the need to ensure that the occupiers of the 9 units proposed within Nos 25-29 would enjoy a good standard of amenity and that rear access and cycle parking could be provided for them. The site is not large and factors such as the relationship with other neighbouring properties, the need for private amenity space, accommodating waste storage and providing dual aspect units also limit its capacity. None of this is disputed by the Council.
11. At the application stage the Council sought further illustrative material to show how a greater scale of development could be accommodated. Other than some modelling showing a part 3-story building this was not forthcoming. However, if the Council thought that the application should not be considered separately from the matter of scale then it could have formally requested further details under paragraph 5(2) of part 3 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, it did not do so and therefore the matter of scale is not part of the proposal.
12. The Council is nevertheless not convinced that a scheme for 9 units would be of an appropriate scale. In particular, that it would not provide for a strong urban form but rather one that is "underwhelming and weak". However, the size and type of the proposed new dwellings is not fixed and they could conceivably be larger than the small ones illustrated and so lead to a larger building than that indicated. As the quantum of development would not change in that scenario it is unlikely that the supporting infrastructure would change to such an extent that developing 9 larger units would not be feasible, notwithstanding the constraints. This is especially as parking provision would be minimal. There is no clear evidence that the site only has scope to be developed by studio flats.
13. The centre of Sittingbourne is undergoing change and distinctive buildings have been erected nearby in recent years. However, the appeal site has not been identified as suitable for a landmark building and is outside the Masterplan area as shown in figure 6.7.1 of the Local Plan. Indeed, the Council has not been

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specific about the scale of development that it is seeking to achieve. The immediate context mainly comprises two and three storey development in Station Street and Pembury Street. There is no particular need for any scheme to be subservient to Nos 25-29 and so three-storey development here would reflect the scale of the buildings that border the appeal site.

14. The illustrative material was devised to show the minimum amount of development that could be achieved. Based on this there is scope for a new building to follow the line of Dover Street and provide a firm edge to the site. Moreover, it is not obvious that 9 residential units could not produce a development that would be meaningful in size in this location and when seen against its neighbours. In this way, and subject to detailed design, the proposal would be able to meet the aspirations for the town in Policy Regen1.
15. Therefore the proposal could achieve a satisfactory scale of development having regard to the character and appearance of the area. There would be no conflict with Local Plan Policies Regen1 or CP4 or with the general development criteria of Policy DM14.

Other Matters

16. A number of other considerations weigh strongly in favour of the proposed development. These include the support in Policy Regen1 for housing redevelopment in the western gateway to the regeneration area, the use of previously-developed land, the very close proximity to the station and the absence of a 5 year housing land supply in Swale as of spring 2021.
17. The Urban Design Officer refers to the desirability of including 25-29 Station Street within a more comprehensive redevelopment site. The appellant company previously considered that option but those plans were put on the 'back burner' due to the pandemic. In any event, there is no policy requirement for a larger site to come forward. This consideration therefore does not count against the proposal.
18. The appeal site is within 6km of the Medway Estuary and Marshes Special Protection Area (SPA). In combination with other development in Swale, additional dwellings would be liable to lead to recreational disturbance and so have a detrimental impact on the migratory birds. There would therefore be a likely significant effect on the SPA's features of interest.
19. To mitigate this impact, the Council expects a financial contribution to be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy. Natural England concurs with this approach. The requisite sum has been paid by the appellant accompanied by a payment form confirming the purpose of the contribution. The mitigation works are carried out by Birdwise which is the brand name of the SAMM Board that is made up of a partnership of local authorities, developers and environmental organisations.
20. The PPG indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice (ID: 65-004-20190722). A high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. One way of achieving this would be by means of a planning obligation but the Council indicates that a direct payment is also a suitable mechanism.

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21. In this case, the money has been paid and the way in which it would be spent has been documented. Furthermore, the Board and the Council are responsible public bodies. In particular, the Board has a system of governance in place and comprises multiple partners. The Mitigation Strategy indicates that its annual reports will provide details of spending. There is no evidence that sums collected have not been spent on the measures detailed in the Strategy. In these circumstances, I am satisfied that the financial contribution would lead to effective mitigation.
22. As a result, following an appropriate assessment, the proposal would not adversely affect the integrity of the SPA. It would therefore accord with Policy DM28 of the Local Plan which reflects the Regulations and seeks to conserve and enhance biodiversity generally.

Conditions

23. Where necessary, the suggested wording of the conditions that are required has been adjusted in the interests of clarity.
24. To ensure that the development functions as intended a condition is required to secure the provision of the approved access. Details of the car parking provision for disabled persons should be agreed. Making provision for vehicle charging points is required to promote sustainable transport as referred to at paragraph 112 e) of the Framework. Cycle storage facilities should also be incorporated for the same reason. In the interests of pedestrian safety the visibility splays shown should be provided and retained.
25. A limit on the water consumption rate is justified by Local Plan Policy DM21. Given the proximity of the site to Dover Street a condition to assess air quality and to mitigate any adverse impacts is warranted to safeguard the health of future occupiers. As the site has previously been used for parking a condition to investigate and remediate, if necessary, any contamination is warranted.
26. Due to the proximity to residential properties a construction management plan including measures to suppress dust is necessary together with a limit on working hours. However, control of vehicle routing is unlikely to be effective and they would be required to travel along Pembury Street in any event.
27. Conditions regarding the implementation of hard and soft landscaping and replacement planting can be imposed at the reserved matters stage once details of landscaping have been provided.
28. The need for specific measures to deal with surface water has not been explained in any detail and the treatment of the land would be covered by the landscaping details so there is also no need to specify a bound surface.
29. The Council seeks at least a 50% reduction in dwelling emission rates compared to the Target Emission Rates required under the Building Regulations. This is a laudable response to climate change but the Framework is clear that any local requirements should reflect the Government's policy for national technical standards. Such a condition therefore goes beyond national policy. Policy DM19 refers to sustainable design and construction in generic terms and so this specific requirement is not part of the development plan. As such, this stipulation is not justified.

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Conclusion

30. The proposal accords with the development plan and there are no other material considerations to indicate that a different decision should be taken. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale ("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 three 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) Prior to the occupation of the dwellings hereby permitted, the access shown on drawing no. 0117-KAA-XX-ZZ-DR-A-0017-A1-P2 shall be provided.
- 5) The layout details submitted pursuant to Condition 1) shall include details of parking for disabled persons. No dwelling shall be occupied until the approved parking has been provided. Thereafter the space(s) shall be retained and kept available for the parking of vehicles for disabled persons.
- 6) No development shall take place until details of the provision of electric vehicle charging point(s) for each approved parking space have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved charging point(s) has been provided. The approved charging point(s) shall thereafter be retained.
- 7) No development shall take place until details of cycle storage have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the first occupation of the development hereby permitted and retained thereafter.
- 8) Prior to the occupation of the dwellings hereby permitted, the pedestrian visibility splays shown on drawing no. 0117-KAA-XX-ZZ-DR-A-0017-A1-P2

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shall be provided and thereafter retained with no obstruction over 0.6m above footway level.

- 9) The dwellings hereby permitted shall not be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
- 10) No development shall take place until an air quality assessment has been submitted to and approved in writing by the local planning authority. This shall assess the impacts of air quality from road traffic and shall incorporate any mitigation required to manage any air quality impacts. Any approved mitigation measures shall be implemented prior to the first occupation of the development hereby permitted and shall thereafter be retained.
- 11) No development shall take place until a scheme to deal with the risks associated with any contamination of the site have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - (1) A preliminary risk assessment which has identified all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and potentially unacceptable risks arising from contamination at the site;
 - (2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; and
 - (3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This shall give full details of the remediation measures required and how they are to be undertaken. The RMS shall also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.A closure report including data collected and details of any monitoring, maintenance or contingency action undertaken in accordance with the verification plan (3) shall be submitted within one month of the completion of the development. The report shall also include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.
- 12) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The management plan shall include details of parking and turning areas for construction and delivery vehicles and site personnel, timing of deliveries, wheel washing facilities and dust suppression measures. Construction works shall be undertaken in accordance with the approved management plan.
- 13) No construction work shall take place on any Sunday or Public Holiday, nor at any other time except between 0730 – 1800 hours on Monday to Friday and 0800 – 1300 hours on Saturdays.