



Appeal Decision

Hearing held on 7 and 8 November 2023

Site visits made on 6 and 8 November 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Appeal Ref: APP/X2220/W/23/3324453

Land South of Whitefriars Meadow, Sandwich, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Easton Builders Ltd against the decision of Dover District Council.
 - The application Ref 21/01604, dated 14 October 2021, was refused by notice dated 12 January 2023.
 - The development proposed is described as 'the erection of three buildings to provide 10 apartments and commercial floorspace (Use Class E), together with associated landscaping and open space'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application for an award of costs was made by Dover District Council against Easton Builders Ltd. This application is the subject of a separate Decision.
3. In September 2023 the Government published a revised National Planning Policy Framework (the 'Framework'). The revisions relate to national planning policy for onshore wind development rather than anything relevant to the main issues in this appeal. Consequently, I have not invited further comments.
4. The Dover Local Plan Regulation 19 draft was submitted to the Secretary of State in March 2023. The emerging plan remains subject to amendments following an examination, which is due to open soon. Accordingly, the document does not carry full weight. Nevertheless, the National Planning Policy Framework (the 'Framework') states that weight may be given to relevant policies in emerging plans according to the stage of preparation, the consistency with the Framework and the extent of unresolved objections.

Main Issues

5. Through the submission of a planning obligation the Council and appellant have been able to reach common ground regarding the Council's sixth reason for refusal. In short, a planning agreement pursuant to s106 of the Town and Country Planning Act has been entered into that would secure the provision of affordable housing and the infrastructure required to make the proposal acceptable. Consequently, the Council and appellant share the view that a conflict with neither existing or emerging development plan policies would occur in this respect. I have not, therefore, considered this matter further.

6. The main issues in this appeal flow from the Council's reasons for refusal and the concerns raised by interested parties. They were explored at the hearing and can be summarised as:
- The effect of the proposed development on the significance of Sandwich Town Wall: section from New Gate to Woodnesborough Gate (The Rope Walk), which is a Scheduled Ancient Monument (SAM);
 - The effect of the proposed development on the significance of the Sandwich Conservation Area;
 - The effect of the proposed development on a designated open space;
 - The effect of the proposed development on the character and appearance of the area
 - Whether the appeal site is a suitable location for the proposal, having regard to policies relating to development in areas at risk of flooding.
 - The effect of the proposal on highway safety and quality of life, with particular reference to the adequacy of parking; and
 - The effect of the proposed development on the living conditions of the occupants of 4 and 6 Whitefriars Meadow, with reference to outlook.

Reasons

The effect on the significance of the Rope Walk

7. The Rope Walk is part of Sandwich Town Wall, a medieval urban defence system that consists of a ditch, rampart, berm and wet moat. It is a remarkable surviving feature that encircles the medieval core of the town and possibly dates from the 14th Century. Historic England have explained that the structure is rare in that it was never supplemented with stone. The Rope Walk section was carefully designed to go around the Carmelite Friary (now the site of the Whitefriars Meadow estate) and some of its associated land, including the appeal site. It is also of note that development in the town has not gone right up to sections of the wall, in part due to an economic downturn in the late medieval and early modern period.
8. The SAM therefore has evidential¹ value as a relatively complete medieval structure which tells us much about the construction of civic defences. The need to construct the wall and its position also provides evidence of medieval society and important events, such as a French raid in the latter stages of the Hundred Year War. The Rope Walk therefore has historic value. The fact it remains and is celebrated by a town walking trail articulates its communal value². In addition, the wall is now a pleasant feature that provides a break in development and views back towards the town. This results in fortuitous aesthetic³ value. The SAM derives significance from its value.

¹ Sometimes also referred to as archaeological interest

² Sometimes included as part of historic interest

³ Sometimes also referred to as architectural or artistic interest

9. The setting of the monument, which includes the appeal site, contributes to its value and significance. This is because the openness of the appeal site allows the earthworks to be appreciated from within the town, including the locality of the Fellowship Walk. The ability to experience the wall in this way helps with understanding the evidential and historic value and develop a semblance of what would have once been formidable defences. The aesthetic value is also enhanced by the absence of development either side of the Rope Walk. Modern development has occurred near to the SAM, including the Guildhall Car Park and Whitefriars Meadow. However, the SAM is still clearly discernible and can be understood and experienced despite these incursions into its setting.
10. The appeal scheme would introduce three buildings into the appeal site which would partially obscure some views of the Rope Walk that are currently possible across the appeal site. As a result, the form and height of a section of the SAM would be harder to discern and experience from certain vantage points. The buildings would also have an imposing presence in the vista from the Rope Walk due to the three-storey arrangement and close proximity of Buildings A and C.
11. Indeed, these structures would be much taller than the Rope Walk, which would harmfully alter the way the ramparts are experienced. This impact would not be fully mitigated by the proposed horseshoe arrangement of the buildings, and the interface with the views from the Rope Walk this would facilitate, because Buildings A and C would still be seen as close incursions into the walls historic setting. Thus, the experience/setting of the SAM would be eroded as it would be harder to discern its heritage values. The effect would be to a limited section of the wall and would therefore be of moderate magnitude.
12. The appellant has proposed mitigation in the form of a pleasantly landscaped public open space to the side of the proposed buildings. This would provide a new publicly accessible view of the SAM and tidy up what is currently a scrubby parcel of land surrounded by low quality temporary fencing. That said, development is not required to tidy up the site and the SAM can already be experienced from publicly accessible land between where the open space is proposed and the SAM. Nevertheless, the open space would allow passers-by to step off the Rope Walk and spend time admiring the monument and the integral Grade II listed wall. The appellant intends to insert interpretation panels as part of the package of mitigation to help better reveal the significance of the SAM.
13. Accordingly, this mitigation would reduce the level of residual harm to a low level. In this respect, I do not entirely share the views of the appellant's heritage consultant or those of Historic England. There is not much between us, but I consider they have slightly underplayed the harm and inflated the benefits. Accordingly, the proposal would result in some low-level residual harm to the setting and significance of the SAM.
14. For reasons I will go into, the harm to designated heritage assets is not outweighed by public benefits. Thus, as a material consideration a conflict with draft Policy HE1 of the emerging Dover District Local Plan to 2040 Regulation 19 Submission (the 'emerging Local Plan'), and the Framework, would occur. I have attached significant weight to the conflict with Policy HE1 because it is at

an advanced stage of preparation⁴, the policy appears consistent with the heritage policies in the Framework and there are no unresolved objections to it.

The effect on the significance of the conservation area

15. The Sandwich Conservation Area (CA) is focussed on the medieval town, which is broadly delineated by the town walls and probably has its origins as an early medieval trading settlement. There is no dedicated Conservation Area Appraisal covering the CA, but the Dover District Heritage Strategy and the appellant's Heritage Statement articulate the significance of this designated heritage asset. In summary, the road layout, grain of the town and rich mix of historic buildings, many of which are listed, provide considerable evidential value. Indeed, Sandwich has been described in the past as the most complete medieval town in England. The economic rise and fall of the town and its associations with international trade and events such as the Hundred Year War also provide historic value. In addition, the sinuous streets and attractive period properties provide charm, character and aesthetic value.
16. Archaeological investigations and historic maps indicate that the appeal site has probably never been developed despite being inside the town walls. The County Archaeologist explains that this is significant because it illustrates the presence of a different part of the medieval townscape, which was less densely developed. This is probably on account of the religious and hospital foundations that were established to the south of the Delf Stream, and the economic downturn in the late medieval period that meant the area within the town walls was slow to develop. Indeed, the contrast between the open spaces to the southwest of New Street and the more densely developed quayside is still very apparent on a map dating from 1787 and can still be seen on maps that predate the construction of Whitefriars Meadow. The appeal site provides one of the last vestiges of this pattern of development.
17. Because of this historic grain, the development in the vicinity of the appeal site is generally modern infilling that has less aesthetic and heritage value than other areas of the conservation area. It is not however, unattractive because the overall townscape has general harmony and cohesion in the style, scale and materials employed. Furthermore, the corridor of the Rope Walk is a pleasant space with a semi-rural character. This provides a sense of what the edge of the town may have been like in bygone times. The appeal site also has historic value as a surviving parcel of open land associated with the Carmelite Friary before it was dissolved in the 1500s and the site built upon in the 1970s.
18. The construction of the appeal scheme would inherently erode the contribution the appeal site's undeveloped character makes to the evidential and historic value of the conservation area as a whole. This is an important point given the conservation area's high level of significance. In addition, for reasons I go into, the proposed buildings would appear incongruous, and this would harm the aesthetic value of the conservation area. This harm would not be fully mitigated by the provision of a modest public open space and nor would the provision of interpretation boards entirely address the physical harm either.
19. Overall, the proposal would residually harm the significance of the conservation area and the harm would be of a moderate to high level. Thus, neither the character nor appearance of the conservation area would be preserved. For

⁴ As agreed by the Council and appellant at the hearing

reasons I will go into, the harm to designated heritage assets is not outweighed by public benefits. A conflict with draft Policies HE1 and HE2 of the emerging Local Plan, as well as the Framework, would occur. As a material consideration, I have attached significant weight to the conflict with draft Policy HE2 for the same reasons I have to Policy HE1.

The effect on a designated open space

20. The appeal site is designated in the existing development plan as an open space. Policy DM25 states that the loss of open space will not be permitted unless the site has no overriding visual amenity interest, environmental role, cultural importance or nature conservation value. Due to my findings in respect of heritage, the appeal site is of cultural importance. This alone means that building on the appeal site would be at odds with Policy DM25.
21. The Framework also seeks to protect open spaces and states that they should not be built upon unless certain criteria are met. However, the Framework defines 'open space' as areas of public value, including not just land, but also areas of water, which offer important opportunities for sport and recreation and can act as a visual amenity. The appeal site does not offer opportunities for sport and recreation and therefore does not meet the definition of an open space in the Framework. Consequently, the protection of the appeal site conveyed through Policy DM25 is not consistent with the Framework. And therefore the conflict with Policy DM25 carries limited weight.
22. Nevertheless, the appeal site is also identified in the Core Strategy (Fig 3.6) as part of the existing network of Green Infrastructure. Policy CP7 of the CS states that planning permission for development that would harm the GI network will only be granted if it can incorporate measures that avoid the harm arising or sufficiently mitigate its effects. The appeal site provides an open setting to the Rope Walk and its development would erode the quality and visual amenity of a small part of this linear route. As a result, the proposal would harm the GI network.
23. The provision of a new, pleasantly landscaped and publicly accessible open space would offset to a notable extent the harm. However, the benefit of the open space cannot be separated from the harm caused by the buildings. Overall, there would be some limited residual harm to the GI network. The proposal would therefore be at odds with Policy CP7 of the CS. This policy is consistent with Paragraph 20 of the Framework which, without qualification, seeks to conserve and enhance green infrastructure.
24. In addition, the proposal would be at odds with emerging Policy PM5. The adoption of this policy would see the appeal site designated as a Local Green Space. The implication of this is that the policies for managing development on the appeal site would need to be consistent with those for Green Belt land. The appeal scheme would therefore need to be treated as 'inappropriate development', which is, by definition, harmful. That harm would carry substantial weight as a minimum. Due the implications of this designation, it is likely the examining Inspector may wish to carefully test the evidence base. Given this, and because there are some questions relating to that evidence base⁵, I have only afforded draft Policy PM5 limited weight.

⁵ Including a suggestion in the evidence base that there is public access to the site, when there is not

The effect on the character and appearance of the area

25. As already explained, the appeal site is an open area of land situated between the Rope Walk and modern development, principally a car park and housing estate. It provides an open buffer between these areas and marks a point of transition upon leaving the car park along the Fellowship Walk and entering the leafy and pleasant environment of the Rope Walk. It therefore contributes positively to the character and appearance of the area in its undeveloped state.
26. The appeal scheme would harm the open character and appearance of the appeal site through the construction of three buildings. In particular, Buildings A and C would run parallel with the Fellowship Walk and therefore erode the sense of openness. This impact would not be mitigated by the provision of a new open space, because this area would be screened by the new buildings.
27. That said, the impact would be softened by setting the buildings back from the edge of the site behind a landscaped buffer. Building A would also provide a townscape function by helping to frame the Fellowship Walk and the Guildhall Car Park, and obscure the backs of the properties in Whitefriars Meadow. The latter does not currently respond to the grain of development in the town centre where the front of buildings enclose, frame and create the public spaces. That said, the rear elevations of the properties are exposed to the public realm because of the site clearance undertaken by the appellant.
28. The appeal scheme would also have an acceptable pallet of materials, a simple form reminiscent of semi-rural or industrial buildings often found on the edge of historic towns and a legible horseshoe composition with a clear entrance. The proposal would therefore interact with the Rope Walk, the Fellowship Walk, the new internal courtyard and the proposed public open space. Accordingly, in some respects the design of the appeal scheme has been well considered.
29. Nevertheless, it would be at the expense of an open space of visual and cultural value. In addition, Buildings A and C would be incongruous. This is because their three-storey scale would appear odd and imposing in views across the Guildhall Car Park due to the predominant two storey scale of nearby buildings. The horizontal emphasis to the windows would also result in awkward and unattractive proportions to the fenestration. The elevations would also have an incoherent composition that would result in disjointed relationships between the three floors.
30. The appellant has suggested that the appeal scheme is required to tidy up the site. However, the poor condition is down to the action, and inaction, of the appellant. This includes extensive site clearance, lack of management and the siting of a poor-quality fence. Development is not required to facilitate the removal of fencing, for the site to be tidied up or for trees to be planted. Indeed, due to its permanence the appeal scheme would have a notably worst effect on the amenity of the area than the temporary fencing and the slightly overgrown appearance of the site. In any event, it does not follow that an overgrown site should automatically be treated as an eyesore. In this instance, the 'wild' appearance of the site is not out of place in the context of the leafy and semi-rural Rope Walk.
31. In conclusion, the appeal scheme would result in significant residual harm to the character and appearance of the area through the loss of a valuable open area, the height of Buildings A and C and the elevational design of all three

buildings. Consequently, as a material consideration the proposal would be at odds with Paragraph 130 of the Framework, which requires developments to add to the quality of an area, be visually attractive and respect local character. Paragraph 134 of the Framework states that development which is not well designed should be refused. The proposal would also be at odds with draft Policy PM1 of the emerging Local Plan, which seeks to secure development that is well designed. Significant weight is attached to the conflict with Policy HE1 because it is at an advanced stage of preparation, the policy appears consistent with the Framework, and I am unaware of any unresolved objections to it.

Flood risk

32. The appeal site is in Flood Zone 3a on account of the risk from tidal flooding. It is therefore at a high risk from flooding. The Framework explains that development in areas at risk of flooding from any source should be avoided. Indeed, Paragraph 161 of the Framework explains that to avoid flood risk to people and property, a sequential, risk-based approach to the location of development should be taken. This should be done by applying the sequential test. Paragraph 162 of the Framework explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. It also includes an instruction that development should not be allocated or approved if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
33. The Planning Practice Guide (PPG) provides further guidance on the sequential approach⁶ and test. In particular, it explains that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the sequential test still needs to be satisfied first. In addition, the PPG explains⁷ how the sequential test should be applied, whereby areas of lowest risk of flooding are considered first, then medium and then high-risk areas. The sequential test does not factor in access to services and facilities.
34. A key component of the sequential test is to identify a robust sequential test area (STA). This is the geographical area within which alternative sites will be identified and sequentially tested. The STA can be defined by local circumstances relating to the catchment of the proposed development.
35. The appellant has undertaken a sequential assessment and set the STA as the built-up boundary of Sandwich. The rationale behind this is that Sandwich is identified as a Rural Service Centre in the CS, and therefore residential development needs to occur within its settlement boundary to help support its function in the settlement hierarchy and sustain the local community. Evidence from interested parties seems to support this argument, as it was suggested at the hearing that shops have closed, that existing housing is often used as holiday accommodation and that there is an acute need for affordable housing. The CS also suggests that Sandwich has lost some vitality (Fig 3.5) and the town has only taken a small proportion of the residential growth in the district. New housing could help address some of these matters.
36. However, the services in Sandwich are used by more than just the residents of the town. I heard at the hearing that Sandwich serves a wider hinterland

⁶ Paragraph: 023 Reference ID: 7-023-20220825

⁷ Paragraph: 024 Reference ID: 7-024-20220825 and Paragraph: 027 Reference ID: 7-027-20220825

including outlying villages. As a result, even if I were to accept the appellant's argument that housing is needed at Sandwich to sustain the local community, and this justifies a STA focussed on Sandwich, that area could still be wider than the town itself.

37. Moreover, some housing has occurred in the town in recent years and there are further allocations in the emerging local plan. The emerging spatial strategy and allocations are yet to be tested through an examination, but the indications are that some housing is likely to come forward to help sustain the community. Windfall development may also occur at sites within the Sandwich settlement boundary but outside areas at risk of flooding. In respect of the proposed commercial units, there is no substantive evidence before me of any local shortfall in such floorspace. Furthermore, the proposal is intended to support the district's general housing needs and the commercial units would be speculative with no local end user currently identified. As a result, the catchment area for the development could reasonably be set as the district or housing market area.
38. Therefore, when having regard to whether the proposal is needed to help sustain the local community and the catchment area of the development, it would be reasonable to draw the conclusion that a STA confined to the town of Sandwich would be too narrow in scope.
39. Notwithstanding this, and following discussions at the hearing, common ground was reached between the appellant and Council that Site SAP21 Sandwich Technology Park is a sequentially preferable site in respect of flood risk. This is because although the site is at risk of surface water flooding, large parts of it are not at risk from any form of flooding, whereas the entire appeal site is. Site SAP21 is also allocated for housing in the current development plan. It has not come forward yet, but the appellant has not directed me to evidence that demonstrates there is no reasonable prospect it would not become available over the next few years, which is the timescale that the appeal scheme would be delivered at. The alternative site is allocated for 40 homes, which is much larger than the appeal scheme. However, the PPG⁸ confirms that a part of a larger site can be included in the sequential test if it would be capable of accommodating the proposed development. There are also other emerging allocations which have a lower flood risk than the appeal site.
40. Accordingly, the submitted sequential test is predicated on a STA that has been drawn too narrowly and thus lacks robustness. Even if I were to set this aside, there is at least one sequentially preferable site within the appellant's STA. The sequential test has therefore been failed.
41. Paragraph 163 of the Framework explains that if it is not possible for development to be in areas with a lower risk of flooding, the exception test may have to be applied. In effect, the Framework is stating that the exception test should only be applied once the sequential test has been undertaken. The PPG explicitly states this⁹. Therefore, as the sequential test has not been passed, the exception test in Paragraph 163 of the Framework is not relevant at this stage. This would have considered, amongst other matters, whether the proposal would provide wider sustainability benefits that outweigh the flood risk, the safety of the proposal over its lifetime and the access and egress.

⁸ Paragraph: 028 Reference ID: 7-028-20220825

⁹ Paragraph: 032 Reference ID: 7-030-20220825

42. In conclusion, the appeal site is at a high risk of flooding and this risk has not been adequately justified through an absence of sequentially preferable sites considered in a logical and robustly identified STA. Thus, as a material consideration, I find that the proposal would be contrary to the Framework, which aims to sequentially direct development away from areas at risk of flooding to avoid flood risk to people and property. Accordingly, the application of policies in the Framework that protect areas at risk of flooding provide a clear reason for refusing the proposal.

Highway safety and quality of life

43. Policy DM13 of the CS states that parking provision in residential development should be informed by the guidance in the *Table for Residential Parking* in the CS. This table sets an indicative parking provision of a maximum of one space per home in town centres. The appeal scheme is not proposing any parking. The justification advanced for this is because the site is in a town centre location where car use would not be necessary, the parking standard in the CS is expressed as a maximum and the supporting text to Policy DM13 indicates that nil provision is encouraged to support demand management.
44. However, the standard in the CS also factors in the presence of on-street parking controls aimed at preventing all, or long stay, parking. In this respect, Whitefriars Meadow does not have parking controls along one side of the street. Accordingly, occupants of the appeal scheme and their visitors could regularly park their cars in Whitefriars Meadow, especially as the alternative is to pay for parking and/or a parking permit at the Guildhall Car Park.
45. This is important because the need to own a car should not be conflated with the desire to. Sandwich is an affluent area so residents moving into the appeal scheme may well be able to purchase and run a vehicle. They may do this even if a car is unnecessary for work or to access services or if they have access to convenient bicycle storage. Census data is not before me demonstrating that residential properties in the town centre have low car ownership, which could be attributed to access to services and facilities or socio-economic trends. As such, there is a risk the appeal scheme would increase parking demand in Whitefriars Meadow despite the 'car free' concept.
46. Emerging Policy TI3 takes a balanced approach to the nil provision of parking. It explains that this will be supported if a development site is in easy walking distance of a range of services and facilities; that there is suitable access to non-car-based modes of transport; and it is demonstrated that the lack of provision will not be to the detriment of the surrounding area. This emerging policy has not been adopted but is at an advanced stage of preparation, seems consistent with the Framework and I am not aware of any outstanding objections. Moreover, it sets out sensible criteria that can help guide my assessment. It is therefore a material consideration of significant weight.
47. The appeal site is within easy walking distance of services and facilities and non-car-based modes of transport. Adherence to the emerging policy therefore turns on the last criteria. In this respect, I observed during my site visit that there is a very high level of on street parking in Whitefriars Meadow, perhaps on account of the integral garages being too small for modern cars. Indeed, I was not able to safely park in the street. These observations are a snapshot in time but the evidence before me does not demonstrate they are untypical.

48. In this respect, a parking survey to a recognised methodology would have been of assistance. I am also mindful that I visited in the afternoon so the situation could be even worse in the evening when residents return from work.
49. Thus, the evidence before me indicates that Whitefriars Meadow is subject to parking stress. I heard from local residents that adverse implications of this can include inconsiderate parking on bends in the road, across dropped kerbs and in front of garages. There is also competition for spaces between neighbours and sometimes parking can be dangerous because it blocks sight lines and crossing points. This is often the case with delivery drivers.
50. Given the existing situation, and the possibility that future residents could own a car, I cannot rule out the possibility that the appeal scheme would harmfully exacerbate the parking stress in Whitefriars Meadow, with the knock-on effect this would have on highway safety and the quality of life of existing residents. Moreover, deliveries to the appeal scheme, including the commercial units, would likely need to occur from Whitefriars Meadow as delivery drivers would not want to incur parking charges. This would add even greater stress as some deliveries could take time to complete, such as the transfer of stock or grocery shopping. The proposal's lack of parking for residential and service vehicles would, in this instance, result in detriment to the surrounding area. As a material consideration, there would be a conflict with emerging Policy TI3.
51. It would not be possible to impose a condition preventing future occupants of the appeal scheme from owning a car as this would be unreasonable and unenforceable. Similarly, a planning obligation preventing future occupants from applying for a parking permit, and thus parking in the Guildhall Car Park, is not before me. In any event, such an obligation would not be linked to the control of land and thus fall under s106 of the Town and Country Planning Act. Moreover, it may not suppress car ownership given the ability to park in Whitefriars Meadow would endure. Lastly, I am not aware of any plans to introduce further parking controls to Whitefriars Meadow, and the appeal scheme is not accompanied by a Travel Plan as a means of incentivising future occupants not to own a car.
52. In conclusion, the proposal would unacceptably harm highway safety and quality of life, and this would be detrimental to the surrounding area. There would be no clear conflict with Policy DM13 of the CS on account of this because it simply requires parking provision to be informed by a maximum standard of one space per home. The Council has alleged a breach of Policy DM11, but this does not overtly refer to parking or highway safety. However, I have identified a conflict with draft Policy TI3 and that this policy carries significant weight. Thus, a material consideration indicates that this matter should be determined otherwise than in accordance with the development plan.

The living conditions of the occupants of 4 and 6 Whitefriars Meadow

53. The properties 4 and 6 Whitefriars Meadow (Nos 4-6) are mid terrace houses orientated with a rear outlook towards the appeal site. The outlook from these properties, including the modest gardens, is currently unimpeded save for small outbuildings and boundary fencing of a conventional height.
54. The drawings indicate that Building B would be around 11m from the rear elevation of Nos 4-6 and only 3m from the shared boundary. It would also be wider than the garden at No 6 and span around half the width of the garden of

- No 4. Building B would also be a two-storey structure which would be considerably taller than the intervening boundary treatment.
55. It would therefore dominate and enclose the modest rear garden at No 6 and to a lesser extent, the garden at No 4. Accordingly, Building B would have a constant and unavoidable close-range and dominant presence when the occupants of these properties were in the rooms at the back of their houses or in their gardens. Consequently, Building B would have an overbearing impact on the outlook from Nos 4-6 and this would harm the living conditions of the occupants of these properties.
56. This would be at odds with draft Policy PM1 of the emerging Local Plan, which seeks to secure development that is compatible with neighbouring buildings. This policy is at an advanced stage of preparation, seemingly consistent with Paragraph 130 of the Framework and I am not aware of any outstanding objections. The conflict with this emerging policy is therefore a material consideration of significant weight against the proposal.
57. In coming to this view, I have carefully considered aspects of the design advanced as mitigation. Building B would be set into the ground and therefore have a lower ridge height than Nos 4-6. The roof would also slope away from the boundary at a reasonably shallow pitch. These points would soften the impact, but the eaves height would nevertheless be higher than the boundary treatment by some way. This, taken with the proximity to the fence, would be overbearing. Moreover, the small gap between Building B and the site boundary would leave little space for meaningful planting, which could otherwise soften the presence of what would be a large building.
58. The appellant indicated at the hearing that they have applied the standard in the Kent Design Guide of an 11m distance between rear and side elevations. It is unclear if this relates to outlook or light. Nevertheless, given the width and height of Building B, and the proposed proximity to the site boundary, the back-to-back standard of 21m would be more appropriate. This would have resulted in the gap between Nos 4-6 and Building B being more akin to that proposed between 2 Whitefriars Meadow and Building A, which the Council considers to be an acceptable relationship.
59. In conclusion, the proposal would have an overbearing impact on the occupants of Nos 4-6, and this would harm their living conditions. The proposal would therefore be at odds with Paragraph 130 of the Framework, which seeks to secure developments that promotes health and well-being and high standards of amenity. This is an important point against the scheme.

Other Considerations

60. Paragraph 11d) of the Framework states that where a local planning authority cannot demonstrate a five-year housing land supply and/or the most important policies for determining the application are out of date, then permission should be granted. This presumption can only be displaced if the application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development, or any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Five-year housing land supply

61. The Council has recently published its five-year housing land supply assessment for the period April 2023 to March 2028. This analysis indicates that the housing land supply is currently 5.38 years. In undertaking this assessment, the Council applied the standard formula that factors in past under delivery. The appropriate buffer of 5% was also applied as notified by the results of the Housing Delivery Test. The appellant has arrived at a slightly different figure for the housing requirement, but the discrepancy is not so great as to meaningfully effect the outcome of the exercise. As a result, there is broad common ground that the housing requirement over the five-year period is between 3,197 and 3,207 dwellings.
62. The Council suggests it has a supply of 3,438 homes whereas the appellant's figure is 3094. The divergence is on account of the appellant applying a lapse or non-implementation rate to the supply of 10%. The appellant suggests that this should be done because not all the sites identified by the Council are likely to come forward due to changes in circumstances or viability concerns.
63. The Framework defines what a deliverable site is. This definition includes two categories of sites in an open list. Category A is the first and includes non-major sites with planning permission and all sites with detailed planning permission. These sites can be included in the supply unless there is clear evidence that homes will not be delivered within five years. The examples of clear evidence given are situations where the development would not be viable, there is no longer a demand or there is long term phasing.
64. The general underlying principle is that small sites and all sites with detailed planning permission are likely to have fewer impediments to delivery and can therefore be presumed deliverable. The clear evidence needed to disapply this presumption would, to my mind, need to be site specific rather than general. This is because without site specific evidence it would be difficult to reasonably conclude there is clear evidence a site would not be delivered in the relevant period. The appellant has not provided any site-specific evidence.
65. Therefore, the application of a general lapse rate does not chime with the definition of deliverable in the Framework. Indeed, I have not been directed to any policy or guidance that requires the application of a lapse or non-implementation rate. Some Local Planning Authorities do adopt such an approach, but that seems to be by choice rather than compulsion.
66. Category B sites can include major schemes with outline planning permission, allocated sites, those granted permission in principle or sites on a brownfield register. In this instance the onus is on the Council to demonstrate that there is clear evidence that housing completions will begin on site in five years. The clear evidence will, again, need to be site specific. Accordingly, a general lapse rate should not be necessary. The appellant has not challenged the site-specific evidence prepared by the Council.
67. Thus, I am content to rely on the Council's supply forecast of 3,438 homes. As such, the Council has demonstrated an adequate housing supply in accordance with Paragraph 74 of the Framework and therefore Paragraph 11d of the Framework is not relevant on this account.

Whether the most important policies for determining the application are out of date

68. During the hearing the Council and appellant agreed that the following development plan policies are the most important for assessing the appeal:

- Policies CP1, CP4, CP6, DM1, DM5, DM11, DM13 and DM25.

69. To this list I would also add Policy CP7 given my earlier findings. I have my doubts whether Policy DM1 is a 'most important' policy in this instance. This is because it simply seeks to prevent development outside settlement boundaries. The site is however, within the defined boundary of Sandwich. That said, I have included it for the purposes of my assessment.

70. Of this list of Policies, the Council indicated that only Policies CP1 and DM1 are out of date because they are predicated on an out-of-date housing requirement that is lower than the emerging local plan indicates. The inference being that the current spatial strategy, including Policies CP1 and DM1, does not plan to deliver an adequate level of housing. That said, I am not entirely satisfied Policy CP1 is out of date because it sets out a broad settlement hierarchy that includes all settlements in the district. It is perhaps more restrictive than the Framework for some settlement types, such as hamlets¹⁰, but it nevertheless seeks to balance housing delivery with other objectives in the Framework such as promoting sustainable transport. Nevertheless, I have adopted the Council's position simply for the purposes of this assessment.

71. Therefore, only two out of the nine policies identified above as being the 'most important' are out of date. In the context of assessing this appeal, neither Policy DM1 nor Policy CP1 are of greater importance than the other 'most important' policies listed. If anything, the other seven policies are more important because the acceptability of the scheme in this instance is informed to a larger extent by the impacts they seek to manage and address, rather than the principle of development, which is established by virtue of the site being within a Rural Service Centre.

72. Accordingly, the most important policies for determining this appeal, as a collective basket, are not out of date. As such, Paragraph 11d of the Framework is not relevant on this account.

The public benefits of the scheme

73. The appeal scheme would deliver housing and commercial floor space within a sustainable town centre location. This would adhere to the spatial strategy, reduce the need to travel by private motorised transport and encourage active travel by walking and bicycle, which can accrue health benefits. This is a significant point in favour of the scheme.

74. The proposal would deliver economic benefits through construction, the spending of future occupants, from revenue to the Council and the delivery of the commercial units. The latter is on the assumption that businesses would not be put off by the flood risk at the site. Given the modest size of the scheme, the economic benefits, which would also contribute to the vitality of the town centre, would be of moderate positive weight.

¹⁰ Where development is only permitted if it functionally requires a rural location, whereas Paragraph 78 of the Framework directs housing to all settlements.

75. The proposal would deliver ten homes. This would contribute to the Council's housing land supply targets, which is expressed as a minimum. However, the Council are currently able to demonstrate a five-year housing land supply and are therefore in the process of significantly boosting the supply of housing. Furthermore, the Council is at an advanced stage in the preparation of its new local plan, which includes housing allocations, and the contribution the appeal scheme would make to supply would be modest. As a result, housing supply is only a moderate benefit. Similarly, the delivery of three affordable homes through the planning obligation would be a benefit. The contribution would be modest but as there is an acute need the matter carries moderate weight.
76. The provision of a landscaped public open space would facilitate access into the site. It could be designed to be a pleasant and useful space. However, it would be tucked away and modest in size. As a result, the provision of an open space would be a benefit of moderate weight. There would also be a limited benefit from additional space for surface water storage and I have already factored the provision of interpretation boards into my assessment when gauging the level of harm. I share the view of the Council that the proposal would have a neutral impact on the setting of the listed wall.
77. The Statement of Common Ground (SOCG) indicates that the energy and sustainability of the construction would represent a moderate environmental benefit. However, such construction is simply a means of mitigating and reducing the impact of the proposal on carbon emissions. That is, unless it can be established that the building would have a net positive impact on these environmental factors. However, for the purposes of my assessment I am content to adopt the view in the SOCG because housing is required and consequently there is a benefit in providing it in a way that reduces carbon emissions relative to the baseline standards.
78. Given my earlier findings, the appeal site currently provides a pleasant open setting to the SAM and is an area of green infrastructure which also contributes to the significance of the conservation area. It also provides ecosystem services such as space for biodiversity and drainage. Accordingly, the proposal would not be the development of under-utilised land.
79. Nor have I given any weight to the purported biodiversity enhancements. This is because the Preliminary Ecological Assessment (PEA), which considered the baseline value to wildlife and recommended enhancements in this context, is now more than two years old. Moreover, the PEA was probably undertaken not long after the site was cleared and fenced. Since then, the baseline value could possibly have increased due to regenerative growth, the reported recolonization by wildlife that interested parties have observed and the presence of extensive log piles within the site.

Heritage balance

80. For the reasons already set out, the appeal scheme would harm the significance of a scheduled ancient monument and a conservation area. The harm would not be severe and would therefore be less than substantial within the meaning of the Framework. Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal.
81. The Framework states that designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations. Any

harm to their significance is therefore an important matter. Indeed, the Framework states that great weight should be given to an asset's conservation and the more important the asset, the greater the weight should be. Conservation in this context means sustaining, and thus not harming, an asset's significance. In this case, the designated heritage assets are a scheduled ancient monument, selected because of its national importance¹¹, and a conservation area of very high significance.

82. Consequently, very great weight should be afforded to the conservation of designated heritage assets. It is also of note that the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area¹² is a matter that must be given considerable importance and weight. This is not an instruction to dismiss a proposal that would harm a conservation area, but it nevertheless provides a strong presumption in favour of preservation.
83. The proposal would result in moderate cumulative harm to the significance of designated heritage assets. This matter carries weight of a high order. Against this, the public benefits of the proposal are only cumulatively of significant weight. Overall, the benefits are not of sufficient force to outweigh the less than substantial harm that would occur.
84. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to the significance of designated heritage assets would not have clear and convincing justification. Accordingly, the application of policies in the Framework that protect designated heritage assets provides a clear reason for refusing the proposed development.

Planning balance

85. The appeal scheme would adhere to several policies in the development plan. Indeed, the Council has not alleged any conflict with Policies CP1, CP4, CP6, DM1, DM5 and DM11¹³. Alternatively, the proposal would conflict with Policies DM25 and CP7. However, the weight I afford to the conflict with Policy DM25 of the CS, and the extent of harm caused through the conflict with Policy CP7, would be limited for the reasons already given. Thus, the proposal would adhere to the development plan taken as a whole. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise.
86. In this instance, there would be significant conflicts with several policies in the Framework. Most notably those that seek to protect designated heritage assets and areas at risk from flooding. Therefore, even if Paragraph 11d of the Framework was relevant, which it is not, the application of policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the proposed development.
87. In respect of the latter, the benefits of the scheme would not outweigh the harm that would occur to designated heritage assets. It therefore follows that the benefits of the scheme would not outweigh the totality of harm that I have identified either. The benefits would fall short by some way. There would also be a conflict with policies in the emerging local plan which can be afforded

¹¹ Planning Practice Guide - Paragraph 023 Reference ID: 18a-023-20190723

¹² See Sections 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990

¹³ A conflict with this policy was alleged in the fourth reason for refusal but the Council removed its objection

significant weight. These are decisive material considerations which, in this instance, indicate the proposal should be determined otherwise than in accordance with the development plan, and the appeal dismissed.

Other Matters

88. Various concerns have been raised by interested parties including reservations about construction management and the effect on day and sun light, which I have noted. However, given my findings above it has not been necessary for me to address these matters further as the appeal has failed on the main issues. Similarly, because I am not minded to allow the project it is unnecessary to consider whether the proposal would have a likely significant effect on the integrity of the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar sites.

Conclusion

89. For the reasons set out above, the appeal is dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Alister Hume	Hume Planning Consultancy
Georgina Keenan	Hume Planning Consultancy
Nicola Easton	Easton Builders Ltd
Tony Easton	Easton Builders Ltd

FOR THE LOCAL PLANNING AUTHORITY

Amanda Marks	Dover District Council
Alison Cummings	Dover District Council
Karen Evans	Dover District Council
Luke Blaskett	Dover District Council
Cllr Dan Friend	Dover District Council

INTERESTED PARTIES

Clare Ungerson	Deputy Major, Sandwich Town Council
Emmet Csuka	Sandwich Town Council
Simon Mallate	Sandwich Town Council
Lynne Ripley	Sandwich Town Council
Peter Dean	
Jennifer Dean	
Clive Alexander	
Lean Noelken	
Ursula Noelken	
Jeffrey Sneller	
Annika Sneller	
Jack Taylor	
Hugo Jordan	
Ann Clemence	
Adrian Tottenham	
Jennifer Dean	
Irene Rogers	

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- Final copy of the Statement of Common Ground
- Listed of suggested conditions agreed by the appellant and Council
- Deed of variation to planning obligation dated 7 November 2023
- Written copy of the Council's application for an award of costs



Costs Decision

Hearing held on 7 November 2023

Site visits made on 6 and 8 November 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Costs application in relation to Appeal Ref: APP/X2220/W/23/3324453 Land South of Whitefriars Meadow, Sandwich, CT13 9AS

- 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 Dover District Council for a full award of costs against Easton Builders Ltd.
 - The appeal was against the refusal of planning permission for a development described as the erection of three buildings to provide 10 apartments and commercial floorspace (Use Class E), together with associated landscaping and open space.
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Reasons

1. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG)¹ states that an award of costs may only be made against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
2. The Council's application was made in writing and relates to the substance of the appellant's case. In summary, the Council submit that the appeal had no reasonable prospect of succeeding because, during the hearing, common ground was reached between the appellant and Council that there is at least one sequentially preferable site. The implication being that Paragraph 11d(ii) of the National Planning Policy Framework is not engaged. Indeed, the application of policies in the Framework provide a clear reason for refusal. The premise of the Council's case is supported by the PPG, which states that an appellant is at risk of an award of costs if the appeal had no reasonable prospect of succeeding.
3. It is fair to say the appeal had little prospect of success without passing the sequential test. Furthermore, the appellant erroneously approached the sequential test required by Paragraph 162 of the Framework, in part at least, with reference to the accessibility of services and facilities. Instead, the sequential test is concerned with sequentially considering sites with reference to three 'sub tests', these being; whether the alternative site(s) are in an area of lower flood risk; appropriate for the proposed development; and reasonably available.
4. Nevertheless, by way of mitigation, the Council's reason for refusal relating to flood risk was muddled in that it focussed on access and/or egress to the site. Such a consideration only becomes important if the sequential test is first passed. It also only alleged a conflict with Paragraphs 163-167 of the

¹ Paragraph: 030 Reference ID: 16-030-20140306

Framework, which relate to the exception test. The appellant's case, therefore, understandably focussed on responding to the perceived concerns with access and egress.

5. Moreover, the Council's delegated report does not identify any specific sites that are sequentially better, did not apply the tests listed above and seemed to factor in wider site constraints. It also confirmed that the level of search for alternative sites 'appears' limited but did not directly criticise the sequential test area or identify a different geographical location.
6. The appeal statement provides a bit more detail and does confirm that seven sites are proposed for allocation in the emerging local plan, and that some of these site score preferentially in terms of flood risk. However, there is little detail behind this statement. For example, the specific sites are not identified, and there is no analysis against the relevant 'sub tests'. Nor did the Statement of Common Ground identify which sites the Council considered to be sequentially preferable. Therefore, the limitations in the appellant's sequential test were not clearly set out by the Council. Thus, the Council's case lacked precision and therefore the appellant's response did too.
7. It is therefore unsurprising that this was a matter discussed in detail at the hearing. During that discussion the Council's case crystallised. At that point the appellant conceded the matter and agreed that at least one site was sequentially preferable in flood risk terms to the appeal site. Had the Council provided more detail in the delegated report, reason for refusal or appeal statement then the appellant may have conceded the point earlier.
8. Moreover, it is of note that parties are encouraged to keep their cases under constant review, even during events such as hearings. There is nothing inherently wrong with conceding a point as that assists the proceedings. Indeed, the appellant's team showed professional integrity in doing so.
9. The Council also evolved its case during the hearing with reference to whether the most important policies for assessing the proposal are out of date, whether the car free concept would harm the area, whether a district wide sequential test should be undertaken and the relevance of Policy DM25. Some of these revisions to the Council's case departed from the Statement of Common Ground. This serves to illustrate that cases can change upon testing at the event. The parties should react to this and not remain dogmatically wedded to a point that does not stand up to scrutiny. Given this, and when factoring in the lack of precision in the Council's case, I am of the view that unreasonable behaviour has not occurred, but only just.

Conclusion

10. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

Graham Chamberlain
INSPECTOR