

Appeal Decision

Site visit made on 21 December 2016

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 27th January 2017

Appeal Ref: APP/J2210/W/16/3154985

11 Valkyrie Avenue, Whitstable, Kent CT5 4DJ

- 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 Mr Payne against the decision of Canterbury City Council.
 - The application Ref CA/16/00207/FUL, dated 26 January 2016, was refused by notice dated 22 March 2016.
 - The development proposed is demolition of existing bungalow and erection of two detached dwellings with associated parking.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant submitted a block plan with their final comments (reference 775/01 I) which differs from that submitted with the application (775/01 C), particularly in relation to the location of the electric gates to the driveway to Plot 2 to the rear of the site. There is also a difference in the layout of the dwelling in Plot 2. The revision date on this is after the decision date of the application and is not on the list of documents submitted with the application. I have no evidence that the Council considered this plan, or that it has been subject to any form of public consultation. For the avoidance of any doubt, I have assessed the appeal on the basis of the plans submitted with the application only.

Main Issues

3. The main issues are the effect of the development on:
 - (a) The character and appearance of the area;
 - (b) The Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar Site (TCSBSPA) and North Kent Marshes SPA and Ramsar Sites (NKMSPA); and
 - (c) The living conditions of future occupiers of 'the Plot 1 dwelling', with particular regard to noise and disturbance.

Reasons

Character and appearance

4. The appeal site comprises a detached bungalow set back from the road behind a small front garden. The dwelling is vacant and appears to be in a poor state
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of repair, though there is nothing to suggest it is uninhabitable. The bungalow sits back from the road behind a low wall and small front garden and driveway to the integral garage. To the rear is a relatively long garden.

5. To one side of the site lies 13 Valkyrie Avenue, which is a detached bungalow separated from No 11 by a public footpath that runs between the dwellings. A new two storey dwelling is currently under construction on the other side of the site. The predominant type of dwellings in the vicinity of the site are detached bungalows, which have similar characteristics to the existing dwelling. This is not exclusively the case, however, with some examples of two storey dwellings being visible in the street scene in addition to a dwelling under construction adjacent to the appeal site. Notwithstanding this, the housing along Valkyrie Avenue exhibits a strong linear character, with no overt signs of backland or tandem development.
6. The development would comprise two dwellings. Plot 1 (P1), to the front of the site, would contain a two storey 4 bedroom dwelling roughly in the same location as the existing bungalow. Plot 2 (P2), to the end of the rear garden, would be a 4 bedroom bungalow. This would be accessed by its own access drive from Valkyrie Avenue, which would run between the public footpath and the side of P1.
7. The Council's main concern is with the introduction of backland development into an area where none currently exists. The appellant has argued that the analysis of the character of the area should not be restricted to the confines of Valkyrie Avenue. My attention has been drawn to other backland development on the nearby street of Joy Lane, which runs at right angles to Valkyrie Avenue. I had the opportunity to view these. While Joy Lane may not be a significant distance from the appeal site, it does not share the same overall appearance or character. The dwellings are generally larger family houses with more architectural variation. They also tend to be set further back from the roadside in more spacious and verdant plots than on Valkyrie Avenue. The street scene here differs quite considerably from that near to the appeal site. While I do not have the full details of when or how each of the backland dwellings on Joy Lane was granted, they are clearly part of the character of that street and are not unusual in their context.
8. The character of Joy Lane does not, therefore, have a significant bearing on the appropriateness of development on Valkyrie Avenue. The examples provided are not visible from anywhere on Valkyrie Avenue and do not establish any kind of context for development in this location. It is the character and layout of development in the immediate vicinity of the appeal site, therefore, which provides the primary context for the consideration of the development.
9. The bungalow (P2) would not be particularly prominent from the roadside, but it would still be visible from some locations on Valkyrie Avenue through the gap that would exist between P1 and No 13. There would be some screening from any boundary treatment, but this is unlikely to restrict all visibility of the roofline of the bungalow from the roadside. Moreover, the presence of the dwelling would be clearly discernible to any users of the public footpath and from the private views of nearby dwellings. As such, I consider the development would represent a discordant and incongruous feature that would have a detrimental impact on the strong linear character of Valkyrie Avenue. The resulting intensification of development on the site would also be out-of-

keeping with the predominant density and nature of development exhibited by other plots in immediate vicinity of the site.

10. The Council do not appear to have raised any specific concerns over the dwelling on P1. This would differ in character and height from the bungalows leading up to the site and what is currently in place. As such, it would have some effect on the existing street scene. However, the dwelling next door has already created some additional variety to the frontage. There is nothing inherently objectionable about the scale or design of the dwelling in terms of the mix of dwelling types or styles in the area around the site. It would also not appear cramped in the plot or be an unduly large or dominant structure in relation to other two storey development in the immediate area. I am satisfied, therefore, that there would be no material harm resulting from P1.
11. As such, while I have no significant concerns relating to the development of P1, the introduction of an uncharacteristic form of development into a backland plot would be harmful to the existing character and appearance of the area. Accordingly, there would be conflict with saved policy BE1 of the Canterbury District Local Plan¹ (CDLP) which seeks, amongst other things, to ensure development is of a high quality of design which has regard to the visual impact on local townscape character. There would also be conflict with the Council's 'Guidelines to Control Residential Intensification' (2008) insofar as this suggests intensification should not be allowed where there is conflict with policies in the Local Plan. The development would also conflict with the requirements of section 7 of the National Planning Policy Framework (the Framework), which sets out the importance of delivering high quality design that improves the character and quality of an area.

Effect on SPAs

12. The site lies within the identified zones of influence for the above SPAs and Ramsar sites. The TCSBSPA area also includes part of the Tankerton Slopes and Swalecliffe Special Area of Conservation (SAC) and the Thanet Coast Site of Special Scientific Interest (SSSI) and The Swale SSSI. The SPAs are afforded protection under the Conservation of Habitats and Species Regulations 2010 (Habitat Regulations). The occupiers of the dwellings would have the potential to visit the SPAs and their activities could cause disturbance to the important bird species identified. The net increase of one dwelling on the site would see an increase in risk to these habitats.
13. To mitigate the potential for such disturbance, the Council has prepared Strategic Access Management and Monitoring (SAMM) strategies for the Canterbury section of the TCSBSPA. These have been prepared in partnership with Natural England and promote the collection of developer contributions to fund the SAMM strategies within the SPAs. It is noted that Natural England do not object to the development, subject to the necessary contributions being made.
14. The appellant has indicated a willingness to make appropriate contributions. However, no Unilateral Undertaking was submitted with the appeal. Therefore, without a mechanism for securing the contributions, I cannot be satisfied that the development would provide adequate measures to mitigate the potential adverse effects on the SPAs. This would, therefore, be contrary to the

¹ Canterbury District Local Plan – Adopted July 2006

requirements of CDLP policy NE1 and paragraphs 17, 109 and 118 of the Framework, which seek to ensure that development that could have a significant impact on protected species is not permitted where adequate mitigation is not provided.

15. The Council have referred to conflict with CDLP policy BE1 in relation to this issue, but as this policy relates to the design of development I do not see it has significant relevance to the mitigation of any impact to the SPAs.

Living conditions

16. The Council's concerns relate primarily to the effect of noise on the future occupants of P1 as a result of the access to P2. Both main parties suggest that there would be no windows in the flank wall facing the drive. However, the elevations indicate that there would be two living room windows in this wall. The appellant has pointed out that there is a discrepancy between the elevations and the block plan, and it is the latter (which does not show any windows) that should be considered correct. As the Council have accepted there would be no windows, I am satisfied that the appeal can be determined on this basis. Moreover, had I been minded to allow the appeal, this could have been stipulated by condition.
17. There would clearly be some noise associated with vehicles using the driveway. However, the drive itself would be reasonably wide and there would be some separation between the flank wall and the access itself. The lack of windows to any habitable room in this wall is an important consideration here in minimising the likely impacts. Having regard to the likely number of vehicle movements and the levels of disturbance, I find that this would not be of a sufficient level or frequency to have an unacceptable impact on future occupants. I have had some regard here to the examples of other backland/tandem development given by the appellant. The effect on living conditions is less location specific than impact on character and I was able to see existing examples where the relationship between the access drive and frontage dwelling would be similar to that proposed here. These only helped to confirm my conclusion that the width of the driveway and relationship to the windows and amenity space of P1 would not cause material harm to the living conditions of future occupants.
18. Accordingly, there would be no conflict with CDLP policy BE1, which seeks to ensure that development has regard to amenity and is compatible with adjacent uses. Neither would it conflict with the 'Guidelines to Control Residential Intensification' document which seeks to resist backland development that would have an unacceptable impact on the amenity of neighbouring properties.
19. The Council have quoted conflict with Section 6 of the Framework in relation to this issue. This section deals with the delivery of new homes and it is not clear what aspect of this the Council are particularly concerned about. In any event, in relation to the living conditions of future occupiers, I see no conflict with the Framework which, as part of its Core Principles, seeks to ensure a good standard of amenity for all future occupants.

Other matters

20. I recognise that the Council have no concerns relating to the principle of development in this location, the specific design of the bungalow on P2, any

impacts on the living conditions of existing residents in the area or in relation to highways. I saw nothing to suggest that I should disagree with their conclusions on these issues.

21. However, neither these factors nor my conclusions on the living conditions of future occupiers outweigh my concerns over the harmful impact on the character and appearance of the area or the lack of mitigation associated with protected habitats.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR