
Appeal Decision

Site visit made on 24 January 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 24th February 2017

Appeal Ref: APP/J2210/W/16/3157419

Land adjacent to Broomhirst, Willow Road, Whitstable, Kent CT5 3DW

- 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 Majid Sadri-Shirani against the decision of Canterbury City Council.
 - The application Ref CA/15/01263/FUL, dated 8 June 2015, was refused by notice dated 4 March 2016.
 - The development proposed is a proposed new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be:
 - Whether the proposal is acceptable having regard to the location of the site and its accessibility to shops and services;
 - The effect of the proposal on the character and appearance of the locality, with particular regard to the trees;
 - The effect of the proposal on the habitat of the Great Crested Newt; and
 - The effect of the proposal on the Swale SPA/SAC/Ramsar site and the Thanet Coast and Sandwich Bay SPA, SAC and Ramsar Site.

Reasons

Accessibility to Shops and Services

3. Policy H1 of the *Canterbury District Local Plan First Review* (adopted 2006) states that planning permission will be granted for residential development on identified sites and on previously developed land within urban areas. It is silent in respect of development outside of these areas. The accompanying text states that some previously developed, underused, or derelict sites could come forward as large windfall sites provided they do not have an adverse impact on the social and physical infrastructure of the village.
 4. Policy BE1 seeks high quality design which responds to the principles of sustainable development. Amongst other matters the accompanying text states that the aim is to achieve a more sustainable pattern of development,
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- reduce car travel and make greater use of public transport. This aim is consistent with the principles within the National Planning Policy Framework (NPPF).
5. Policy SP4 of the emerging *Canterbury District Local Plan* sets out the strategic approach to the location of development. For the purposes of policy SP4 the appeal site lies within the open countryside where development is generally restricted to that necessary for agriculture and forestry. Emerging policy HD4 strictly controls new dwellings within the countryside. The appeal proposal does not come within the listed exceptions.
 6. The appeal site lies within the defined countryside in both the existing and emerging Local Plans. It is situated outside of Whitstable, from which it is separated from by Thanet Way. The site is located within a cluster of residential properties and is a short walk from the bus stops on Clapham Hill. Therefore it is not remote from public transport. It is also within walking distance of a public house/restaurant; however, for most day to day services future occupants would be reliant on either the use of a car or local public transport. I therefore do not consider the proposal to be an isolated dwelling within the countryside, but equally there is no evidence before me to suggest that it would enhance or maintain the vitality of the rural community.
 7. On balance, I conclude that the location of the appeal site is acceptable in terms of accessibility to shops and services and it would not be contrary to Local Plan policies H1 or BE1. I am aware that the emerging plan adopts a more hierarchical approach to the location of development, however, the Local Plan has not yet been found sound and there is no certainty that the policies will be adopted in their present form. Consequently the weight to be afforded to these policies is limited.

Character and Appearance

8. The site is about mid-way along Willow Road, a narrow unmade road with sporadic residential development along its length. It has a distinctive rural wooded character and appearance derived from the numerous trees and hedges along its length. The absence of formal footpaths and the loose knit arrangement of dwellings add to the rural quality. There are a considerable number of trees both on the appeal site and immediately adjacent to the boundary. Most of these are protected by way of a Tree Preservation Order (TPO).
9. Policy NE5 seeks to retain trees, hedgerows and woodlands that make an important contribution to the amenity of the site and the surrounding area. LB10 of the emerging plan has a similar intent, whilst Local Plan policy BE1 encourages the conservation and integration of natural features including trees and hedgerows to strengthen local distinctiveness, character, and biodiversity.
10. The proposal is for a part one, part two storey house of a modern design. It would be situated towards the centre of the site. The elevations would be finished in timber and render with a sedum roof. Three parking spaces would be provided at the front of the site adjacent to the boundary with Broomhirst.
11. Although the appellant states that the proposed dwelling would be located within a natural clearing within the site, it would nonetheless require the removal of a significant number of trees. I accept that some of the trees to be

removed may not be of particularly good quality and that others may have a limited future. However, whilst they may be of limited quality individually, as a group, they contribute to the sylvan quality of the site and the woodland character of the road.

12. The proposed access would be likely to require additional trees to be removed. I appreciate that the dwellings has been designed to respond to the character of the site, however the introduction of a dwelling on what is essentially a small wooded area and the associated loss of trees would in my view intrinsically harm the character of Willow Road.
13. The proposal includes a garden area to the south and sides of the proposed dwelling. However, a number of the retained trees would extend close to the proposed dwelling and in my view it is probable that there would be pressure for future residents to remove additional trees. I appreciate that these trees are safeguarded by a TPO, and therefore the Council would have control over works to them and their removal. Nevertheless, there is a need to achieve a reasonable balance between safeguarding the trees and providing acceptable living conditions for future residents, and in such circumstances their removal may be difficult to resist.
14. I therefore conclude that the proposal harm the character and appearance of the locality and would fail to comply with Local Plan policies NE5 and BE1, as well as LB10 of the emerging Local Plan.

Great Crested Newt

15. The appellant submitted an ecological scoping survey and a Great Crested Newt Survey. The latter recorded a low population of great crested newts adjacent to the application site in three ponds within 500m of the application site. It found that there is extensive and continuous optimal terrestrial habitat suitable for great crested newt within the appeal site. There are no ponds located within the application site.
16. The survey recommended that a method statement including a mitigation plan is required prior to any development taking place. Whilst the survey provides a method statement for the development, the proposal would also result in the loss of some terrestrial habitat for the Great Crested Newts and no mitigation strategy to ensure the maintenance of the species' favourable conservation status has been submitted. The appellant suggests that this matter could be addressed by way of a condition.
17. Local Plan policy NE1 and policy LB9 of the emerging Local Plan which seek the avoidance and/or mitigation of adverse impacts on protected species and habitats. These policies are broadly consistent with the guidance of the NPPF, which advises that biodiversity should be conserved and enhanced, and that planning permission should be refused if significant harm cannot be avoided or adequately mitigated. As a consequence of the proposal there would be a clear risk of harm to Great Crested Newts, a European protected species, and their habitat. A mitigation strategy is necessary to demonstrate how any negative effects will be reduced or managed. Accordingly in the absence of a mitigation strategy I am unable to conclude that the proposal would not have a significant adverse effect on the Great Crested Newts.

The effect of the proposal on the Swale SPA/SAC/Ramsar site and the Thanet Coast and Sandwich Bay SPA, SAC and Ramsar Site.

18. The application site is located within 1.2 Km of the Swale SPA/SAC/Ramsar site and 4.3 km of the Thanet Coast & Sandwich Bay SPA/SAC/Ramsar site. The appellant states that the site is outside of the immediate zones identified by the Council and that the proposal would not have any significant adverse effect on these sites. Whilst the site lies outside of the protected sites, both the Council and Natural England are clear that it comes within the zone of influence and this is not disputed by the appellant. Within this area proposals may, individually, or in combination with other developments, increase the use of these protected sites for recreation and other purposes. Policies SP7 and LB5 of the emerging Local Plan restrict development that could adversely impact on the integrity of these sites. This approach is consistent with Section 11 of the NPPF and I afford it significant weight.
19. The Council is working with neighbouring authorities and Natural England to produce the Strategic Access Management and Monitoring Strategies (SAMMS). The aim is to ensure that within the zones of influence mitigation would be provided so that new developments do not have a significant effect on protected sites through. These aim to ensure that the recreational pressure from additional development, both individually and cumulatively, would not have any likely significant effect on the special interest features of these sites. The SAMMS measures rely on financial contributions collected through a Planning Obligation.
20. The appellant does not dispute the need for mitigation and states that he is prepared to make a financial contribution in accordance with the SAMMS. However, no planning obligation has been submitted and no alternative mitigation has been proposed.
21. European legislation requires a precautionary approach when considering the impact of a proposal on a site of international importance to nature conservation. In the absence of any mitigation the proposal would be likely to have a significant adverse effect on the Swale SPA/SAC/Ramsar site the Thanet Coast & Sandwich Bay SPA/SAC/Ramsar site in combination with other plans and projects contrary to policies SP7 and LB5 of the emerging Local Plan.

Other Matters

22. I am aware that there is a dwelling currently under construction at Royal Avenue, close to the appeal site. The submitted information would suggest that this is a replacement dwelling for one previously on that site, and therefore is not comparable with the appeal proposal.
23. A number of residents signed a petition in support of the proposal at the time of the application, some of the same residents have also objected to the current appeal. However, local support or opposition for a proposal is not in itself a ground for refusing or granting planning permission and such support does not justify the harm that I have identified above.
24. Mr Sadri-Shirani wishes to provide a tranquil environment for his son to mitigate the after effects of a stroke, and also to cultivate his son's creative talent through his active involvement in the design of the proposed dwelling. He believes that it is his human right to offer such a future to his son.

25. I recognise that dismissing the appeal would interfere with the rights of the appellant under Article 8 of the Human Rights Act. This sets out the right to respect for family and private life and the home. However, this is a qualified right and requires a balance between the rights of the individual and the wider community interest. Having regard to the legitimate and well-established planning policy aims to protect the character of rural areas, and the legal duty in respect of protected habitats and species, a refusal of permission would be proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering with the appellant's rights and would not, therefore, result in violation of the appellant's rights under Article 8.

Conclusion

26. Although I have found above that the location of the appeal site is acceptable in terms of accessibility to shops and services, this consideration does not outweigh the harm to the character and appearance of the locality, the habitat of the Great Crested Newt or the harm to the Swale SPA/SAC/Ramsar site and the Thanet Coast and Sandwich Bay SPA, SAC and Ramsar Site.

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

Lesley Coffey

INSPECTOR