



Appeal Decision

Site visit made on 13 December 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 9th January 2018

Appeal Ref: APP/J2210/W/17/3181311
25 Reculver Drive, Herne Bay, Kent CT6 6QF

- 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 Brian Wisbey against the decision of Canterbury City Council.
 - The application Ref 17/00886, dated 30 March 2017, was refused by notice dated 27 June 2017.
 - The development proposed is to site a static/removable caravan or mobile home for residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The adoption of the Canterbury District Local Plan (the Local Plan) in August 2017 postdates the refusal of planning permission by the Council. Accordingly the policies of the Canterbury District Local Plan First Review of 2006 cited in the reasons for refusal have been replaced by the new Local Plan's policies. I have therefore disregarded all references to what are now superseded policies.
3. The appellant's case refers to Planning Policy Statements (PPS) and Planning Policy Guidance Notes (PPG). However, the PPSs and PPGs were cancelled when the National Planning Policy Framework (the Framework) was published in March 2012. I have therefore disregarded all references to the cancelled PPSs and PPGs.

Main Issues

4. The main issues are: the effect of the development on the character and appearance of the area; whether the site would be an appropriate location for residential occupation, having regard to ground stability; and the effect of the development on the Thanet Coast and Sandwich Bay Special Protection Area for Birds and Ramsar site (the SPA/Ramsar).

Reasons

Character and Appearance

5. The development would involve the siting of a static caravan/home (the static home) for permanent residential occupation. The static home would occupy a heavily overgrown plot of land between 23 and 27 Reculver Drive at the top of a coastal slope.

6. Reculver Drive is a street characterised by dwellings of traditional 'bricks and mortar' construction of varying designs and ages. A modular static home, while being of a design appropriate to a park home estate, would have an appearance and form that would not be in keeping with the dwellings of traditional construction in this street. I therefore consider that the development would have an incongruous appearance that would not be respectful of the streetscene.
7. I therefore conclude that the development would cause unacceptable harm to the character and appearance of the area. The development would therefore be contrary to Policy DBE3 of the Local Plan and paragraphs 56, 58 and 64 of the Framework. That is because the development would be of an appearance that would not be in keeping with its surroundings.

Ground Stability

8. The site is situated within an area that the Council has designated as being a coastal protection zone (CPZ) under the provisions of Policy CC10 of the Local Plan. Policy CC10 states that new development in the CPZ '... will normally be refused'. The supporting text for Policy CC10 explains that within the CPZ for reasons of public safety development will generally not be permitted because of concerns about instability arising from erosion and the potential for new development to exacerbate the current situation or prejudice future remedial works.
9. It is intended that the static home would be sited largely on foundations that were laid in the 1990s in association with the construction of a replacement bungalow. That bungalow has subsequently been demolished following the taking of enforcement action by the Council.
10. A structural engineer's report has been submitted that seeks to demonstrate that the development would not be subject to or cause ground instability. The engineer's report is dated 31 March 2017 and its author explains that when the site was visited in September 2016 it was not possible to undertake a full visual inspection because the site was heavily overgrown. The report's author therefore places considerable reliance on a site inspection that was undertaken in September 2009. Nevertheless the report's author concludes that the foundations that were previously observed would be capable of supporting the weight of a static home without affecting the site's stability.
11. The engineer's report advises, together with a much earlier one¹, that historically the Council undertook stabilisation works, which involved the regrading of the coastal slope and the introduction of drainage. It appears that the historic stabilisation works have removed the imminent threat of a collapse that was identified in the 1960s/70s, with it being stated in an exchange of correspondence between the appellant's agent and the Council's structural engineer² that numerical monitoring of the slope has been ceased. The Council's engineer has, however, further advised that visual monitoring is ongoing and the CPZ '... will always be at risk from the forces of nature and the sea and can only be maintained for as long as it can be justified that it is financially viable to do so'.

¹ Technical Note of August 2003 prepared by Mott MacDonald

² Email of 17 July 2017

12. While the risk of a collapse has been reduced I consider the comments of the Council's engineer explain why the CPZ designation has been retained via Policy CC10's inclusion in the recently adopted Local Plan. In this context I consider that Policy CC10 is consistent with paragraphs 106 and 107 of the Framework, which encourage local planning authorities to: reduce the risk from coastal change by avoiding inappropriate development in vulnerable areas or adding to the impacts of physical changes to the coast; and to consider development to be appropriate when it is demonstrated that it will be safe over its planned life.
13. Presuming there has been no physical deterioration in the condition of the existing foundations since they were last observed by a structural engineer, the available evidence suggests that a static home could be sited on the existing foundations without affecting the site's stability. However, no evidence has been provided relating to the current stability of the rest of the site. On the evidence available to me I consider that there can be no certainty that the area between the foundations and the site's northern boundary would always be stable, especially when regard is paid to the in perpetuity risk referred to by the Council's engineer. I therefore consider there would be an unacceptable safety risk for the occupiers of the development.
14. The proposal is for the siting of a static home that would be capable of being occupied permanently. While it might be possible to occupy the site temporarily, utilising permitted development rights, such occupation would be of a shorter duration reducing the risk of the site's occupiers being affected by any future instability. I therefore attach limited weight to the possible occupation of the site on a temporary basis.
15. On the evidence available to me I conclude that it has not been demonstrated that the site would be an appropriate location for residential occupation. I therefore consider that the development would be contrary to Policy CC10 of the Local Plan and paragraphs 106 and 107 of the Framework.

Effect on the SPA/Ramsar

16. The site immediately adjoins the SPA/Ramsar and there is a need to discourage the SPA/Ramsar from being used as a recreational destination by the development's occupiers. The Council operates a disturbance avoidance strategy to mitigate the effects of new development on the integrity of the SPA/Ramsar, with that strategy being underpinned by Policy SP6 of the Local Plan. The avoidance strategy operates on the basis of financial contributions being paid by developers to fund the implementation of Strategic Access Management and Monitoring (SAMM) initiatives to manage recreational pressures within the SPA/Ramsar.
17. In connection with the appeal the appellant has not entered into a planning obligation, made pursuant to Section 106 of the Act, to secure the payment of a contribution to mitigate the development's effects on the SPA/Ramsar. The appellant was advised in the standard appeal 'start letter' that any planning obligation should be submitted no later than seven weeks from the date of that letter. The appeal start letter being dated 3 October 2017. The start letter includes an internet link to procedural guidance for appeals and that guidance includes an annexe (Annexe N) relating to the submission of planning obligations. It is the appellant's responsibility to submit any

planning obligations that it considers necessary and importantly the Planning Inspectorate, other than in the start letter, does not prompt the submission of planning obligations.

18. Given the statutory duty to safeguard the SPA/Ramsar's habitat value I am content that mitigation would be required. In the absence of a planning obligation the mitigation required to safeguard the SPA/Ramsar would be unavailable and I can therefore only conclude that there would be unacceptable harm to the SPA/Ramsar. The absence of mitigation gives rise to the potential for the SPA/Ramsar to be harmed, resulting in conflict with Policy SP6 of the Local Plan and paragraphs 109 and 118 of the Framework.
19. In the absence of suitable mitigation for the development's effects on the SPA/Ramsar, I consider the requirements of The Conservation of Habitats and Species Regulations 2017³ cannot be discharged. That is because insufficient information is available to me to undertake a Habitats Regulation assessment for the unmitigated effect of this development, in combination with others, on the SPA/Ramsar.
20. The operation of the SPA/Ramsar avoidance strategy is something quite separate to the consideration of whether or not the development would have a direct effect on any protected species present on the appeal site. The submission of an ecological appraisal for the site prior to the appealed application's determination therefore does not address the need to provide mitigation for the development's effects on the SPA/Ramsar.

Conclusion

21. For the reasons given above I conclude that the development would be unacceptable and that it could not be made to be acceptable through the imposition of reasonable planning conditions. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR

³ Regulations that came into force on 30 November 2017, consolidating the 2010 Regulations and the subsequent amending statutory instruments