
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/17/3179756
Land rear of 17 Saddleton Road, Whitstable

- 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 Y Ertan against the decision of Canterbury City Council.
 - The application Ref 16/00632, dated 15 March 2016, was refused by notice dated 16 February 2017.
 - The development proposed is erection of chalet bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site forms part of the rear garden of 17 Saddleton Road (No 17) and its address was referred to as 'land off Orchard Grove, Gordon Road, Whitstable, currently the rear part of the garden of 17 Saddleton Road' on the application form. The Council has referred to the site address as being 'Land rear of 17 Saddleton Road, Whitstable'. The appellant has not objected to the address used by the Council and I have therefore used it in the banner heading above.
3. The application was amended prior to its determination by the Council and I have only had regard to the plans that formed the basis of the Council's decision.
4. The adoption of the Canterbury District Local Plan (the Local Plan) in August 2017 postdates the refusal of planning permission by the Council. Accordingly Policy BE1 of the Canterbury District Local Plan First Review of 2006 cited in the reason for refusal is no longer extant. I have therefore disregarded all references to Policy BE1 and only had regard to the extant policies of the Local Plan that have been made available to me.

Main Issues

5. The main issues are the effect of the development on: the Thanet Coast and Sandwich Bay Special Protection Area for Birds and The Swale Special Protection Area for Birds (the SPAs); and the character and appearance of the area.

Reasons

Effect on the SPAs

6. The appellant recognises that the site is within the zone of influence for the SPAs and that there is a need to discourage the SPAs being used as a recreational destination by the chalet bungalow's occupiers. The Council operates a disturbance avoidance strategy to mitigate the effects of new development on the integrity of the SPAs, 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 on the SPAs.
7. In connection with the appeal the appellant has submitted an undated and unsigned (and thus unexecuted) Unilateral Undertaking (UU) pursuant to Section 106 of the Act. The UU is intended to obligate the appellant to make contributions respectively of £848.00 and £304.79 towards the operation of the SAMM initiatives for the Thanet Coast and Sandwich Bay SPA and The Swale SPA. As the submitted UU has not been fully executed it does not contain binding obligations. The submitted UU is also missing a plan defining the land that the UU would be binding upon.
8. The appellant has also submitted that the mortgagee has declined to sign the UU. The mortgagee is therefore not party to the UU. The appellant has therefore advised that the intention would be for the contributions to be paid under the UU's terms to be held to order by the appellant's solicitor until such time as the contributions fell due to be paid at the development's commencement. An executed version of the UU would not be binding on the mortgagee and I therefore consider it would only contain personal undertakings given by the appellant.
9. Any planning permission granted would run with the land and would not be personal to the appellant. If for any reason the mortgagee was to become a mortgagee in possession then it would be possible for the permission to be implemented without the SAMM contributions being paid. Even if the UU had been executed, as the mortgagee would not be a party to it, I consider it could not be relied on to deliver the intended mitigation for the development's effects on the SPAs.
10. Given the statutory duty to safeguard the habitat in the SPAs I am content that mitigation in the form of the SAMM contributions would be necessary. In the light of the UU's deficiencies I consider the mitigation required to safeguard the SPAs' integrity would be unavailable. As there would be no appropriate mechanism to mitigate the development's effects on the SPAs I can only conclude that the development would unacceptably harm the SPAs. The absence of mitigation gives rise to the potential for the SPAs to be harmed, resulting in conflict with Policy SP6 of the Local Plan and paragraphs 109 and 118 of the National Planning Policy Framework (the Framework).
11. In the absence of suitable mitigation for the development's effects on the SPAs, I consider the requirements of The Conservation of Habitats and

Species Regulations 2017¹ cannot be discharged. That is because insufficient information is available to me to undertake a Habitats Regulations assessment for the unmitigated effect of this development, in combination with others, on the SPAs.

Character and Appearance

12. The chalet bungalow would be sited between a bungalow at 4 Orchard Grove (No 4) and a chalet bungalow at 19A Saddleton Road (No 19A). No 4 is one of four quite recently constructed backland dwellings (Nos 1 to 4) situated behind Gordon Road. No 19A is a backland dwelling of recent construction sited behind 19 Saddleton Road. There are also two more backland bungalows at 2 and 3 Saddleton Grove, to the north west of No 4. The area within the immediate vicinity of the site is characterised by recent backland dwellings and the development would be in keeping with that character.
13. The chalet bungalow would occupy a quite narrow plot and it would have a tight siting relationship with the boundary it would share with No 19A. This development would therefore have a compact appearance. That said I consider that the dwelling's mass would not be excessive for the area and that the ratio of built development to plot size would not be that dissimilar to that of Nos 1 and 2. I therefore consider that the additional dwelling would not appear cramped within the context of its immediate surroundings.
14. I therefore conclude that the development would not be harmful to the character and appearance of the area. The development would therefore accord with Policy DBE3 of the Local Plan and paragraph 17 (the fourth core planning principle) and section 7 of the Framework because its layout, density and scale would be respectful of its context.

Other Matters

15. Concern has been raised that the additional dwelling would affect the receipt of light to and outlook from rooms within No 19A. While there would be some effect on the receipt of light and outlook for No 19A's occupiers, given the presence of the existing boundary fence and the scale of the additional dwelling, I consider that there would be no unacceptable effect on the living conditions for the occupiers of No 19A. I also consider that there would be sufficient distance between the new dwelling and the adjoining properties for there to be no unacceptable overlooking of the latter.
16. The proposed parking and accessing arrangements have been considered by both the Council and the highway authority and they consider them to be acceptable. On the evidence available to me I see no reason to take a contrary view with respect to that matter. Access for fire appliances would be for consideration under the Building Regulations and is therefore a matter covered by other legislation.

Conclusions

17. While I have found that the development would be in keeping with the area's character and appearance, for the reasons given above it would not mitigate

¹ Regulations that came into force on 30 November 2017, consolidating the 2010 Regulations and the subsequent amending statutory instruments

its effects upon the SPAs. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR