



Appeal Decision

Site visit made on 20 May 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 17 October 2019

Appeal Ref: APP/J2210/W/18/3214213

Land at rear of 73-85 Sweechgate, Broad Oak, Sturry, Canterbury CT2 0QR

- 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 S Patience of Simon Patience New Homes Ltd against the decision of Canterbury City Council.
 - The application Ref 18/01336, dated 27 June 2018, was refused by notice dated 20 September 2018.
 - The development proposed is demolition of existing garages and erection of 3 no. detached and 6 no. semi-detached houses, amenity space, landscaping, parking and access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr S Patience of Simon Patience New Homes Ltd against Canterbury City Council. This application is the subject of a separate Decision.

Procedural Matter

3. These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me now as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA through carrying out an assessment under the Habitats Regulations. Consequently, it is necessary to consider this matter as a main issue.
4. A completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act (1990) (as amended) was received during the course of the appeal and the Council's comments were sought on this.

Main Issues

5. Having regard to the above procedural matters and all that I have read and seen, the main issues are firstly, whether the proposal makes adequate provision to mitigate potential significant effects upon the integrity of the Thanet Coast and Sandwich Bay Special Protection Area (SPA), and secondly, on the character and appearance of the area.

Reasons

SPA

6. The site is located within the 7.2km Zone of Influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar Site. The SPA and Ramsar Site is used by large numbers of migratory birds, including those of European importance.
7. Policies SP6 and LB5 of the Canterbury District Local Plan (2017) prevents development which may have an adverse effect on the integrity of the coastal sites. The Council has adopted a Strategic Access, Management and Monitoring Plan (SAMM) providing a suite of strategic measures to seek to mitigate against the impact of new development across the area. Natural England has supported the North and East Kent Local Planning Authorities in the production of this. There is a financial contribution sought from new development on a per-dwelling basis were required.
8. There is evidence that human recreational activity is causing disturbance of these protected species, which is likely to increase with new housing. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment (AA) is carried out by a competent authority, as decision maker. This is incumbent upon me.
9. I have sought further evidence on this potential disturbance. I have been provided with the Habitats Regulations Assessment screening report by the Council. This identifies that the SPA is designated for reasons including the presence of habitats which support bird species of international importance which breed, feed and nest in these areas. The structure and function of these habitats can be directly or indirectly altered by increased human and/or dog activity. In this case, the proposal comprises 9 additional dwellings, and due to its proximity to the SPA and Ramsar Site there is a reasonable likelihood that this would be accessed for recreational purposes by future occupiers of the development. Although this may be minimal by itself, a significant effect on the integrity of the SPA would occur, when considered in combination with other development in the surrounding area.
10. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites, which includes whether site specific conditions or restrictions could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the sites. Due to the scale of the proposed development and site constraints, there is no scope to provide on-site mitigation.
11. The appellant has submitted Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act (1990) (as amended) to make a financial contribution as set out in the SAMM. I have also been provided with a summary of the measures included within the SAMM to which these funds will be provided. This includes further survey work, education of visitors, information boards and wardens to ensure additional impacts from recreational disturbance to the SPA and Ramsar Site are ecologically sound. These are to be secured in perpetuity through the SAMM. Given the scale of the development, suite of measures proposed and strategic working of the authorities to develop and implement the SAMM, my AA concludes that with mitigation measures, the

project would have no adverse effect on the integrity of European Sites. This position is also agreed by both parties, and Natural England.

12. The UU must also meet the tests set within paragraph 56 of the Framework. Given the requirements of Policy SP6 preventing development which may have an adverse impact on the integrity of the coastal sites, the UU is necessary to make the development acceptable in planning terms. The requirement for a contribution follows the AA conclusion and therefore is directly related to the development. Finally, the contribution is based upon a per-dwelling tariff calculated using the total cost of delivering the mitigation measures in perpetuity and the planned number of additional dwellings expected to be built in Canterbury District. It is therefore fairly and reasonably related in scale and kind to the development.
13. However, the document must also be effective in delivering the mitigation. As provided the document cannot be legally bound to secure the measures. The document is not specific in terms of the mitigation to be provided and the SAMM is not included in the definitions. The Council has also identified some technical issues with the plan, dates and signatures, and does not consider it complete. Overall, the UU would not be clear or sufficiently detailed to ensure that the contributions will be collected and used towards the specific strategic mitigation measures set out in the SAMM to ensure their strict implementation for the full duration of development. Given the precautionary principle when considering European Designations, I cannot therefore be certain that the proposal would not adversely affect the integrity of the site alone, or in combination with other sites.
14. Therefore, evidence before me indicates that there is potential for recreational disturbance to the SPA and Ramsar Site through additional activity associated with the proposed development, which has the potential to affect the integrity of the SPA and Ramsar Site. Therefore, the proposal would be contrary to Policies SP6 and LB5 of the Canterbury District Local Plan 2017 as supported by the Habitats Regulations which prevents development which may have an adverse effect on the integrity of the coastal sites.

Character and Appearance

15. The proposal lies to the south of the ribbon development fronting Sweechgate and to the east of development lining Shalloak Road. There are further dwellings to the south of the site. These are mainly detached and semi-detached properties. To the north of Sweechgate is a residential development nearing completion at the former Royal Oak public house. This has access between properties and development to the rear of the frontage to Sweechgate. The dwellings within this new development are positioned close to the access creating a strong frontage and private cul-de-sac. There is a variety of building styles and character in the vicinity.
16. The proposal would be predominately to the rear of the existing dwellings, with limited wider views. It would include a pair of semi-detached dwellings continuing the frontage onto Sweechgate, with 7 dwellings to the rear. The layout would follow the linear nature of the site, similar to that at the former Royal Oak public house development. The properties would be close to the vehicular access route, but this would be open to the north side given the parking arrangement, and create an intimate shared surface character. There would be a mix of dwellings in line with local character, with detached units set

in the corners of the site and two semi-detached blocks in the centre. These would be orientated at a slight angle which would break up the build frontage and provide gaps in between.

17. The units would have a traditional design, have appropriately size outdoor living space and reflect local density. Whilst positioned behind some bungalows, the proposal would be read as a distinct development and not be harmful to the wider character.
18. The proposal would therefore have an appropriate layout and not have a cramped appearance to the detriment of the character of the area. Consequently, the proposal would not be contrary to Policy DBE3 of the Canterbury Local Plan (2017) or the National Planning Policy Framework (2019) which, taken together and amongst other objectives, require development reinforce and positively contribute to its local context.

Conclusion

19. The proposal would not secure the necessary mitigation in regard to the SPA and despite my findings regarding character and appearance, I must conclude for that reason, the appeal should be dismissed.

Tim Crouch

INSPECTOR