



Appeal Decision

Site visit made on 2 December 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2019

Appeal Ref: APP/Z2260/W/19/3236201

17 Upper Dumpton Park Road, Ramsgate, Kent, CT11 7PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Van Issum against the decision of Thanet District Council.
 - The application Ref F/TH/19/0198, dated 5 February 2019, was refused by notice dated 20 June 2019.
 - The application sought planning permission for the erection of 3 No three storey dwellings following the demolition of existing buildings without complying with a condition attached to planning permission Ref F/TH/17/1112, dated 28 September 2017.
 - The condition in dispute is No 2 which states that: The proposed development shall be carried out in accordance with the submitted application as shown by the drawings numbered 611C/P/002, 611C/P/003rA and 611CYP004rA.
 - The reason given for the condition is: To secure the proper development of the area.
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Decision

1. The appeal is dismissed.

Background

2. The 3 dwellings were granted consent in September 2017. The appellant wishes to amend the design of the roof space of the 3 dwellings to that approved in the plans referred to in condition 2¹, by increasing the amount of residential accommodation within the roof space and constructing gables to the rear of each dwelling. The Council has concerns with regards the effect of the changes to the design to the roof space on the character and appearance of the area; the living conditions of the occupiers of neighbouring properties and also the effect of the development on the nearby Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI).
3. My site visit confirmed that the appeal site had been cleared. It also appeared that the approved development of the three dwellings had commenced and that the disputed condition had not been breached. As the original permission is within the time limit for implementation I have dealt with this appeal as a section 73 appeal against a condition.

¹ Planning application ref: F/TH/17/1112: Approved drawings 611 C/P/002. 611C/P/003rA and 611CYP004rA

4. It has been brought to my attention that the appellant submitted to the Council amended plans for the roof space of the three dwellings to construct a mansard roof, prior to lodging the appeal. Those plans did not form the basis of the Council's decision. I have based my decision on those plans² considered by the Council, as the amended plans were not accepted by the Council and had not been subject to consultation.

Main Issues

5. The main issues are the effect that removing the Condition 2 would have on:
- the character and appearance of the area; and,
 - the living conditions of the occupiers of the neighbouring properties; and,
 - the integrity of the SPA and SSSI.

Reasons

Character and Appearance

6. The appeal site is located in a terrace of two storey dwellings of similar age and architectural style. There is a uniform pattern of development to the rear of the properties with some having single and two storey extensions to the original rear wall.
7. The consented scheme consists of a front dormer set behind a parapet wall and a roof light in the rear slope to provide a bedroom. The development proposed would increase the amount of living accommodation by extending over the first floor with gables to the rear of each of the three properties, to provide a bedroom and bathroom.
8. It was evident when I visited the site that the proposed gable ridges and rear elevations of the appeal site would be visible from the gap between 3 and 5 Upper Dumpton Park Road and due to their mass, height and design would be dominant additions in the roof scape. Further the development proposed would be visible from the rear garden areas of the neighbouring properties on Upper Dumpton Park Road and would significantly impact upon the outlook from the rear of properties on Alma Road, as more bulky three storey dwellings would result compared to the smaller two storeys in the approved scheme.
9. Due to its scale and design, the development proposed at the rear of each dwelling at the second-floor level, would significantly detract from the uniform pattern of development in the surrounding area. The proposed gables would appear incongruous and have a significant adverse effect on the character and appearance of the surrounding area.
10. I conclude that the development proposed would be detrimental to the character and appearance of the surrounding area and would be contrary to Policy D1 of the Thanet Local Plan and paragraphs 117, 127 and 130 of the National Planning Policy Framework (2019), which when read together seek to ensure new development will be to a high quality and respects or enhances the character or appearance of the surrounding area.

Living Conditions

11. The rear extension from the original wall would project beyond the uniform building line of the neighbouring properties and further than the consented scheme, being approximately 10 metres from the rear boundary and approximately 13.5 metres from the rear elevation of properties on Alma Road. Whilst the rear of the properties on Alma Road already experience some overlooking from neighbouring properties, given that the development proposed would have windows in the proposed gables at second floor level there would be an increased level of overlooking which would adversely affect the living conditions of the occupiers of properties on Alma Road.
12. With regards to the effect of the development proposed on the neighbouring properties at 15 and 21 Upper Dumpton Park Road, the rear elevation would extend beyond the existing building line and the proposed second floor extension would increase the height of the roof to approximately 8.9 metres to the ridge. The inclusion of windows to the gables would result in an increase of overlooking to the rear garden of the neighbouring properties.
13. I have had regard to proposed extensions to the neighbouring properties and to the height of the proposed gables being lower than the roof ridge. However, due to the increased scale of the development proposed compared to the approved scheme there would be significant adverse effects on the living conditions of the occupiers of No 15 and 21. The occupiers of both neighbouring properties would experience an increased sense of enclosure due to the increased height of the proposed rear extension and the occupiers of No 21 would experience loss of sunlight and daylight to the rear of the property during the afternoon.
14. I therefore conclude that the design and increased scale of the development proposed would have significant adverse effects on the living conditions of the occupiers of neighbouring properties and would be contrary to saved Policy D1 of the Thanet Local Plan and paragraphs 117, 127 and 130 of the National Planning Policy Framework (2019), which when read together seek to ensure development is designed to a high standard which safeguards the living conditions of the occupiers of neighbouring properties.

SPA and SSSI

15. The appeal site is in close proximity to the aforementioned SPA afforded protection under the Conservation of Habitats and Species Regulations 2017 and SSSI which is given the same level of protection as a European designated site. SPA's are protected sites classified in accordance with Article 4 of the EC Birds Directive and are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires member states to take appropriate action to avoid pollution or deterioration of habitats or any disturbances affecting birds, in so far as these would be significant having regard to the objectives of this article.
16. Whilst the site is not directly connected or necessary to the management of the SPA, this development, combined with the effect of other projects could have an adverse effect on the integrity of the SPA because any residential development would have the potential to increase the level of public access due to increased nearby population with harmful effects. Any such effects of the development proposed must be considered on a precautionary basis.

17. The development proposed comprises three dwellings which is in close proximity to the SPA and SSSI. Whilst residents would have access to a number and wide range of public open spaces in the surrounding area which are not associated with the SPA, there is a reasonable likelihood that it would be accessed for recreational purposes by the future occupants of the development. Whilst minimal in itself, when combined with other residential developments in the area, a significant effect would be likely to occur.
18. The view that there is a likelihood of a significant effect is reflected in the position of Natural England and the Council. In these circumstances the Conservation and Habitats Regulations 2017 requires that an Appropriate Assessment is carried out, if the appeal was to be allowed.
19. Whilst the Council acknowledge that mitigation could be secured by a financial contribution to the SPA's Strategic Access Management and Monitoring Strategy, in this case the appellant has not submitted a Unilateral Undertaking (UU) in respect of such a payment. As I have found harm with regard the main issue on character and appearance and living conditions, there is no need for me to undertake an Appropriate Assessment further.
20. Moreover, the development proposed differs significantly due to its design and scale from the fallback scheme which has planning permission, which I note has no UU to secure a financial contribution to the SPA's SAMM. As the appeal would be dismissed on the first and second main issue, regardless of the third main issue, I conclude that in the absence of a UU that would mitigate the effects of the development proposed on the SPA and SSSI, the development would be contrary to paragraphs 176 and 177 of the National Planning Policy Framework (2019), which seeks to protect habitats within European designated sites.

Other Matters

21. The appellant has referred to conduct with the Council during the application process. As this is outside the scope of a Section 73 appeal, I have not pursued the matter further.

Conclusion

22. For the reasons set out above, the appeal is dismissed.

Paul Wookey

INSPECTOR