
Appeal Decision

Site visit made on 30 June 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2020

Appeal Ref: APP/J2210/W/20/3244586

Land to the north of Hanover Street, r/o 76-80 High Street, Herne Bay, Kent CT6 5RN

- 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 Ian Thomas against the decision of Canterbury City Council.
 - The application Ref 19/01458, dated 19 July 2019, was refused by notice dated 15 November 2019.
 - The development proposed is demolition of existing storage units, change of use and construction of 2no. new three storey, three bedroom semi-detached dwelling houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on (a) the living conditions of future occupiers of the dwellings in respect to proximity to commercial premises and (b) the integrity of a Special Protection Area.

Reasons

Living conditions

3. The appeal site comprises two vacant and dilapidated storage units, midway between High Street and Hanover Street. Access is gained along a concrete driveway from Hanover Street leading to a servicing courtyard to the east of the site. There are single storey pre-fabricated buildings to the western side of the driveway and to the south of the site used by a tool hire company. To the eastern side of the driveway is a ramped access to a car park over an adjacent supermarket. To the north of the site fronting High Street and backing on to the servicing courtyard are shop units with residential accommodation over. There is a large cleared site to the rear western side of the appeal site; this used to be a bus depot but now has permission for a predominantly housing development.
4. The proposed two dwellings would front directly on to the driveway. They would have modestly sized back gardens adjacent to a parking area in the plans for the redevelopment of the bus depot site. The design of the dwellings would be similar to those approved on the adjacent redevelopment site.
5. The southernmost of the dwellings would face a rising curved section of the ramp at a distance of about 7m. The ramp would be an obtrusive feature when

viewed from the front at ground floor level, but this would only be perceived by the front door and garage door alongside. All habitable rooms would be on the upper floors and the lounge, kitchen diner on the first floor would be dual aspect with front and rear windows. Outlook from first floor front windows would not be obstructed by the height and proximity of the ramp. I note that permission was refused in 2006 and dismissed on appeal for a mixed use development on the site due to the impact of the ramp on outlook¹. In my judgement, the proximity of the ramp would not significantly impact on the living conditions of the units now proposed in terms of visual intrusion.

6. In hours of darkness, headlamps from vehicles descending the curved section of the ramp would briefly point towards the front of the proposed dwellings, but the perimeter wall to the ramp would help to mitigate the impact of headlamp glare. The low speed of vehicles on the ramp should not result in noise levels likely to adversely affect living conditions. There are loading bays for the supermarket to the east of the ramped access, but these would not be so close to the proposed dwellings to cause undue noise and disturbance for future occupiers. Customer activity associated with the tool hire shop takes place on the site frontage in Hanover Street; this activity would not be so intense or so close to significantly impact on living conditions at the proposed dwellings.
7. The northernmost dwelling would face the servicing courtyard to commercial premises fronting High Street. This is a relatively small area, not suited to large commercial vehicles. Service vehicles would pass the front of the proposed dwellings to enter and leave this area, but the low number of vehicle movements would be unlikely to materially impact on living conditions. There are extract fans to the rear of some of the High Street shop units, but these would not be so close to result in disturbance for future occupiers. Moreover, the extract units appear to have been designed to be compatible with residential use on the upper floors of the High Street buildings.
8. Living conditions for the occupiers of the proposed dwellings would not be adversely affected to a material degree by the proximity of the car park ramp or by adjacent commercial premises. The proposal would not conflict with Policy DBE3 of the Canterbury District Local Plan (2017) which sets out several design principles including that development should not be adversely affected by the impact of polluting elements, such as noise, dust, odour, light, vibration and air pollution from neighbouring uses. The proposal would also be compatible with the design section of the National Planning Policy Framework which at Paragraph 127 (f) requires developments to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Special Protection Area

9. The site is located within the Zone of Influence of the European designated Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar Site. The proposal in combination with other plans or projects is likely to have a significant effect on this European designated site through increased recreational pressures. The Council has carried out an Appropriate Assessment, in accordance with the Habitat Regulations, which concluded that subject to securing a financial contribution towards the Thanet Coast and Sandwich Bay Strategic Access Management and Monitoring Strategy, (SAMM), the proposal

¹ CA//06/00945 and APP/J2210/A/06/2031786

would not have an adverse effect on the integrity of the SPA. The Council informs that the standard mitigation for two 3 bedroomed dwellings in this location would be a financial contribution of £1,340 (2 x £670), to be secured by a unilateral undertaking.

10. From the information available to me, I have no reason to doubt the findings of the Council's Appropriate Assessment and the need for mitigation to ensure that the integrity of the SPA is safeguarded. I am satisfied that a planning obligation to secure mitigation is necessary to make the development acceptable in planning terms, that it would be directly related to the development and that it would be fairly and reasonably related in scale and kind to the development. Such a planning obligation would therefore be in accordance with Regulation 122(2) of the Community Infrastructure Levy Regulations (2010).
11. The appellant indicated willingness to enter into a unilateral undertaking to secure the appropriate financial contribution at the application stage, but a planning obligation does not accompany the proposal at the appeal stage. Notwithstanding the acceptability of the proposal in respect of other planning considerations, the absence of a necessary planning obligation means that the proposal is incomplete and if approved as presented would be contrary to adopted development plan policies that seek to prevent adverse effects on the integrity of the SPA.
12. The appellant has suggested that in such circumstances there should be a deferral of a decision on the appeal whilst a suitable obligation is produced. However, a missing planning obligation does not carry any weight. If I were to delay the decision, there would be uncertainty when or if a planning obligation would be produced, and in the interests of natural justice the Council would also need to be afforded opportunity to comment on its details. It would not be appropriate to delay the decision whilst such an arrangement is commenced.

Other matters

13. The site is within the Herne Bay Conservation Area. The dilapidated condition of the current buildings has a negative impact on the character and appearance of the area. The proposed dwellings would resemble those approved on the adjacent former bus depot site and would result in a visual enhancement of the site. This would be in accordance with statutory duty² for special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

Conclusion

14. The proximity of the site to commercial premises would not be detrimental to the living conditions of future occupiers of the dwellings; but as presented the proposal would be likely to adversely affect the integrity of a SPA. For the reasons given, and having regard to all other matters raised, the appeal should therefore be dismissed.

Rory MacLeod

INSPECTOR

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990