



Appeal Decision

Site visit made on 24 September 2020

by C Hall BSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Appeal Ref: APP/Z2260/W/20/3248788

Land adjacent to Cliff Paddock, North Foreland Avenue, Broadstairs, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Castle Homes SPV 4 Ltd against the decision of Thanet District Council.
 - The application Ref OL/TH/19/1283, is dated 19 September 2019.
 - The development proposed is an outline application for a detached dwelling with landscaping and access from North Foreland Avenue.
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Decision

1. The appeal is allowed and outline planning permission is granted for a detached dwelling with landscaping and access from North Foreland Avenue on land adjacent to to Cliff Paddock, North Foreland Avenue, Broadstairs, Kent in accordance with the terms of the application, Ref: OL/TH/19/1283, dated 19 September 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the application was determined, the Council has adopted the Thanet Local Plan July 2020 (LP). This replaces the previous Local Plan and the policies cited in the Council's refusal notice no longer apply. The main parties have been consulted on the matter and I am satisfied that no prejudice would arise by the consideration of the appeal proposal against the policies of the now adopted LP.
3. My attention has been drawn to previous appeals (references APP/Z2260/A/13/2195975 & APP/Z2260/W/15/3005322). I shall have regard to this background when considering the merits of this proposal.
4. The application was submitted in outline form with all matters except for landscaping reserved for future consideration. The appeal will be determined on the same basis.

Main Issue

5. The main issues are the effect of the development on (a) the trees within the site and the consequent impact on the character and appearance of the area; (b) the effect of the development on the biodiversity of the area; and (c) on protected areas of environmental sensitivity.

Reasons

Character and appearance (trees)

6. The proposal is for a new detached dwelling on land to the east ribbon of Northforeland Avenue. To either side of the appeal site are residential properties. A number of trees lie within the site boundaries, which are the subject of a group preservation order. The proposal would result in the removal of most of the trees in order to provide the access to the site from Northforeland Avenue and the building itself.
7. From the appellant's survey 8 trees are judged to be category U trees (those trees in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years) with the others as category C (low quality and value 10 years +). The survey advocates that following removal of the majority of the trees, new planting around the site boundaries would more than mitigate the loss of the existing poor quality tree stock.
8. To my mind, the Council's tree survey paints an even bleaker picture. The assessment is clear that individually most of the trees are in poor condition and it seems likely that a number will continue to deteriorate. No reference is made to their estimated remaining contribution in years or to their value as a group.
9. I recognise that the trees on the site form a prominent feature when viewed from Northforeland Avenue; they are also visible in longer vistas from Cliff Promenade. I am of the view that they have moderate collective value as a group. I also note the conclusions of the previous appeal decision (2195975).
10. However, these matters are diminished by virtue of the trees' individual state. No positive evidence from the arboriculturalists is before me to suggest that there would be merit in retaining them in perpetuity. If the existing trees were to be retained, their value in landscape terms would progressively diminish over time. I recognise that trees can be adaptable, but decline is inevitable and appears to have set in already with some of them. As such, given the condition of the trees and their limited life expectancy, I consider that their loss would not result in demonstrable harm to the character and appearance of the area. The replacement landscaping scheme, including new specimen trees within the site, would compensate for the loss of the existing stock. I acknowledge that these may take time to establish and mature, but in the longer term the effect would either be broadly neutral or potentially enhanced.
11. I therefore conclude that the loss of the existing trees would not cause significant harm to the character and appearance of the area. There is no conflict with policy QD02 of the LP which requires new development to be of high quality, inclusive and sustainable design and promote or reinforce the local character of the area. It would also be consistent with the advice in the National Planning Policy Framework (the Framework) which seeks to conserve and enhance the natural environment.

Biodiversity

12. The scheme includes an ecological appraisal which concludes that there would be no impact on the nearby Site of Special Scientific Interest (Thanet Coast SSSI and Special Area of Conservation) or the roadside nature reserve and Special Protection Area. Mitigation measures would be provided for bats and

birds; the site has limited potential for other protected species. I note that Kent County Council's Ecology Team do not object to the development subject to certain recommendations.

13. Taking into account my reasoning on the trees above, I consider that appropriate landscaping and other mitigation measures can be provided to ensure that there would be no demonstrable harm on the biodiversity of the area. Accordingly the proposal would be in accordance with policies SP14, SP27 and QD02 of the LP that seek to retain existing boundary features where possible, safeguard Green Infrastructure and provide opportunities for increasing biodiversity interest. It would also be consistent with the advice in the Framework which seeks to conserve and enhance the natural environment.

Special Protection Areas

14. The site is not far from the Thanet Coast and Sandwich Bay Special Protection Area (SPA), which is vulnerable to potential in-combination impacts from new housing through increased recreational activities. The SPA is used by large numbers of migratory birds and qualifies under the Birds Directive through supporting populations of over-wintering birds of European importance. The proposal therefore needs to be subject to a Habitat Regulations Assessment.
15. In relation to screening, the proposal would not be directly connected with or necessary to site management for nature conservation. Nevertheless, in combination with other plans and projects, including other residential development, it would be likely to have a considerable impact on internationally important interest features within the SPA. As likely significant effects cannot be excluded then the competent authority must undertake an Appropriate Assessment to assess the implications of the effects of the proposal on the integrity of the SPA and its conservation objectives.
16. The Council has produced the 'The Strategic Access Management and Monitoring Plan (SAMM) (2016) to mitigate the impacts of increased recreational pressures on the SPA from new residential development. This includes a tariff scheme in relation to the size and form of housing proposed. The appellant has submitted a Unilateral Undertaking agreeing to make a payment of £530 as a contribution towards mitigation measures. The accompanying plan clearly identifies the appeal site and the Undertaking is dated, signed and witnessed. I am satisfied that the Undertaking would meet the requirements for planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations (2010).

Other Matters

17. Residents and the Parish Council have objected to the proposal in relation to matters covered and on other grounds. I am satisfied that the proposal would not result in an overdevelopment of the site and the dwelling would assimilate with surrounding properties. Given the space separation to adjacent buildings, there would not be material impacts on the living conditions of the occupiers of those buildings in respect of outlook, light or overlooking. Planning conditions could be used mitigate other potential impacts, for instance replacement planting would help to offset the impacts of climate change.
18. Therefore whilst I can understand the apprehension of local residents and the Parish Council, their concerns are not supported by any substantive evidence that would justify the dismissal of the appeal on these grounds.

Conditions

19. I have considered the imposition of conditions in light of advice in Planning Policy Guidance and the National Planning Policy Framework. I have altered the wording of some of the conditions suggested by the Council in the interests of clarity and necessity. In addition to the standard conditions relating to the submission of reserved matters, I impose an archaeological condition to ensure the examination and record of any features of interest on the site.
20. A condition concerning external lighting would limit the effects of the proposal upon protected species. Electric Vehicle Charging should be installed in the interests of air quality and amenity. Conditions for landscaping of the site and tree protection concerning specimens to be retained are required in the interests of the visual amenities of the area. Details of drainage would protect groundwater and ensure satisfactory arrangements for the disposal of surface water.
21. A condition relating to contamination would prevent any potential impacts on human health and the pollution of the environment. I have not imposed the ecological enhancement condition as such details form part of the landscape planting plan. Similarly the construction management plan condition suggested by the Council is not necessary given the relatively small scale of the proposal, the nature of surrounding roads and the fact that no such condition appears to have been suggested by the Highway Authority.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

C Hall

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions – and:

- a) the programme and methodology of site investigation and recording;
 - b) the programme for post investigation assessment;
 - c) the provision to be made for analysis of the site investigation and recording;
 - d) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - f) the nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.
- 5) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the the building is occupied. Development shall be carried out in accordance with the approved details.
- 6) The dwelling shall be provided with an electric vehicle charging point which shall be installed in a suitable location to enable electric vehicles to be charged. The charging point be installed and made operational prior to the first occupation of the dwelling.
- 7) All the trees shown on the landscaping plan (0233/19/B/2C) as "to be retained" shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 8) All planting, ecological enhancements, seeding or turfing comprised in the landscaping plan (0233/19/B/2C) shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees (existing or proposed) or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) No development shall take place until schemes for the proposed method of surface water and sewage disposal have been submitted to and approved in writing by the Local Planning Authority. The schemes shall include details of the timetable for provision and future management and maintenance. The approved sewage disposal and surface water drainage facilities shall be constructed in accordance with the approved details before the development is first occupied and shall be retained and maintained thereafter in accordance with the schemes as approved.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.