



Appeal Decision

Site visit made on 25 May 2021

by Mr Kim Bennett BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/Z2260/W/20/3265363

The Nursery, Canterbury Road, Birchington CT7 0JW

- 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 Mrs M and Mr and Mrs T Montgomery against the decision of Thanet District Council.
- The application Ref F/TH/20/0653, dated 13 May 2020, was refused by notice dated 17 July 2020.
- The application sought planning permission for erection of 5no. single storey dwellings with associated parking and landscaping without complying with conditions attached to planning permission Ref F/TH/18/1203, dated 19 December 2018.
- The conditions in dispute are Nos 2 and 9 which state that:
Condition 2 – The proposed development shall be carried out in accordance with the submitted application as amended by the revised drawings numbered 18/300/JG/PL01 Rev C, 18/300/JG/PL02 Rev C, 18/300/JG/PL03 Rev D, and 18/300/JG/PL04 Rev C, received 20 November 2018, and the materials specification numbered 18/300/JG/PL05 and visibility splay plan numbered 833/201, received 28 August 2018.
Condition 9 – The development hereby permitted shall be constructed in the materials as specified within the material specification numbered 18/300/JG/PL05.
- The reasons given for the conditions are:
Condition 2 – To secure the proper development of the area.
Condition 9 – In the interests of visual amenity in accordance with Policy D1 of the Thanet Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for 5no. single storey dwellings with associated parking and landscaping at The Nursery, Canterbury Road, Birchington CT7 0JW in accordance with the application Ref F/TH/20/0653 dated 13 May 2020, without compliance with condition numbers 2 and 9 previously imposed on planning permission Ref F/TH/18/1203 dated 19 December 2018 and subject to the conditions set out in the schedule at the end of this decision.

Main Issues

2. The main issues are: the effect of the proposal on the landscape character and appearance of the area; and whether the proposal would result in additional

pressure on the Thanet Coast and Sandwich Bay Protection Area (SPA) and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI).

Reasons

Character and appearance

3. The appeal site comprises a rectangular shaped area of land located on the southern side of Canterbury Road and a short distance to the west of the settlement of Birchington. It is currently an open field, but was formerly used for a mix of grazing and horticulture as part of Brooksend Nursery, and is on gently rising land from south to north. Adjoining and to the north are 3 single storey dwellings which have been recently constructed and are currently occupied. Adjacent to those and to the west is Brooksend Lodge, a two storey dwelling. The site is surrounded by open agricultural land on both sides of the busy Canterbury road, although a short distance to the north east is a small group of dwellings and a service station. To the south is Thanet Earth, comprising a collection of large glasshouses.
4. The Council advises that the 3 recently constructed dwellings replaced former agricultural buildings on the site. In 2018 permission was granted for a further 5 single storey dwellings¹ on the basis that the buildings would have no greater impact in the countryside setting than previous buildings on the site. In that respect, the permission involved them being set down into the ground in order to mitigate any impact from outside the site.
5. The current proposal is for the same sized units but at current ground levels which would result in an increase in height compared to what was approved. In that regard there are differences between the parties in relation to precise measurements, but in general terms the increase in height of ridge levels would vary between 0.5 m and 1.5m depending upon the particular units. Some minor changes to layout and roofing material are also proposed.
6. The Council is particularly concerned that the increase in height would result in the development having increased prominence within the landscape. In that respect the site lies within the St. Nicholas at Wade Undulating Chalk Farmland Landscape Character Area (LCA) with the key sensitivities being defined as the openness and undeveloped character of the farmland, which contributes to the rural character of long distance panoramic views.
7. I can fully understand the Council's desire to limit any impact of development within the wider open landscape. In that regard, a detailed Landscape and Visual Impact Assessment (LVIA) dated October 2020 assessed the site from a total of 16 different viewpoints from all directions. In respect of effect upon landscape character the conclusions ranged from none to negligible. In respect of visual amenity, the conclusions also ranged from none to negligible but with 2 instances of minor impact. The LVIA has been prepared in accordance with industry guidelines and I have no reason to doubt its accuracy. The Council's main concern was in respect of views from Canterbury Road and from Seamark Road, a short distance to the east, and at my site visit I made a point of walking and driving along both roads and in each direction in order to fully understand any impact.

¹ Application no F/TH/18/1203

8. In terms of approaching the site along Canterbury Road from the west, the site is largely screened by a combination of the existing vegetation and changes in the landform levels and at best there might be a brief glimpsed view of part of the roofscape. The roofs of the buildings would be apparent when passing the entrance of the site, but they would be seen in the context of the 3 dwellings in front and as above, any view would be very brief given that vehicles are travelling at some speed as they pass the site in both directions. I also noted that a new hedgerow has been planted across the frontage of the site and in time that will mature, which would further diminish any views of both the currently proposed development and the recent dwellings.
9. Approaching the site from the east along Canterbury Road, the overall site is more visible as the ground is elevated before it dips down in front of the site itself. From this direction, the rooftop of Brooksend Lodge is clearly apparent and the slate roofs of the new buildings are just visible. The LVIA suggests that the roofs of the new dwellings would also be just visible in parts, but they would be seen in the context of the small group of buildings and service station in the foreground and the massive impact of Thanet Earth on the skyline to the rear. In that context, I agree with the LVIA that the impact would be negligible.
10. Turning to Seamark Road, the LVIA wireframe image shows that the roofscape would be partly visible, as indeed are the existing buildings from that direction. However, any impact is limited by the land level in the adjoining field being at a slightly higher level, by the substantial tree and hedgerow on the eastern boundary of the site which helps to interrupt views, and by the fact that for part of the year at least any views would be obscured by the cereal crops which grow on that field. Importantly, the new ridge line would also be below the backdrop of trees to the west of the site when viewed from this direction. I also note that the proposed plan indicates that the 6 mature trees adjacent to the eastern boundary would be retained and the existing hedgerow enhanced with further planting. That would also help to mitigate any limited views that might be apparent.
11. I note that the proposed buildings would be single storey only and that the roofing material would be slate, as are the existing new buildings, and I agree with the appellant that this would also help to integrate the new buildings within the landscape. The Council has not raised any objections to minor changes to the layout and I see no reason to come to a different view.
12. In summary, I find that from my own on site observations, I agree with the conclusions of the LVIA that the overall effect of the minor increases in height of the proposed dwellings upon the characteristic features of the LCA and the visual amenities of the area, would be very limited. The predominantly open rural character of the landscape would be retained. Whilst the Council says that no good reason has been put forward as to why the buildings could not be lowered, there needs to be a sound justification for that in the first place, which I have found not to be the justified based on any resulting landscape harm. The fact that the buildings might be glimpsed in the landscape, from certain vantage points, as indeed are the existing buildings which the Council found to be acceptable, does not automatically equate to visual harm.

13. Having regard to the above, I find that there would be no conflict with Policies SP24, SP26 and QD02 of the Council's Local Plan 2020, in that there would be no harm to the character of the countryside or with the principles of the LCA.

Impact on the SPA and SSSI.

14. The Council refers to concerns previously raised by Natural England in respect of increased population in the area giving rise to increased recreational pressure and therefore possible significant effects on the interest features for which the SPA and SSSI sites have been identified. In response the Council has prepared a strategy to deal with such pressures known as The Strategic Management and Monitoring Plan (SAMM). Essentially, this involves financial contributions from developments which go towards such measures as wardening services, visitor management and monitoring studies, all designed to manage recreational pressure. Such an approach is endorsed by Natural England which regards it as suitable mitigation.
15. The extent of the financial contribution for differing developments is based on a tariff approach and set out in the SAMM. No Unilateral Undertaking (UU) had been submitted at the time the application was refused, but a signed UU has since been submitted with the appeal papers and dated 10th December 2020. The Council advises that a contribution of £2006 is required based on 1 x 1 bed, 1 x 2 bed, 1 x 3 bed and 2 x 4 bed and therefore the UU does not meet the policy requirement. However, as the appellant points out, there are no 4 bed units shown on the submitted plans and the correct contribution based on 1 x 1 bed, 2 x 2 bed and 2 x 3 bed is actually £1794, which is shown in the UU. Having had regard to that, I am satisfied that it would satisfactorily help to mitigate any additional recreational pressure on the ecological sites and that it satisfies the various tests, namely: that it is necessary to make the development acceptable in planning terms, it is directly related to the development and is fairly and reasonably related in scale and kind to the development.
16. Pursuant to the above, the proposal would be consistent with Policy SP29 of the Council's Local Plan 2020 in that there would be satisfactory mitigation measures in place to assist with any increased recreational pressure on the ecological sites.

Conclusion

17. For the reasons set out above there would be no adverse impact arising on the character and appearance of the landscape area, nor on the nearby SPA and SSSI.
18. Conditions relating to the development being carried out in accordance with approved plans, provision of parking, landscaping, clearance measures for the site, retention of trees, and provisions for archaeology, are all necessary in the interests of certainty, visual amenity and to safeguard any archaeological remains.
19. Although the Council referred to a condition in respect of visibility splays at the entrance, I noted that the access is already in use together with required visibility and no further works are necessary. No condition is therefore required in that respect. A condition requiring details of materials is not

necessary as these are clearly set out on approved plan 20/377/JG/PL07. The Council also requested a condition in relation to possible contamination on the site. However, there is no evidence before me to indicate that contamination may be present and given its former use as a nursery it seems unlikely in any case. As such, I do not consider that such a condition is necessary.

20. Accordingly, subject to the above, the appeal is allowed and planning permission is granted.

Kim Bennett

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 20/377/JG/PL01; 20/377/JG/PL02; 20/377/JG/PL03; 20/377/JG/PL04; 20/377/JG/PL05; 20/377/JG/PL06; 20/377/JG/PL07 and 20/377/JG/PL08.
3. Prior to the first occupation of the development, the area shown on the approved plan for the parking of vehicles shall be operational. The area approved shall thereafter be maintained for that purpose.
4. Prior to the first occupation of the development hereby approved, full details of both hard and soft landscape works, to include: species, size and location of new trees, shrubs, hedges and grassed areas to be planted, the treatment proposed for all hard surfaced areas beyond the limits of the highway walls, fences, other means of enclosure, proposed ecological enhancements to the site, including the installation of bat and bird nesting boxes, native planting and hedgehog access points, retention of the historic hedgerow as identified within the archaeological desk based assessment, shall be submitted to, and approved in writing by, the local planning authority.
5. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first occupation of any part of the development, or in accordance with a programme of works to be agreed in writing with the local planning authority. Any trees 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 a similar size and species.
6. Clearance of the site and excavation works shall be carried out in accordance with the mitigation measures as identified within section 4 of the Preliminary Ecological Appraisal report, dated 30th May 2018.
7. Existing trees, shrubs and hedgerows identified for retention within the development site or existing trees growing on an adjacent site, where excavations, changes to land levels or underground works are within the crown spread, shall be protected in accordance with BS 5837 2005 using the following protective fence specification: o Chestnut paling fence 1.2m

i n height, to BS 1722 part 4, securely mounted on 1.7m x 7cm x 7.5cm timber posts driven firmly into the ground. The fence shall be erected below the outer most limit of the branch spread or at a distance equal to half the height of the tree, whichever is the furthest from the tree, unless otherwise agreed in writing with the local planning authority. The protective fencing shall be erected before the works hereby approved or any site clearance work commences, and shall thereafter be maintained until the development has been completed. At no time during the site works shall building materials, machinery, waste, chemicals, stored or piled soil, fires or vehicles be allowed within the protective fenced area. Nothing shall be attached or fixed to any part of a retained tree and it should not be used as an anchor point. There shall be no change in the original soil level, nor trenches excavated within the protective fenced area.

8. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of: i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority; and ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.