



Appeal Decision

Site Visit made on 13 July 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2021

Appeal Ref: APP/J2210/W/21/3270854

86 Highgate Road, Whitstable, CT5 3HP

- 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 Andy Bryant against the decision of Canterbury City Council.
 - The application Ref CA/20/02059, dated 14 September 2020, was refused by notice dated 12 November 2020.
 - The development proposed is new dwelling with off street parking facilities adjacent to the existing, including the demolition of an existing conservatory.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I have determined this appeal in the context of the revised Framework, on which the main parties have been given the opportunity to comment.
3. The main issues are the effect of the proposed development on:
 - i) the integrity of the Thames Estuary and Marshes Special Protection Area (SPA), the Medway Estuary and Marshes SPA, The Swale SPA and the Thanet Coast and Sandwich Bay SPA; and
 - ii) the character and appearance of the area.

Reasons

Designated habitats sites

4. The appeal site is within the zones of influence of the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA and The Swale SPA, collectively known as the North Kent SPAs, and the Thanet Coast and Sandwich Bay SPA (TCSBSPA). These SPAs are also designated as Ramsar sites and the Medway Estuary and The Swale are designated Marine Conservation Zones.
5. The North Kent SPAs are wetlands of international importance comprising a mosaic of intertidal habitats, saltmarshes, coastal grazing marshes, saline lagoons, shellbeaches and chalk pits. These habitats provide wintering and breeding habitats for important assemblages of wetland bird species, particularly wildfowl and waders, as well as supporting migratory birds on passage.

6. The qualifying features of the Thames Estuary and Marshes SPA are wintering populations of avocet and hen harrier and its regular use by migratory bird species including ringed plover, grey plover and dunlin. The qualifying features for the Medway Estuary and Marshes SPA include nationally important breeding populations of avocet and little tern and a nationally important wintering population of avocet. The SPA's other qualifying features are a regular support in winter of over 20,000 waterfowl, a diverse assemblage of wintering species, and a diverse assemblage of breeding migratory waterfowl in summer. The qualifying features of The Swale SPA are internationally and nationally important wintering populations of migratory waterfowl, including significant numbers of dark-bellied brent geese and dunlin.
7. The TCSBSPA includes a wide variety of coastal habitats including areas of chalk cliff, rocky shore, shingle, sand and mudflats, saltmarsh and sand dunes. The qualifying features of the TCSBSPA are a nationally important breeding population of little tern, a nationally important wintering population of European golden plover and an internationally important wintering population of ruddy turnstone. The SPA also supports outstanding communities of terrestrial and marine plant species. The conservation objectives for all the SPAs are to ensure that the integrity of the site is maintained or restored as appropriate by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats, and the population and distribution, of their qualifying features.
8. Disturbance from recreational activities by visitors to the SPAs is considered by Natural England (NE) to have a likely significant effect on the important bird species. 'Zones of influence' in which the majority of regular visitors to the SPAs live have been defined for the SPAs. Net additional housing development within these zones is likely to increase recreational pressure with consequent likely adverse impacts on the integrity of the SPAs. The proposal would result in an additional dwelling and would therefore be likely to lead to an increase in recreational use of the SPAs, particularly in combination with other plans and projects. It would thus have a likely significant effect on the integrity of the designated sites.
9. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require the decision maker to undertake an Appropriate Assessment (AA) before giving any permission where there are likely significant effects on the integrity of designated habitats sites from the proposal, either alone or in combination with other plans and projects. This falls to me as the competent authority in the context of this appeal.
10. In undertaking the AA I can have regard to potential mitigation measures. Strategic Access Monitoring and Management Strategies (SAMMS) have been produced for both the North Kent SPAs and the TCSBSPA, both endorsed by NE. These set out mitigation measures for the SPAs including a wardening / visitor engagement service, coastal codes of conduct, signage and interpretation and site-specific enhancements. As these measures are supported by Natural England, I am satisfied that they would provide adequate mitigation for the recreational effects of the proposal.
11. These measures are funded through financial contributions from developers based on a tariff in accordance with Policy SP6 of the Canterbury District Local Plan 2017 (the Local Plan). This policy requires developments within the zones

of influence of The Swale SPA and the TCSBSPA which would lead to an increase in recreational disturbance to land, in perpetuity, access and monitoring measures to mitigate those impacts. Subject, therefore, to an appropriate financial contribution towards the mitigation measures set out in the SAMMS I am satisfied that the proposal would not adversely affect the integrity of the North Kent SPAs or the TCSBSPA. This is also the conclusion of the AA adopted by the Council in consultation with NE.

12. However, no planning obligation or other mechanism to secure the required contribution has been provided with the application or the appeal. Whilst the appellant has indicated a willingness to submit a planning obligation, the Procedural Guide Planning Appeals: England explains that planning obligations should be submitted with the appeal documentation.
13. I have considered whether a condition were planning permission to be granted would be an appropriate means of securing the requisite planning obligation. However, the Planning Practice Guidance advises that a negatively-worded condition requiring the appellant to enter into a planning obligation is unlikely to be acceptable in the majority of cases. Whilst such a condition may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk, e.g. in the case of particularly complex development schemes, I have no evidence that this is applicable to this proposal. A condition would therefore not be appropriate in the circumstances of this appeal.
14. I therefore conclude that, in the absence of a mechanism to secure appropriate mitigation for the likely significant effects arising from the occupation of the proposed dwelling or other adequate mitigation, the proposal would have an adverse effect on the integrity of both the North Kent SPAs and the TCSBSPA. Accordingly, in this respect, the proposal would conflict with the Habitats Regulations, Policies SP6 and LB5 of the Local Plan, the latter restricting development which may have an adverse effect on the integrity of a SPA or Ramsar Site, and the policies of the Framework on biodiversity.

Character and appearance

15. Highgate Road is a mature residential area comprising a mixture of detached, semi-detached and terraced 2-storey dwellings and bungalows. No 86 is one of eight bungalows arranged as a close of two semi-detached pairs set back either side of a central footpath. These properties have predominantly consistent plot widths and depths with the exception of those at the end of the close which are wider, having gardens to the northern side.
16. The low height of the bungalows and their frontages give the close a relatively spacious feel and the uniform height and design of the dwellings, including characteristic front gabled projections, provides a degree of coherence. However, both the spaciousness and coherence have been eroded to a moderate extent by the erection of fencing to the front boundaries of two of the properties at odds with the open frontages of the others.
17. No 86 is one of the properties at the end of the close and has a large side garden that extends beyond the front of the existing dwelling, separated from the close by a tall closeboarded fence. This garden forms the appeal site. The area of garden beyond the dwelling makes a moderate contribution to the

character and appearance of the close, but that to the side makes only a limited contribution as it is less visible.

18. The proposed dwelling would differ from the existing bungalows in the close in that that it would be detached, project slightly further forward than No 86 and the other bungalows on that side of the close and be wider. However, the depth of the plot, the proximity of the proposed dwelling to the site boundaries and the gap between the proposed dwelling and No 86 would be consistent with the pattern of development in the close. This would maintain the rhythm of the bungalows and would not result in an unduly cramped appearance.
19. The proposed dwelling would be of the same ridge and eaves height as No 86 and the other dwellings in the close. It would have a partial forward gabled projection reflecting similar features on the other dwellings and would retain an open garden to the front. The proposal would therefore substantially reflect the principal characteristics of the built form and layout of the close.
20. Given the limited contribution of the side garden to the character and appearance of the area I am not persuaded that extending built form closer to Thanet Way to the north of the site would be harmful to the character or appearance of the close. Being set back from Thanet Way and of relatively low height the proposed dwelling would not be prominent or unduly intrusive when passing along this road. The proposed garages would be lower and other built development is visible from Thanet Way in proximity to the appeal site. Consequently, the proposal would not be harmful to the character or appearance of Thanet Way.
21. The proposed pair of garages would be located to the rear of the proposed dwelling, accessed by an existing vehicular access leading to a garage court. The pitched roof of the proposed garages would be different to the flat roofs of the existing garages but would reflect that of the bungalows to either side. Furthermore, views of the garage court are limited and the existing garages make no significant positive contribution to the character or appearance of the area. I therefore do not consider that a variation in the design of the garages would have a material effect on the character and appearance of the close or the area. The proposed accessway from No 86 to the new garage would have no discernible effect on that character or appearance.
22. I therefore conclude that the proposal would not have a harmful effect on the character and appearance of the close or the locality. Accordingly, in this respect, the proposal would conform with Policy DBE3 of the Local Plan, which seeks high quality design that has regard to, amongst other things, the character, setting and context of the site and the impact on local townscape character. Neither would the proposal conflict with the design policies of the revised Framework.

Other Matters

23. The principle of development is acceptable as the appeal site lies within the urban area of Whitstable and has good access to facilities and services. The Framework sets out the Government's objective of significantly boosting the supply of homes and recognises that small and medium sites can make an important contribution to meeting the housing requirement of an area.

24. The Council's Housing Land Supply Statement 2019/20 indicates that the Council can demonstrate 6.62 years' supply of deliverable housing sites for 2020-2025. This includes an allowance for windfall sites and the actions within the Council's 2019 Housing Delivery Test Action Plan include ensuring that the provision / delivery of new dwellings from small windfall sites is maintained.
25. However, none of these matters are sufficient to outweigh the harm to the designated habitats sites I have identified above.

Conclusion

26. The proposed development would conflict with the policies of the development plan taken as a whole. There are no considerations, including the Framework's encouragement of housing delivery, that indicate that a decision should be made other than in accordance with the development plan in this case.
27. For this reason, and having had regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR