



Appeal Decision

Site visit made on 14 July 2021

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021.

Appeal Ref: APP/J2210/W/20/3258260

3-4 Gordon Road, Canterbury, Kent CT1 3PW

- 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 Cityscape Limited against the decision of Canterbury City Council.
 - The application Ref CA//19/02014, dated 9 October 2019, was refused by notice dated 28 February 2020.
 - The development proposed is 12 no. student studio apartments following demolition of existing flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the application was determined the council has advised that the site lies within the catchment area of nationally and internationally designated protected sites at Stodmarsh lakes, east of Canterbury.
3. On 20 July 2021 a revised National Planning Policy Framework (the Framework) came into force. The main parties were given the opportunity to comment.
4. Additionally, during the appeal process the appellant submitted a completed Unilateral Undertaking to secure the scheme as car free to address reason for refusal 2.

Main Issues

5. The main issues are:
 - whether the site is suitable for purpose-built student accommodation;
 - whether an appropriate car free scheme would be secured; and
 - the effect of the development upon the Stodmarsh Special Protection Area, Special Area of Conservation and Ramsar site (Stodmarsh).

Reasons

Purpose-built student accommodation (PBSA)

6. Policy HD7 of the Canterbury District Local Plan (CDLP) supports the provision of PBSA on appropriate sites, subject to a number of criteria, (a) to (i). A key

- dispute between the parties is whether as a site in residential use it is appropriate for student accommodation. The Council contend that CDLP policy HD7 supports PBSA but not at the expense of family dwellings and that development which is not on 'non residential sites' would conflict with policy.
7. The appellant's position, which is supported by a legal opinion, is that HD7 is a permissive policy and that criteria (a)-(c) relate to different circumstances, and also points to other schemes where student accommodation has been approved by the council on existing residential sites.
 8. Policy HD7 criterion (a) indicates that redevelopment of a non-residential site is acceptable where there is no longer a proven need for the existing use. As this site is not in 'non-residential use' I do not find this criterion is applicable in this case. However, in my view, this does not preclude further consideration of the other criteria of policy HD7 or prevents PBSA on residential sites. In support of this approach there are further criteria, (b) which specifically excludes sites already allocated for general housing, and (c) which requires consideration of the concentration of students in residential areas. Additionally, the supporting text to policy HD7 explains the reasoning for criteria (b) and (c) whereas there is no reference to the site having to be non-residential. In my opinion, if the intention of the policy was to only allow student accommodation on sites currently in non-residential use (but only where there is no proven need for the existing use) it would be more explicit. Furthermore, policy HD8 protects housing from loss, other than in certain circumstances- 'other residential need' (e.g., student accommodation), and the Council have not raised any conflict with regards to policy HD8.
 9. As such, I am not persuaded by the Council's restrictive approach. I appreciate that this view is different to that of an earlier appeal decision in relation to a scheme at 102 New Dover Road¹. Nevertheless, given that the aim of the policy is to support PBSA, and having regard the evidence before me and the plan as whole I am of the view that policy HD7 is applicable to sites in residential use. The development would therefore not conflict with criterion (a), or (b) - it is agreed by all parties it is not allocated for general housing.
 10. However, criterion (c) is directly relevant. This requires proposals not to lead to a concentration of students in residential areas and cross refers to policy HD6. Whilst not a proposal for an HMO, the purpose of policy HD6 and criterion (c), as set out in the supporting text, is to limit the concentration of students in an area so not to change the character and to maintain family housing. To seek to achieve this policy HD6 places a limit of 10% on the total number of HMOs in a 100m radius. The Council sets out in their appeal statement that there are 29 HMOs out of a total of 130 dwellings within a 100m a radius of the appeal site, equating to 22%. An existing concentration would also appear to be supported by comments from third parties who explain that several of the neighbouring properties are occupied by students.
 11. The appellant indicates that the two flats are occupied by up to 8 students. However, a number of third-party representations advise that the properties are currently occupied by families with children, and I did see on my site visit children's play equipment in the garden. Even if I am wrong on this matter, there is no evidence before me that this site is already counted in the HMO

¹ APP/J2210/W/19/3221116

figures. Thereby the development would be likely to result in accommodation for an additional 12 students in an area which is already in excess of the level the Council deem to be acceptable. The development would therefore conflict with criterion (c).

12. Other criteria of policy HD7 require the development to be accessible to public transport and provide cycle storage which the scheme accords with. No provision is made for operational spaces for servicing drop off, however the scheme is designed to be car free which is secured through the completed Unilateral Undertaking which I address below. As the existing property has off street parking there would undoubtedly be some additional pressure at certain times for the restricted on street parking, although there is no specific evidence before me that the proposal would lead to an unacceptable level of car parking on the surrounding streets.
13. Therefore, in conclusion whilst I consider that the provision of PBSA under HD7 is not restricted to non-residential sites I find that the proposal is contrary to other criteria of that policy, specifically (c), which seeks to protect the character of the area through limiting the concentration of students and ensuring that an appropriate mix of housing types is maintained.

Car free scheme

14. The appellant has submitted a Unilateral Undertaking dated 14 July 2021 which includes provisions for the scheme to be car free. It places restrictions on tenancy agreements/occupiers/lessees not to bring motor vehicles to the site. Exceptions do allow for servicing at the beginning/end of term.
15. I note that Kent County Council Highways has raised no objection to the proposal, and the site is located close to facilities and accessible to a train station and bus links. Thereby, whilst the proposal does not include specific operational facilities sought under policy HD7 (e). However, given the scale of the development, its location and the encouragement for car free development, on balance I consider that the agreement secures appropriate provisions. Accordingly, the proposal accords with the general provisions of CDLP policies HD7, DBE3 and T9 which amongst other things seek regard is had to local parking standards, provision of secure cycle parking and that developments allow for the safe movement of pedestrians, cyclist and cars.

Stodmarsh

16. The site falls within the Stour Operational Catchment for nationally and internationally designated protected sites at Stodmarsh lakes, to the east of Canterbury, where Natural England are concerned about the impact arising from excessive nutrients including those from waste water discharges.
17. It is possible that the development, when taken in combination with other residential development, could have a significant effect on the ecological integrity of these areas. No mitigation measures have been put forward and there is insufficient information before me to complete an Appropriate Assessment. However, given my conclusion on the first issue it is not necessary for me to undertake the requirements under the Habitats Regulations. As such, there is no assurance that the proposal would not be harmful to designated protected sites at Stodmarsh. The proposal would thereby be contrary to

Paragraphs 180 and 181 of the Framework that seeks to protect designated habitat and biodiversity sites.

Other Matters

18. The site lies within St Martyrs Field Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area. The existing building is of no particular merit in the conservation area and the proposal is in keeping with the general design and height of properties in the vicinity. I also note that the Council's Conservation and Heritage officer raised no objection to the scheme. Consequently, I am satisfied that the proposal would preserve the character and appearance of the conservation area.
19. Third parties have raised concerns regarding the scale of the development and impact on the occupiers of neighbouring properties. The building is significantly deeper than the existing property nevertheless I find the general design and height of the building to be sympathetic to the street scene. In considering the application the Council has assessed the effect on the various neighbours and amendments were made to address concerns. The development does contain a number of windows to the rear and flank where there is potential for overlooking. As such, if I had been minded to allow the appeal conditions restricting the glazing/openings would have been necessary.
20. The site is in an accessible location and there is a need for student accommodation in the city, which this scheme would contribute towards. There would be some economic benefits during the construction phase and the development could enable existing HMOs to be returned to family accommodation - although based on the appellant's position that currently the property is occupied by up to 8 students the net benefit would be limited. Nevertheless, these matters do not outweigh my findings in relation to the conflict with the development plan.
21. The appellant suggests that the Council cannot demonstrate a 5 year housing land supply and that the tilted balance should apply. This is based on a number of recent appeal decisions. The Council's Housing Land Supply Statement covering the period 1 April 2020 to 31 March 2025 indicates a supply of 6.62 years and there are no details before me which challenge the findings in relation to specific sites. However, as highlighted by the appellant delivery in the last two years has been low against the requirements and it is likely that Covid-19 will have had some implications. Even if I were to conclude that the Council does not have a five year housing land supply, the adverse impacts of the proposal on the character of the area would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

22. The proposal would conflict with development plan as whole and would be harmful to, the character of the residential area, through the increased level of student accommodation. There is also insufficient information before me to conclude that there would not be harm to protected designated habitat and biodiversity sites.

23. For the reasons set out above and having regard to all other matters I find that the appeal should be dismissed.

G Ellis

INSPECTOR