



Appeal Decision

Site visit made on 20 September 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021.

Appeal Ref: APP/J2210/W/20/3271406

Land to the rear of 18 and 20 Hillside Road, Whitstable CT5 3EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Renglade Properties Ltd against the decision of Canterbury City Council.
 - The application Ref CA/19/02122, dated 25 October 2019, was refused by notice dated 17 June 2020.
 - The development proposed is an outline application for the erection of 4 No detached dwellings with all matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 No detached dwellings with all matters reserved except access on land to the rear of 18 and 20 Hillside Road, Whitstable CT5 3EX in accordance with the terms of the application, Ref CA/19/02122, dated 25 October 2019, subject to the conditions set out in Annex A.

Procedural Matters

2. On 20 July 2021, the Government published its revised *National Planning Policy Framework* (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is such a material consideration where it is relevant to a planning application or appeal. I note in this case that the Appellant has made comments in respect of Paragraph 121 of the Framework which are noted.
3. The planning application was submitted in outline form with all matters other than access reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as indicative and show what may, not necessarily what will, be constructed.

Main Issues

4. The main issues are the effect of the proposal on:
 - the living conditions of the neighbouring occupiers,
 - highway and fire safety, and;
 - the Thames, Medway and Swale Estuaries Special Protection Area and the Thanet Coast and Sandwich Bay Special Protection Area (SPA).

Reasons

Living conditions

5. The appeal site is a parcel of land located in the SPA to the rear of the brick and tile dwellings that face onto Hillside Road, some of which are separated by timber fencing to the side and rear. The site is accessed via a compacted rubble and grass access track between the dwellings of 20 and 22 Hillside Road, both of which have windows to the side elevations facing the track that is lined on the side of No 22 with refuse bins. The track runs past No 20a Hillside Road on the left-hand side and through a timber-gate access way onto the appeal site which opens up to extend across the rear boundaries of Nos 18, 20, 20a and 22 Hillside Road. The land is uncultivated and is scattered and bounded by mature trees.
6. The proposal is to construct four new dwellings on the site with parking. There would be acoustic fencing to either side of the access track between Nos 20 and 22 Hillside Road.
7. I acknowledge that the Council has confirmed that the proposed fencing would be permitted development with a Lawful Development Certificate¹. Moreover, a noise assessment provided on the Appellants behalf by 'Wardell Armstrong' concluded that the proposal would have the Lowest Observed Adverse Effect Level (LOAEL) as set out in the national *Planning Practice Guidance* (PPG). As a result, the Council's Environmental Health Team has no objections to the proposal in this respect, and I see no reason to disagree.
8. Moreover, notwithstanding previous proposals on the appeal site², as I have limited details of those schemes before me I have considered the proposal on its own planning merits. As such, even if the fencing were to be constructed in close proximity to the side elevations of Nos 20 and 22, it would not be an unexpected structure in this relatively dense residential area, which I noted at my site visit has a range of fenced boundary treatments.
9. I conclude therefore, that the proposal would have a limited effect on the living conditions of the neighbouring occupiers, and given the above, the acoustic fencing need not be secured by condition as it would not be necessary when considered against Paragraph 55 of the Framework.
10. Accordingly, the proposal meets the requirements of Policy DBE3 of the Canterbury District Local Plan 2017 (CDLP), and the Framework when read as a whole.

Highway and fire safety

11. While there are recorded comments by the Kent Fire and Rescue Service (KFRS) regarding the accessibility of the site for fire safety purposes that were received following the submission of the proposal to the Council, the KFRS have subsequently confirmed that a suitably worded condition could be imposed to include sprinkler systems within the proposed dwellings in order to quell its concerns regarding emergency response times.

¹ CA/19/01591

² 18/00841

12. Furthermore, the revised access width to the proposed development following earlier iterations of the scheme is now acceptable to KFRS. Indeed, I note that the proposal would have an access track width that conforms to the Kent Design Guide (KDG) and that no objections to the proposal have been raised by Kent County Council Highways department. As such, notwithstanding third party concerns for waste collection and passing and turning space along the track, given the limited scale of the development and the likely low-level and slow-moving vehicular activity along the access track associated with the proposal, which is likely to be similar in nature to that generated by the existing dwellings, I am persuaded that the proposed access would not harm highway and fire safety.
13. Therefore, the proposal in respect of highway and fire safety meets the aims of Policy DBE3 of the CDLP, as supported by the KDG, and Paragraph 55 of the Framework which says that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

SPA

14. I note that the appeal site is located in the SPA. As such, a competent authority such as myself is required to carry out an 'Appropriate Assessment'. In view of that, I acknowledge that the SPA includes the presence of over-wintering birds that must be protected from disturbance by recreational activities associated with new development, and while the development of four dwellings is unlikely to have a significant effect on the SPA, when considered in combination with other development in the locality there would be such an effect. Indeed, the Council has already carried out its own site-specific 'Appropriate Assessment', and in combination with Natural England have developed a mitigation strategy to address the effects of development throughout the area. Moreover, Natural England has advised the Council that an appropriate tariff per dwelling should be collected to fund strategic measures across the SPA, and from the evidence before me, I consider that the mitigation strategy is being implemented to good effect. Furthermore, the Appellant has produced a signed planning obligation by Unilateral Undertaking (UU), dated 30 October 2020, under Section 106 of the Town and Country Planning Act 1990 that would ensure a payment towards the mitigation strategy that is acceptable to the Council. Therefore, taking into consideration the submitted UU which would mitigate the proposed development, and the absence of an objection from Natural England, I conclude that the proposal would not have an adverse effect on the integrity of the SPA.
15. Consequently, the proposal accords with Policies SP6 and LB5 of the CDLP which say, amongst other things, that sites of international conservation importance must receive the highest levels of protection, and for similar reasons Paragraphs 180 and 181 of the Framework.

Other Matters

16. I acknowledge representations received from interested parties regarding, amongst other things, pot-holes, drainage, street lighting, wildlife and trees. However, there is no compelling evidence before me as part of this outline proposal with matters reserved other than access as to lead me to a different decision after consideration of these specific matters.

Conditions

17. I have considered the Council's suggested conditions against Paragraph 55 of the Framework and the national PPG and for certainty imposed the following conditions; a requirement for the submission of details related to reserved matters, a standard time limit condition associated with reserved matters and a standard time limit condition related to the commencement of the development hereby approved.
18. I have also considered whether it is necessary to impose any of the other suggested conditions. Given that the proposal is for an outline permission, it is not necessary to include conditions related to the construction of the development including the provision of parking spaces, building heights, lighting, a construction management plan, refuse and cycle storage and trees. However, for matters not covered elsewhere, and as it is inextricably linked with the access to the proposed development, I have included a condition related to residential sprinkler systems in the interests of fire safety.

Conclusion

19. For the reasons given above the appeal should succeed and planning permission be granted, subject to the conditions set out in Annex A.

J E JOLLY

INSPECTOR

Annex A - Conditions

- 1) Details of the layout, appearance, landscaping and scale, hereinafter called "the reserved matters", shall be submitted to and approved in writing by the local planning authority before any development takes place 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 take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No dwelling permitted on the site shall be occupied until each dwelling shall be fitted with a domestic sprinkler system designed and installed in accordance with BS9251:2014 (or any superseding standard).

*****End of Conditions*****