
Appeal Decision

Site visit made on 1 September 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/J2210/W/21/3273298

Land adjoining 7 Underwood Close, Canterbury, CT4 7BS

- 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 Mr F Dickmann against the decision of Canterbury City Council.
 - The application Ref. CA/20/01332 dated 27 June 2020, was refused by notice dated 21 October 2020.
 - The development proposed is a detached dwelling including access and layout with associated parking and replacement garage.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was in outline, with only access being for determination at this stage. However, under the provisions of Article 5 (2) of the Development Management Procedure Order 2015, the council requested details of the layout. It appears that the Block Plan reference 6784 402B was provided in response to that request. As a consequence, the council amended the description of the development, as shown in the heading above, to include the words "and layout" (that description then used on the appellant's appeal form). The matters reserved for later consideration now are therefore appearance, landscaping, and scale.

Main Issues

3. The main issues in the case are: i) whether the site is suitable for a single dwelling in advance of a proposal for the comprehensive development of the wider area; ii) whether the parking and access arrangement proposed would have an unacceptable noise and disturbance impact on the living conditions of the occupiers of No.4 Underwood Close; iii) the adequacy of the parking and turning arrangements; and iv) the need for mitigation in relation to the Stodmarsh Nature reserve.

Reasons

4. There has been a previous appeal on this site, reference 3233681, decided on 27 November 2019, which has been referred to by both parties. This proposal was effectively for the same development, described as 'single storey detached dwelling with 2 No. car spaces, land to rear 7 Underwood Close – replacement garage for 7 Underwood Close'. I have been supplied with a copy of that decision which I will need to refer to in some detail. The Inspector's main

issues were set out as the effect of the proposed development on the living conditions of the occupants of No 4 Underwood Close, with particular reference to noise and disturbance; the effect on a strategic allocation; and the effect on the character and appearance of the area.

Whether the site is suitable for a single house in advance of a proposal for the comprehensive development of the wider area

5. The appeal site forms part of a strategic housing allocation labelled as Site 10 under policy SP3 of the Canterbury District Local Plan 2017 (CLP), and that policy requires that applications should be accompanied by a comprehensive masterplan for the whole allocation. The previous Inspector's conclusion on this point was that the council had failed to demonstrate that the proposed development would be likely to prevent the positive master planning of the remainder of the allocation, bearing in mind that the site is a very small component and that, whilst conflict with policy cannot be disregarded, he afforded limited weight to the conflict in light of the evidence. The officer's report on the current appeal application noted that the previous Inspector gave limited weight to the conflict with policy SP3, but considered that the principle of the proposal can only be acceptable if the benefits outweigh the conflict identified.
6. The officer's report then considered the effect on the character and appearance of the area and, having noted the previous Inspector's judgement on the point, concluded that the introduction of a single-storey dwelling to the rear of the existing property would be in accordance with policy DBE3 of CLP and the National Planning Policy Framework (the Framework). The officer then went on to consider the more detailed matters of living conditions of neighbours and future occupants of the proposed dwelling, parking and highway safety, and ecology – the Stodmarsh matter.
7. Thus the officer's report provides no further reasoning on the issue of conflict with the strategic allocation, whilst the recommendation of refusal of the application in the report does not include reasons. The council's appeal statement explains that, since there are other reasons for refusal, the 'limited weight' to be accorded to this policy issue continues to be a matter to weigh with the others.
8. Before proceeding further, it is necessary to understand what the Inspector meant by 'limited weight'. This can be picked up at decision paragraphs 16 and 17 where he deals with the alleged lack of a 5-year housing land supply and the so called 'tilted balance'. He states that, even if he accepted a shortage, a single dwelling and the limited benefits that it would bring in terms of the local economy, supply and choice of housing, etc, the adverse impacts of the scheme (significant harm to the occupants of No.4 and the limited weight to the conflict with policy SP3) would not be outweighed. He then states, at paragraph 18, that *"It is unlikely the conflict with Policy SP3 would have significantly and demonstrably outweighed these benefits."* in other words the benefits of the single dwelling, modest as they were, had it not been for the harm to the occupants of No.4, would have thrown the 'tilted balance' in favour of granting permission.
9. At paragraph 19 he mentions other concerns that had been raised, but does not address them because they would not alter the outcome of the appeal *"which has failed on the first main issue"*; that main issue having been *"the*

effect on the living conditions of the occupants of No 4". He found that the impact on No.4 would be contrary to policies DBE1 and DBE3 of the CLP which are consistent with Paragraph 127(f) of the Framework and therefore any conflict with them can be afforded significant weight (decision paragraph 18). It is thus clear to me that, had there been no harm to the living conditions of No.4, the appeal would most probably have been allowed.

10. Notwithstanding the above, there has been no additional case put forward to suggest to me that I should come to a different conclusion. I take into account that the appeal site is a very small part of the allocation, it is tucked into a corner and surrounded on 3 sides with existing development and uses. Furthermore, the appellant has not been contacted by the landowner/prospective developer of the allocation and nor has there been any representation to me made by such parties that the appeal proposal would be harmful to the comprehensive masterplanning of the allocation.
11. My own judgement is that the appeal site makes little contribution to the flexibility of laying out development in a masterplan, and the future development of the allocation would not be compromised to any significant extent by the proposal. Furthermore, the appeal site is separated by a substantial hedge from the rest of the allocation, and its loss in order to integrate the site into a new housing area would be detrimental to the ecological infrastructure and habitat. Thus the conflict with policy SP3 is insufficient to justify the refusal of planning permission.

Whether the parking and access arrangement proposed would have an unacceptable noise and disturbance impact on the living conditions of the occupants of No.4 Underwood Close

12. Again it is useful to note the previous Inspector's reasoning on this issue, in the context of the specific proposal before him. He noted that the parking area serving No 4 is at the rear of the gardens at 5 and 6 Underwood Close, but that these gardens are protected by a brick wall, such that the sound of vehicular movements is unlikely to be overly apparent in the rear private amenity spaces. However, he also determined that the parking area of the proposed development directly at the rear of No.4 would be near the external amenity area and that the noise from vehicle engines starting and turning over, cars pulling into and out of the proposed parking spaces, and glare of headlights would be at close range to that area and to first floor bedrooms. As a result the appeal scheme would significantly harm the living conditions of the occupants of No 4.
13. The officer's report on the current application found that, given the separation distance from neighbours, and subject to the scale and appearance being restricted by condition to single-storey accommodation, the proposal would not have any unacceptably overbearing or overshadowing impact on neighbouring occupiers, or result in unacceptable overlooking. Nevertheless, it was considered that the proximity of the parking movements to the rear of No.4 Underwood Close would still be so close that the impact of the proposal on those neighbours would have an unacceptable impact due to noise and disturbance on their living conditions. It is worth observing that the reasons for refusal given by the council in relation to the proposal dealt with under appeal reference 3233681 did not include any concern for the living conditions of neighbouring occupiers, including those at No.4.

14. I have the benefit, in respect of the proposal before me, that the council requested details of the layout in order to be able to assess the proposal against effects on neighbours, specifically those at No.4. This layout, on drawing reference 6784 402B, shows that the access follows the boundary with No.8 and continues along the boundary with what is currently agricultural countryside. In the proposal, about half of the private amenity area at the rear of No.4 has a garden area beyond its boundary, whilst the rest of it has the structure of the proposed dwelling just beyond the boundary line. That part of the structure that extends along this boundary contains bedroom and bathing facilities. Beyond this is a courtyard providing space for 1 car to park and turn. This courtyard is bounded, further into the site, by a widened footprint containing kitchen and living facilities, outside of which, furthest from the curtilage with No.4, is a 1 car carport, this being well beyond the curtilage of No.4.
15. This layout is markedly different to that in the previous appeal which showed the provision of 2 car parking spaces and a turning area immediately at the rear of the curtilage of No.4. In my judgement the current proposal has overcome the criticism made by the previous Inspector: the courtyard facilitating the car parking and turning manoeuvres is entirely screened by the proposed dwelling, which would be wholly adequate to screen noise of starting and running engines and closing doors, and manoeuvring, the glare of headlights and any other similar disturbance. In this regard the amenity situation would be at least as good as the current relationship between Nos.2 to 4 with Nos.5 and 6 Underwood Close. I am satisfied that these concerns have been overcome in the proposal before me.

The adequacy of the parking and turning arrangements

16. The council's response to the appeal includes an acceptance that a car barn arrangement, as opposed to the replacement garage applied for, could provide sufficient parking space for the occupiers of 7 Underwood Close. However, it then raises the concern that this in turn could further compound the noise and disturbance impact on 4 Underwood Close. I consider that both points could be dealt with by conditions: that the 'garage' must be in the form of a 'car-barn', but the elevation that faces the boundary with No.4 should be in the form of a wall of suitable construction. In any event, the 'yoga studio' referred to by the council is a building which would provide its own attenuation to the relatively modest sound of the engine of a car entering or leaving the car-barn.
17. With regard to the second part of this reason for refusal, the appellant has provided details of correspondence with the Kent Fire and Rescue Service in relation to the issues of inadequate access/turning. From the documentation submitted, the Fire Service have confirmed that alternative on-site arrangements could be achieved by use of a fire hydrant. On this basis, the council accepts that the concerns relating to inadequate access for the emergency services have been overcome. I therefore find that this issue is no basis for the refusal of planning permission.

The need for mitigation in relation to the Stodmarsh Nature reserve

18. There remains the issue of the impact of the proposed dwelling on the integrity of Stodmarsh Nature Reserve. Since as yet there has been no resolution of this matter and there is no indication of when a solution may be found, I must determine the appeal as the case stands at present. As the competent

authority, I have a duty to ensure that there is no impact on the Special Protection Area. Without an assurance that there would be no detriment to the ecological importance of the Stodmarsh Nature Reserve, the proposed development cannot be permitted.

19. The appellant has asked for the appeal to be held in abeyance until such time as a solution is found. It is not the practice of the Planning Inspectorate to hold appeals in abeyance; paragraph 21 below indicates the decision that should be made on a further application once the Stodmarsh matter has been overcome. But without suitable mitigation or other assurance that this development would be nutrient neutral, it would be detrimental to the ecological importance of the Stodmarsh Nature Reserve, and planning permission cannot be granted at present.

Other matters

20. The matter of the 5-year housing land supply has been raised, but in view of my conclusions set out above, there is no need for me to examine this matter further. I have taken account of all other matters raised; where they raise matters not dealt with above, they were adequately dealt with in the officer's report and none amount to a reason for refusing planning permission.

Overall conclusion

21. To be clear, had it not been for the issue of the Stodmarsh Nature Reserve I would have allowed the appeal and granted planning permission subject to suitable conditions, a situation that should pertain once a solution to the Stodmarsh issue has been found. However, for the reasons stated in paragraph 18 above, I dismiss the appeal

Terrence Kemmann-Lane

INSPECTOR