



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: 15 October 2021

Appeal Ref: APP/J2210/W/20/3271074
40 New Dover Road, Canterbury, CT1 3DT

- 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 Steven Matthews against the decision of Canterbury City Council.
 - The application Ref. CA/19/10396 dated 23 December 2019, was refused by notice dated 17 March 2020.
 - The development proposed is 2no. blocks, comprising 14 self-contained flats including 80 bedrooms for student use, following demolition of detached dwelling and alterations to the access.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The council's decision notice listed 3 reasons for refusal. The second and third reasons related to the absence of an agreement to secure a car free development and financial contributions towards open space and cycleway improvements. During the course of this appeal the appellant has submitted a signed deed of unilateral undertaking that the council accepts secures the necessary financial contributions and the car-free nature of the scheme. As a result, the second and third refusal reasons are no longer pursued. It is therefore unnecessary for me to make any further reference to them. However, there is a fresh issue that has arisen.
3. On 12 October 2020 the council informed the Planning Inspectorate and the appellant of advice received from Natural England (NE) about Stodmarsh Nature Reserve. The Stodmarsh Nature Reserve is protected under European Law and is managed by NE. In a formal advice note, Natural England has identified that the water quality in the lakes there has deteriorated and this is linked to the discharge of wastewater from new homes into the wastewater treatment works within the Stour Valley river catchment area.
4. An Appropriate Assessment must therefore be carried out before any new housing development within the Stour Valley river catchment area can be agreed. This would need to consider any necessary mitigation measures to prevent further harm to the Stodmarsh Nature Reserve. The council is currently investigating possible mitigation solutions and has already identified a way

forward for larger housing sites. The council is continuing to work with Natural England to agree a solution on planning applications for smaller sites.

Main Issues

5. The main issues in this case are: i) the acceptability of the site for purpose built student Accommodation (PBSA), taking into account policy HD7 of the Canterbury District Local Plan 2017; and ii) whether there is a means of ensuring that the proposal will not impact upon the integrity of Stodmarsh Nature Reserve.

Reasons

The site and surroundings

6. The appeal site is situated within the urban area, adjacent to CATS College, and is within walking distance of Canterbury City Centre. There are good bus links in close proximity and a wide variety of local services, and it is a sustainable location. It is situated within the New Dover Street Conservation Area. However, the council has concluded that the proposed development would not harm the heritage assets and on balance the proposed development would preserve the character and appearance of the conservation area and the street scene. I see no reason to disagree with this conclusion.
7. The area is characterised mainly by large buildings in substantial plots. The mix includes houses, flats, institutional uses, hotels, veterinary hospital, offices, educational establishments and PBSA. At present there is an unoccupied large detached house on the site. The house sits within a large plot on the southwestern side of New Dover Road, set back from and elevated above the road, and partly screened by mature trees and planting. The adjoining site to the south-east, 42 Wootton Court, is a recently constructed development of 11 flats in two detached blocks, situated in a similar arrangement to the appeal proposals. The site to the north-west, 38 New Dover Road, comprises 16 apartments extending deep into the plot with an access way which leads to a detached house at the rear.

The acceptability of the site for student accommodation, taking into account policy HD7 of the Canterbury District Local Plan 2017

8. This issue stems from a policy objection, rather than any particular concern with design, impact on neighbouring development, highway capacity, etc. The policy in question is HD7 of the Canterbury District Local Plan 2017 (CLP). The policy is obviously well known to the parties, and so it is not necessary for me to set it out in full. It is the preamble and the first 3 criteria that are relevant to this issue.

"Policy HD7 Purpose Built Student Accommodation

All future increases in academic or administrative floorspace resulting in increased student numbers by the universities, should be matched by a corresponding increase in purpose-built student accommodation. Proposals for purpose-built managed student accommodation will be granted if:

- a. It is the acceptable redevelopment of a non-residential site, where there is no longer a proven need for the existing use;*
- b. The site is not already allocated for general housing;*
- c. The proposal would not lead to a concentration of students in an otherwise residential area and therefore conflict with the purpose of HMO policy HD6;"*

9. The appellant explains that the council changed its approach to the interpretation of policy HD7 after a particular appeal decision (reference 3221116 – 102 New Dover Road). In brief, the Inspector concluded that the site for the proposal for a development of PBSA would not meet the locational criteria in Policy HD7 that seeks for PBSA to utilise redundant non-residential sites. He concluded that there arose conflict with the development plan, and he could not be sure that the development would release existing accommodation, and dismissed the appeal for those reasons.
10. The appellant sees that this appeal decision has resulted in the council using this interpretation of the policy in its subsequent decisions, in effect reversing its previous approach to such applications. As a result the appellant sought advice from William Upton QC. Since both parties are familiar with this advice, I need not refer to the detail.
11. Mr Upton pointed out that CLP Policy HD7, the specific policy for PBSA, is a permissive policy: "Proposals for purpose-built managed student accommodation will be granted", subject to criteria. He considers that it is difficult to see how this policy is actually restrictive, given its permissive language. The only restriction identified in the CLP's supporting text is with regard to sites already allocated for general housing, where it states that this will not be generally acceptable. But even this allows exceptions in certain instances, by the inclusion of "generally acceptable".
12. The council's response is that the CLP, whilst supporting PBSA in certain locations, also aims to protect family dwelling houses. The locational criteria for PBSA are also evidenced in the Housing, homelessness and rough sleeping strategy 2018-23, which states that PBSA should not be built on allocated sites and at the expense of the general need housing (p. 41, Appendix B). This is the context of policy HD7, a stand-alone policy, setting out where PBSA will be supported. The first 4 criteria are locational criteria - permission will be granted if the site is located in accordance with the criteria of the policy. If the site is in residential use, it is clearly not non-residential and will never be able to meet this locational criteria. The purpose of the policy is to identify the sites appropriate for PBSA redevelopment and if a site is outside one of those identified locations, then it is clearly not in accordance with the policy. It is therefore a logical consequence that the proposal on a residential site is in conflict with that policy. Otherwise these policies would serve no purpose.
13. The council does not dispute that there is a need for student housing and the benefits of the proposed development are recognised. However, since the adoption of the CLP, a significant number of PBSA developments have been permitted. The recently prepared SHMA recognised the significant growth in the supply of purpose-built student accommodation (Appendix C). It also recognised that there is likely to be a limited growth in student numbers in the long-term. In addition to this, the protection of family dwelling houses is recognised in CLP as equally important as support for PBSA. The proposal would result in the loss of the family dwelling house and such loss conflicts with a strategic, district-wide approach to locating student housing on non-residential sites, thus conflicting with policy HD7. The proposed scheme does not provide student accommodation which would be linked to any specific educational institution in the district and is not linked to increased educational floorspace elsewhere in the district.

My conclusions on issue i)

14. In respect of the appeal decision (reference 322116) referred to in paragraph 9 above, I have only the text of the decision before me and I do not know how matters were argued in that particular case. I will therefore base my decision on my understanding of the meaning of the policies that have been referred to, and the cases of the parties in this appeal.
15. The policies of the CLP are clearly supportive of development of PBSA, with policy HD7 directed to guiding such provision. I have set out the first 3 criteria of this policy in paragraph 8 above. The other criteria, d. to i., set requirements for such matters as access to pedestrian and cycle routes, minimum car parking provision, car free development respecting the character of the surrounding area, etc. There is no issue raised in the refusal reasons (that have not been satisfactorily dealt with – see paragraph 2 above) in respect of any of these criteria. It is therefore just criteria a., b. and c. that need to be considered in relation to the first issue.
16. The first criterion of HD7 deals only with the case where PBSA is proposed as redevelopment of a non-residential site. Clearly this is not applicable in this case as the appeal site contains residential development and is therefore not a non-residential site. Criterion b. allows for development of PBSA if the site is not already allocated for general housing. The appeal site is not so allocated. Criterion c. stands against a proposal for PBSA if it would lead to a concentration of students in an otherwise residential area and therefore conflicts with the purpose of HMO policy HD6. Whilst there have been representations from interested persons about this, the council has not argued that there is such a concentration, and it will be seen from the description of the area given in paragraph 7 above that the site is surrounded by a wide variety of uses, and is not solely or mainly residential in nature.
17. At this point I should also refer to the preamble of the policy which requires "*All future increases in academic or administrative floorspace resulting in increased student numbers by the universities, should be matched by a corresponding increase in purpose-built student accommodation.*" This, it seems clear, is a further indication of the purpose of the policy, which is to increase the amount of PBSA to achieve a greater match between student numbers and student housing units, and is not any sort of brake on the supply of PBSA that is not directly related to increases in academic or administrative floorspace. Furthermore, there is nothing in this policy that states that PBSA should not be sited on land with existing housing development. In any event, the provision of a single house on the appeal site is of little consequence, in terms of numbers of dwellings, when set against the 80 bedrooms of student accommodation proposed which, if built, would be likely to free a greater amount of existing general housing accommodation, currently occupied by students.
18. The council argues that, in the period since the CLP was adopted in 2017, there has been a considerable amount of PBSA provided within the City. That may be an indication that the policy is working well, but there is no evidence that there is now no outstanding need for more PBSA, or that policy HD7 has been overtaken by events and should no longer carry much weight.
19. Finally I should make reference to policy HD8 which concerns 'Retention of Housing Accommodation'. This sets out the only circumstances where the

council will permit the loss of housing accommodation. These circumstances are where:

- a. The existing accommodation is unsuitable for residential use; or
- b. The existing residential accommodation is incompatible with adjoining uses; or
- c. The change of use will ensure the retention and refurbishment of a building which makes a significant contribution to the character or appearance of the area, where it could not be achieved if the residential use remained; or
- d. The proposed use will meet an identified community, business, tourism, or other residential need, which would be compatible with the character and amenity of the area.

20. It is plain that criterion d. is met in this case, since the proposal will meet an identified residential need (under the terms of policy HD7), and would be compatible with the character and amenity of the area. In any event, the greater amount of housing accommodation that would be provided in this appeal proposal, which can be included towards the housing provision in the council's area, would outweigh the loss of one large detached house currently on the site. The site is acceptable for PBSA, taking into account policy HD7 in particular and the overall objectives and strategy of Canterbury District Local Plan 2017.

Other matters

21. A number of other matters are raised by interested persons, such as noise and disturbance, litter and congestion on roads, loss of trees, enough PBSA already, and demand will fall due to the covid-19 virus. However these matters were either adequately dealt with in the officer's report or are not supported by evidence that would affect my conclusions. I have also taken account of the various other appeal decisions that have been drawn to my attention.

The need for mitigation in relation to the Stodmarsh Nature reserve

22. There remains the issue of the impact of the proposal 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.

Overall conclusion

23. Whilst I find that the appeal site is suitable for the proposed development of PBSA, taking account of the policies of CLP, the fact that there is insufficient information before me to conclude that there would not be harm to protected designated habitat and biodiversity sites of the Stodmarsh Nature Reserve, means that I must dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR