
Appeal Decision

Site visit made on 21 October 2021

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 NOVEMBER 2021

Appeal Ref: APP/K2230/W/21/3272575

Land east of 58 Dover Road, Five Ash Road, Gravesend, Kent DA11 0RE

- 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 Sean Tofts against the decision of Gravesend Borough Council.
 - The application Ref 20210137, dated 31 January 2021, was refused by notice dated 1 April 2021.
 - The development proposed is erection of a pair of semi-detached dwellings with associated parking, landscaping and access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline form with all matters reserved, with all drawings that accompany the application annotated as being indicative. I have considered the appeal on this basis.

Main Issues

3. The main issues for the appeal are:
 - the effect of the development upon the character and appearance of the area;
 - the effect of the development upon the living conditions of existing and future residents; and
 - whether or not the proposed would have a likely significant effect upon the integrity of a designated site on the Thames Estuary and Marshes Ramsar Site and Special Protection Area (SPA).

Reasons

Character and appearance

4. The appeal site falls within an area of residential character comprising predominantly terraces of two storey properties. A very distinctive sense of place is formed through the strong linear nature of the terraces in close proximity to their respective streets, enclosing the space in a relatively uniform layout. The regular rhythm of the residential urban form is only interrupted by

larger plots containing non-residential uses in the immediate vicinity. Gardens are generally rectangular, narrow and deep, matching the style and period of the housing.

5. The appeal site constitutes a triangular piece of land containing trees and an overgrown compound of an electricity substation, currently accessed from a public footpath on its northern boundary and a strip of land down the flank of No.3 Stanbrook Road. It narrows to a pinch-point towards Five Ash Road, with the wider part of the plot abutting the boundaries of No.3 to No.13 Stanbrook Road to the east.
6. The indicative site layout shows a pair of a semi-detached dwellings that are at angles to each other, resulting in a complex roof form to make the physical join and with neither property fronting onto a public highway. The layout would result in small strips of private garden land for each dwelling, both being of irregular size and shape.
7. The proposed development would be visually disruptive to the established and recognisable pattern of the surrounding built environment. It would fail to address the public highway and would be of an awkward design attempting to fit two dwellings into a tight and constrained plot. The form of the proposals would starkly contrast with the established pattern of the built environment and, together with the lack of suitably sized useable garden space, would appear cramped, contrived and visually discordant.
8. I acknowledge that the plans are indicative only, but they fail to convince me that a pair of dwellings could be satisfactorily developed on the plot that would be in keeping with the character or pattern of the local built environment.
9. I conclude that the proposal, in appearing cramped and overdeveloped, would adversely affect the character and appearance of the locality. This would be contrary to policy CS19 of the Gravesham Local Plan Core Strategy 2014 (the CS), which requires proposals to conserve and enhance the character of the local built environment.

Living Conditions

10. No.3 to No.13 Stanbrook Road form a terrace of dwellings that have two-storey rear projections facing west towards the appeal site. The gardens for these dwellings are short in depth, with the rear facing windows clearly overlooking the appeal site.
11. Whilst the habitable rooms for the proposed dwellings would be at oblique angles to the terrace, thus affording those rooms some privacy, the garden areas would be exposed to views from the terrace. The proposed gardens, particularly for the plot immediately adjacent to the boundary with the terrace, would provide no private areas for prospective occupiers. This would be harmful to those occupiers' enjoyment and would result in a less than quality environment in which to live.
12. The proposed dwellings would be on an alignment facing northeast, with the plot furthest from the terrace having a greater tilt in that direction. Proposed first floor windows would face into the gardens of Nos. 9, 11 and 13 Stanbrook Road, although I acknowledge No.11 has an outbuilding at the rear of its garden that may block or otherwise obscure direct views to its grounds and those of No.13.

13. Nonetheless, whilst the oblique angle between the proposed development and the terrace may limit direct overlooking of habitable rooms, the garden area of No.9 would be subject to an unacceptable degree overlooking leading to a harmful loss of privacy. I do not find that this harm would be justified by any overlooking that may already exist between properties in this urban area.
14. Whilst alterations to the layout and window positions could be pursued in any reserved matters application, I am unable to see how such could be designed so as not to cause a loss of privacy to either existing or prospective occupiers. On this basis the proposal would harmfully affect the living conditions of neighbours and future residents, contrary to policy CS19 of the CS, which seeks to safeguard the amenity of properties and land.

Effect on integrity of the SPA

15. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site¹, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
16. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
17. The appeal site falls within 6km of the SPA. This site is designated at European level for its environmental importance, since it provides habitats for wintering birds, wildfowl and wading birds. The site is used for public recreation and so the proposal, when considered alone or in combination with other schemes, could have significant effects on the quality features of interest of the SPA due to the increased recreational use.
18. When concluding that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an Appropriate Assessment.
19. Whilst the main parties agree that mitigation should be provided in the form of a financial contribution of £253.83 per dwelling, the appellant has not secured any mechanism for paying such contributions. Whilst a condition is suggested by the appellant binding any reserved matters submission, securing financial contributions by condition is not an appropriate method². On-site measures to enhance local biodiversity would not overcome the potential effects on the SPA and have not been demonstrated robust or feasible in any event.
20. Since I am dismissing on other grounds, I do not need to undergo the task of Appropriate Assessment in this instance. Nonetheless, on the evidence before me I can only conclude that, in the absence of necessary mitigation, the proposal would have an adverse effect on the integrity of the designated site contrary to policy CS12 of the CS, that gives the highest level of protection for internationally designated sites of biodiversity interest.

¹ Now the National Site Network following withdrawal from the EU

² Planning Practice Guidance Paragraph: 005 Reference ID: 21a-005-20190723

Other Matters

21. It is common ground between the parties that the Council cannot demonstrate a five-year housing land supply and, as such, paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged.
22. In considering the Framework as a whole, I note paragraphs 180 and 181 of the Framework provide unequivocal protection for sites of high biodiversity importance and a statement that if harm cannot be adequately mitigated, permission should be refused. In the absence of mitigation to compensate for harm to the SPA arising from the proposed development, the Framework provides a clear reason for refusing the development, regardless of the level of housing shortfall. Policy CS12 of the CS is consistent with the objectives of the Framework in this regard and there is, therefore, clear conflict with the Development Plan. The appeal should therefore be dismissed as directed under 11(d)(i) of the Framework.
23. I acknowledge that the appeal scheme may represent an improvement on an earlier scheme determined by the Council, but there remain fundamental harms as identified above. Whilst landscaping could come forward, this would do little to change the effects of a development on the appeal site, which points to the proposal being unsuitable as a windfall opportunity. I do not consider that conditions could be used effectively to overcome the harms identified.
24. My attention has been drawn to other developments in the local area that have been granted planning permission and other proposals on this appeal site that have been refused, although I do not have full details of these cases. In any event, I have determined this appeal on its own merits.

Conclusion

25. For the reasons given above, the appeal is dismissed.

David Wallis

INSPECTOR