



Appeal Decision

Site visit made on 24 November 2021

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Appeal Ref: APP/J2210/W/21/3274549
86 Church Street, Whitstable CT5 1PF

- 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 Karl Whaid against the decision of Canterbury City Council.
 - The application Ref CA/21/00364, dated 11 February 2021, was refused by notice dated 9 April 2021.
 - The development proposed is erection of 3 bed chalet bungalow with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's statement of case expands on the description of development given on the application form to include reference to a 4m ecology strip. I have however used the description as it appears on both the application form and the Council's decision notice in making my determination, since I have not been made aware of any agreement between the parties to amend the description of development.

Main Issues

3. The main issues for the appeal are the effect of the development upon:
 - the character and appearance of the area;
 - the safety of the public highway;
 - protected species and their habitats; and
 - the integrity of the Thanet Coast and Sandwich Bay Special Protection Area and the Thames, Medway and Swale Special Protection Area (the SPAs).

Reasons

Character and appearance of the area

4. Policy OS9 of the Canterbury District Local Plan 2017 (the LP) designates areas of open space and seeks to safeguard them from development unless certain criteria are met. Notwithstanding the appellant's contentions to the contrary,

the appeal site clearly currently falls within this designation and therefore is subject to protection conferred by the LP.

5. Under the terms of policy OS9, the Council are of the opinion that the appeal site contributes positively to local character because of its open nature. From my site visit, I agree with this view as the appeal site is in a prominent position on the highway and forms part of a wider network of green infrastructure along Thanet Way, contributing to visual and spatial relief from urban form. It also provides a green gateway into Church Street when seen together with the vegetation to the south of the local playing fields. I saw no evidence of any previous use of the land, which appears to have grown into a natural state.
6. The proposal is to develop the land for a dwelling in the form of a bungalow, with a design and appearance similar to those existing dwellings at Nos 84a and 86 Church Street immediately adjacent the appeal site. Whilst the proposed dwelling would not be out of character with the form of residential buildings nearby, it would result in the fundamental loss of protected open land. Loss of the spatial quality of the open land would not be overcome through the proposed landscaping and ecology strip to the appeal site's southern boundary.
7. By developing the plot for a dwelling with accompanying hard surfaces and residential paraphernalia, I conclude that the proposed development would be harmful to the existing open character of the appeal site and its relationship to adjacent and nearby open spaces. This would be contrary to the objectives of policy OS9 of the LP.

Safety of the Public Highway

8. Access for the proposed dwelling would be to the northwest corner of the appeal site, close to the entrances to Nos 84a and 86, at the apex of a bend in Church Street. During my site visit, I noted that Church Street is a busy thoroughfare between the residential areas to the north and Thanet Way to the south.
9. The Council requires unobstructed visibility splays of 43m by 2.4m in both directions from the access. Written reassurances have been given by the appellant that the splays could be provided without removing the boundary hedgerow onto Church Street. However, in the absence of a plan or drawing to substantiate this claim, I am unconvinced that the splays could be safely achieved in such circumstances.
10. The proposal could therefore impact adversely on highway safety. Given the importance of this issue, and the fact that the proposal relates to an application for full planning permission, it would not be appropriate to leave this unresolved matter to chance and the subject of a planning condition.
11. I conclude that, in the absence of detailed information to the contrary, the proposal would be harmful to highway safety contrary to the requirements of LP policy DBE3, which seeks to ensure that developments do not have a detrimental effect on the highway network.

Protected Species

12. The submitted Preliminary Ecological Appraisal (PEA) identifies that birds, hedgehogs and reptiles may be present on the appeal site, with a range of

recommendations for subsequent management. Whilst these recommendations do not extend to providing an area of green refuge within the appeal site, the proposals make provision of a 4m wide ecology corridor on the southern boundary. It is unclear what functional benefits would arise from the ecology corridor or if it would provide sufficient mitigation in this instance.

13. Whilst the PEA actions and conclusions could be secured by condition if I were to grant permission, a notable exception is that further reptile surveys are required to be undertaken in order to understand the impact of the proposed development. Policy LB9 of the LP seeks that adequate mitigation and compensation measures are scheduled in advance of any development. At this time, in the absence of this information, the level of potential harm to reptile species cannot be ascertained and the level of mitigation needed is unquantified.
14. On this basis, in the absence of detailed information, I conclude that the proposal would likely be harmful to protected species, contrary to policy LB9 of the LP that seeks to protect the natural environment.

Effect upon the integrity of the SPAs

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 two SPAs. The sites are designated at European level for their environmental importance, providing 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 SPAs 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, the appellant has not secured any mechanism for paying such contributions and no obligation has been submitted to the appeal.
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 policies SP1, SP6, LB5 and LB9 of the LP, that give the highest level of protection for internationally designated sites of biodiversity interest.

¹ Now the National Site Network following withdrawal from the EU

Other Matters

21. The parties are in disagreement over whether the Council can demonstrate a five-year housing land supply, although no detailed site-by-site assessment has been submitted to the appeal to substantiate either claim. Even if this were a case where paragraph 11(d) of the National Planning Policy Framework (the Framework) was engaged, the policies of the Framework that relate to protecting open space and protecting both ecology and biodiversity provide clear reasons for refusing the proposed development as set out above. The proposal would therefore fail the environmental limb of sustainability set out in the Framework.
22. I note that the scheme would deliver some benefits, particularly in a location adjoining the settlement, but these would be minor given the limited nature of the development. I acknowledge concerns regarding anti-social behaviour on the appeal site, but this would be tackled by other means and does not in itself justify the proposed development.

Conclusion

23. For the above reasons, the appeal is dismissed.

David Wallis

INSPECTOR