



Appeal Decision

Hearing Held on 29 March 2022

Site visit made on 30 March 2022

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

an Inspector appointed by the Secretary of State

Decision date: 9th May 2022

Appeal Ref: APP/X2220/W/20/3264236 Broomhill, Gobery Hill, Wingham CT3 1JJ

- 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 and Mrs van Petegem and Leath Park Developments Ltd against the decision of Dover District Council.
 - The application Ref 19/00217, dated 31 January 2019, was refused by notice dated 22 June 2020.
 - The development proposed is for the erection of 15 No, two-storey dwellings (including 4 units of on-site affordable housing), served from a vehicle access located at the south of the site onto Gobery Hill, including all associated engineering works and landscaping (c.1ha), together with retention, enhancement and long term management of woodland/grassland (0.3ha) to the east of the proposed dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.

Main Issue

3. The main issue is the effect of the proposal on highway safety.

Reasons

4. The appeal site is a rising parcel of land to the northern side of Gobery Hill (A257) just outside the settlement of Wingham that is adjacent to the Wingham Conservation Area (the CA). The site has a gated access onto the A257 and is flanked by a footway which runs downhill towards the junction with Preston Hill and the facilities and services found in the centre of Wingham. There are residential dwellings to either side of Preston Hill which leads down from Nash Road to the listed dwellings of 113 and 114 High Street at the junction with the A257. No 114 faces onto the junction across a pedestrian refuge towards the properties known as 'Topaz' and 'Choristers Cottage'. Preston Hill is lined by parking on the western side.
5. The proposal is to construct 15 new dwellings on the appeal site in traditional style materials that would have an access onto Gobery Hill. The junction with Preston Hill would have an additional 'built-out' pedestrian crossing to each side, dropped kerbs and tactile paving in addition to the existing central pedestrian crossing.

6. At the Hearing while I heard that the Council had found that the impact of the proposal on highway safety would be unacceptable, subsequent discussions with Kent County Council Highways department (KCC) have led the Council to conclude that in their view an acceptable and safe solution for the junction could be found. Moreover, the Council told the Hearing that a revised scheme would be tested by means of an independent safety audit, and be secured by conditions with the details being finalised as part of a S278 agreement. Therefore, although a revised proposal(s) was not available at the Hearing for consideration, the Council no longer wish to contest the reason for refusal given in their decision notice.
7. In certain circumstances a proposal can be amended through revised plans during an appeal. However, as a revised scheme had not been submitted by the appellant, interested parties had not had the opportunity to comment. Therefore, the appellant was invited to submit a revised proposal for the junction by means of written representations subsequent to the Hearing. To do otherwise would prejudice interested third parties and other consultees, who may have observations to make on the evolved scheme.
8. Therefore, while mindful of the Wheatcroft principles¹, in my view the appeal can be determined on the basis of revised plans. Subsequently, the appellant has proposed two alternatives for the scheme. The first proposal (option one) is similar to the appeal scheme but would include a reduced central traffic-island and have an increased 'built-out' crossing on the eastern side of Preston Hill. The second scheme (option two) would also see modifications to the central traffic-island and have a crossing on Preston Hill. As such, I have considered the planning merits of the two revised schemes.
9. At my site visit I noticed that the traffic travelling down Preston Hill is limited by a 40mph speed limit sign and is also partially slowed by the presence of parked cars to one side of the highway. Nonetheless, irrespective of the 'give-way' (150yds) road-traffic sign, I observed that most vehicles move at a relative pace towards the broad-mouthed junction with Gobery Hill. Therefore, regardless of where the proposed visibility splay is measured from, or whether built-out footways, friction surfacing and additional signage is included or not, the fact remains that by virtue of the sloping and curved highway arrangement, as well as the hedged boundary of 'Topaz' and 'Choristers Cottage', both pedestrians and motorists would be unable to see each other at the re-worked junction on the eastern side of the road until the very last moment.
10. I note the changes to the Highway Code, including, but not limited to, the hierarchy of users, and the guidance for people crossing the road at junctions. However, despite their best intentions, it is very likely that motorists who are unfamiliar with the junction would come into conflict from time to time with pedestrians attempting to cross the relatively wide section of road on the eastern side of Gobery Hill. Indeed, whether the size of the 'built-out' crossing on the eastern side of the road would be enlarged or not, the potential for conflict between motor vehicles and pedestrians is likely to be increased on darker days or wetter times of the year.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL, 1982, P37)

11. Moreover, the junction would be linked to the appeal site by a pedestrian footway that would provide direct access to the centre of Wingham, which includes, amongst other things; shops, a primary school and a bus-stop with regular services to Canterbury and the wider area. Therefore, at busier times of the day, when commuting and vehicular activity is at its peak, some of the numerous occupiers of the 15 unit development may well be distracted at the well-used junction on Preston Hill. For example, when residents of the proposed development make their way from the nearby appeal site access to catch a bus or are rushing to school with their children. The proposed pedestrian crossing on Preston Hill of option two would not provide adequate mitigation. Indeed, the location of the crossing further up Preston Hill is likely to be unattractive to those in a hurry or with limited mobility as it is at some distance from the junction mouth.
12. In addition, the proposed crossing on Preston Hill would require the removal of a number of on-street car-parking spaces that would be likely to add to local parking stress. The aims within the Wingham Parish Council Highway Improvement Plan are noted, which include parking restrictions on or near to the junction. However, I have limited details of those plans before me. Accordingly, I cannot be certain that they would be delivered in a timely and acceptable way to ensure highway safety and to mitigate parking stress in this specific location following construction of the new development.
13. I acknowledge that HGV movements appear to be relatively infrequent on to Preston Hill, that this type of movement would be finite in respect of the construction period, and that the revised proposals would have a reduced central island and an amended 'swept-path' that would somewhat increase ease of movement through the junction for larger vehicles. Nonetheless, it is likely that the articulated elevations of No 114 would encourage vehicles to manoeuvre towards the centre of the junction. As such, in my view, even if infrequent, the risk of overrunning of the central island by larger vehicles remains.
14. The Council has indicated that it is willing to engage in further discussion with the appellant and KCC to finalise a scheme. However, after consideration of the revised options before me, the fact remains that there can be no certainty that those discussions or proposed mitigations would lead to an acceptable scheme that would fully overcome my concerns for highway safety that I have found above. This would be the case even if the suggested conditions were to be imposed. I conclude therefore, that the proposal(s) would have an unacceptable impact on highway safety.
15. Consequently, the proposal is contrary to the Dover District Council, Dover District Local Development Framework, Core Strategy 2010, and guidance of the Manual for Streets when read as a whole.
16. For similar reasons, the proposal does not meet the aims of Chapter 9 of the Framework which says, amongst other things, that development should be refused if there would be an unacceptable impact on highway safety.

Other Matters

17. The Council can demonstrate a 5 Year Housing Land Supply. As such, while I acknowledge the judgement contained within 'Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (2021)', and whether the Council's relevant planning policies are out of date or not, in this case the 'tilted-balance' is not engaged.
18. At the Hearing the 'Wingham Conservation Group' and other interested parties brought to my attention their concerns about the effect of the proposal on the CA, listed buildings and drainage. Whilst the Council considered these matters in its 'Officer Report' these concerns are nevertheless noted.
19. Additionally, I was reminded at the Hearing that the appeal site is located near to the Stodmarsh Wetlands and Lakes, and is also within the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar. Therefore, the proposal is subject to Natural England's Nutrient Neutral Methodology advice and the Habitat Regulations which protect them. If I had come to a different conclusion it would have been necessary for me as a competent authority to undertake an 'Appropriate Assessment' and the likely effectiveness of any mitigation measures, including the certainty of an agreed S106 agreement being forthcoming in this respect. However, as I have found against the appellant on the main issue, and therefore planning permission is to be refused, these matters need not be considered any further in this case.

Conclusions

20. For the reasons given above, I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR

APPEARANCES:

For the Appellant:

- John Wilde (Highways Consultant - C&A Consulting)
- Nicola Coles (Associate Planner – Hume Planning Consultancy Ltd)

For the Local Planning Authority:

- Andrew Jolly (Planning Consultant)
- Laura Mackenzie – Senior Development Planner
- James Wainwright – Principal Transport Planner

For Kent County Council Highways Department:

- James Wraight – Principal Development and Transport Planner

For the Wingham Conservation Group:

- Anne Williams (Counsel)
- Tessa Gardiner – Secretary
- Peter Weatherhead – Planning Consultant
- Graham Bellamy – Highways and Drainage Consultant
- Janet Gooch – Heritage Consultant

For Wingham Parish Council:

- Cllr Sharon Addis

Others/Observers:

- Mr Guy Van Petegem (Appellant)
- Tim Warren (Leath Park Developments)
- Dan Collins (Wingham Parish Council)
- Dave Manager
- Victoria Clark
- Katy Cook