



Appeal Decision

Site visit made on 10 May 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/Z2260/W/21/3287388

Land at rear of Hartsdown Mansions (facing All Saints Avenue), Margate Kent

- 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 Stephen Moore against the decision of Thanet District Council.
 - The application Ref F/TH/21/0388, dated 10 March 2021, was refused by notice dated 16 June 2021.
 - The development proposed is a detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken account of the National Planning Policy Framework 2021 (the Framework), which was issued after the Council's determination of the application. Whilst specific paragraph numbers have changed, the substantive elements of the new Framework have not insofar as they relate to the substance of this appeal.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of neighbouring residents of 2 and 4 Hartsdown Road with regard to outlook, light and outdoor space and whether acceptable living conditions for future occupiers would be provided, with regard to outlook; and
 - the effect of the proposal on the integrity of the Thanet Coast and Sandwich Bay European site.

Reasons

Character and Appearance

4. Hartsdown Mansions occupies a corner site and contains four flats, numbers 2, 4, 6 and 8 Hartsdown Road. The appeal site comprises an area of land to the rear of Hartsdown Mansions.

5. The area immediately surrounding the site and the context in which the proposed development would be viewed is that of a residential area of mainly semi-detached and detached two storey dwellings of similar appearance and spacing between. Those occupying corner sites generally have a larger plot size, including land to the side as well as to the front and rear. The dwellings sit on quite generous sized plots and there is a reasonable separation distance between them. One of the key characteristics of the immediate area is therefore its relative uniformity and defined pattern and grain of development. The site contributes positively and distinctively to the sense of openness around Hartsdown Mansions and the spacious quality of the street scene in this location.
6. The proposed development would not sit comfortably in the street scene. It would reduce the gap between Hartsdown Mansions and the dwelling at 42 All Saints Avenue such that the visual separation between these two properties would be substantially and unacceptably reduced. This would significantly harm the open character of the street scene in this location and disrupt the pattern and grain of development. Furthermore, the limited space around the proposed dwelling together with the reduced space to the rear of Hartsdown Mansions would contribute to the appearance of a visually cramped development when compared to other dwellings in the vicinity.
7. As a result, the proposed development would appear as an incongruous form of development within the street scene, materially harming the open and spacious character of the vicinity.
8. For the above reasons, I conclude that the proposed development would significantly harm the character and appearance of the area. It would therefore conflict with the design principles of Policy QD02 of the Thanet District Council Local Plan, adopted 2020, (the Local Plan) which seeks to promote or reinforce the local character of the area amongst other matters. It would also conflict with the design objectives of paragraphs 130 and 134 of the Framework.

Living Conditions

9. The side elevation of the proposed dwelling would be in close proximity to the rear elevation of 2 and 4 Hartsdown Road. This elevation contains a number of windows at ground and first floor levels. The information submitted by the appellant indicates that the windows serve bathrooms, halls and kitchens. Although my attention has not been drawn to any guidance on this matter, bathrooms and hallways are not normally considered to be habitable rooms, whilst kitchens often are. The proposed dwelling would also be in very close proximity to the small outdoor area immediately adjacent to the northern part of Hartsdown Mansions.
10. By virtue of its height, size and proximity, the proposed development would be dominant and overbearing when viewed from the rear habitable room windows and the small outdoor area of nos. 2 and 4 and would result in a sense of enclosure for the residents of these properties. As such, it would significantly diminish their outlook. For similar reasons, the proposed development would result in overshadowing of the rear windows and small outdoor area of these properties with a consequent loss of light for part of the day. The scheme would also significantly reduce the outdoor space adjacent to nos. 2 and 4, compounding the poor building to building relationship.

11. Both rear bedrooms of the proposed dwelling would be served by high level windows, which, based on the submitted information, have been proposed to avoid direct overlooking of the garden area to the rear. The other window serving bedroom three would need to be obscure glazed to a high level to prevent harmful overlooking.
12. Such design elements would reduce the impact of the proposed development on residents of the adjacent properties and provide adequate light and ventilation for future occupiers of the proposed dwelling. However, these features would not provide a reasonable outlook for future occupiers and would result in a poor-quality living environment.
13. I therefore conclude that the proposed development would result in significant harm to the living conditions of residents of 2 and 4 Hartsdown Road, with particular regard to the effect on outlook and light, as well as a reduction in the outdoor space adjacent to these properties and would not provide acceptable living conditions for future occupiers with particular regard to outlook. Accordingly, it would conflict with the residential amenity aims of Policy QD03 of the Local Plan and paragraph 130 of the Framework.

Thanet Coast and Sandwich Bay European Site

14. The site lies within the Zone of Influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA)/Ramsar Site¹. The SPA is a European site afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Paragraph 181 of the Framework confirms that listed Ramsar Sites should be given the same protection as European sites.
15. The European site is used by large numbers of migratory birds. A primary reason for the designation is through supporting populations of European importance over-wintering Turnstone. European Golden Plover and breeding Little Tern are also listed as qualifying species.
16. The Council has prepared a Strategic Access Management and Monitoring Plan, 2016, in respect of the Thanet section of the European site (the SAMM). It identifies that one of the main threats to the integrity of the European site is the disturbance of feeding and roosting waders, notably over-wintering Turnstones, by recreational activities, particularly dog walking.
17. The European site is an important recreational resource. Due to the proximity of the proposed development, there is a reasonable likelihood that the European site would be accessed for recreational purposes by future occupiers. Although the number of additional recreational visitors would be limited given the nature of the proposal, when considered in combination with other development in the area, there would be a likely significant effect on the qualifying features of the European site, particularly through increased disturbance as a result of recreational activity.
18. As the competent authority, it is therefore necessary for me to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the European site. Considering its conservation objectives, there would be adverse effects on the integrity of the European site from the proposed development through increased disturbance to the qualifying features

¹ listed under the Ramsar Convention

from recreational activity. I must therefore consider whether measures could be put in place to avoid or mitigate the impacts.

19. Through the SAMM, which has been prepared with the support of Natural England, the Council has developed strategic habitat-based measures to mitigate impacts on the European site caused by increased recreational activity arising from new housing. These would be funded by financial contributions at a specified tariff per dwelling. Natural England is of the view that if these measures, including financial contributions to secure them, are implemented, they will be effective and reliable in preventing the harmful effects on the European site².
20. The evidence indicates that Natural England agrees that the mitigation measures in the SAMM to address additional impacts from recreational disturbance to the European site are appropriate. I am therefore satisfied that the SAMM includes suitable mitigation for the adverse effects of the proposed development on the European site.
21. The proposed development includes no mechanism by which mitigation can be secured and controlled, for example by means of the submission of a completed planning obligation in respect of a financial contribution to assist with the on-going funding of the mitigation actions and the capital investment required to fund the mitigation strategy in perpetuity, as outlined in the SAMM. I cannot therefore conclude that the proposed development would not have an adverse effect on the integrity of the European site.
22. No other alternative solutions have been put to me that would avoid or reduce the effects on the European site. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling, taking into account the merits of the case and the modest scale of the development, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitats Regulations, permission must not be granted.
23. Reason for refusal four on the Council's decision notice also refers to the Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI). Paragraph 180 of the Framework states that development which is likely to have an adverse effect on a SSSI (either individually or in combination with other developments), should not normally be permitted, unless the benefits of the development in the location proposed clearly outweigh both its likely impact on the notified features, and any broader impacts on the national network of SSSIs. No evidence has been presented about the SSSI. However, even if I was able to determine that the proposed development would not have an adverse effect on its notified features, this would not alter or outweigh my conclusions on the European site.
24. The evidence is that the proposed development would have an adverse effect on the integrity of the European site, without suitable mitigation. Hence, it would be contrary to Policy SP29 of the Local Plan, which requires all proposals for new residential development to comply with the SAMM including making a financial contribution. It would also be contrary to the habitat and biodiversity

² Natural England letter to Canterbury City Council and Thanet District Council dated 11 March 2019

requirements of paragraphs 181 and 182 of the Framework and the Habitats Directive³.

Conclusion

25. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR

³ Directive 94/43/EEC 1992 on the conservation of natural habitats and of wild fauna and flora is transposed by the Habitats Regulations