



Appeal Decision

Site visit made on 4 July 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2022

Appeal Ref: APP/Z2260/W/21/3277591

8 Percy Avenue, Broadstairs CT10 3LB

- 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 S Groom of Kazoku Ltd against the decision of Thanet District Council.
 - The application Ref F/TH/19/0388, dated 1 March 2019, was refused by notice dated 18 March 2021.
 - The development proposed is change of use from storage (use class B8) to residential (use class C3) together with first floor extension with accommodation in roof to facilitate 3No 2bed self-contained flats and 2No 3bed self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the Framework in reaching my decision.
3. The proposal was amended during the course of the planning application being before the Council. The development as proposed in the banner heading above reflects that of the amended proposal.

Main Issues

4. The main issues in the case are the effect of the proposal on:
 - a) The character and appearance of the area; and
 - b) The Thanet Coast and Sandwich Bay Special Protection Area (SPA) and the Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI).

Reasons

Character and appearance

5. The area is of mixed character comprising predominately two storey pitched roof dwellings to the north and three storey flat development to the south. The appeal site is also abutted by a two storey flat roofed development. To facilitate the residential development the building would be altered from being a single storey flat roof building to a two and a half storey building.

6. The creation of a development of two and half storey would be in line with properties along Percy Avenue in regard of height and massing. The proposal would be more visible within the Percy Avenue street scene, noting that it would have a greater height to that of the adjoining flat roofed development. Nonetheless, the pitched roof design of the upper additions would reflect that of the other developments along Percy Avenue. The upper storeys would be of a design and scale that would assimilate with the context of the development in the vicinity. Given there is taller and larger development within the immediate area of the proposed development, I do not consider the proposal would appear inherently obtrusive or prominent in this location when viewed either from the north or the south from Percy Avenue.
7. For these reasons, I conclude that the proposed development would not be harmful to the character and appearance of the area. As such, the proposed development would comply with Policy QD02 of the Thanet Local Plan (the Local Plan). The primary planning aim of this policy seeks, amongst other matters, all new development to promote or reinforce the local character of the area and provide high quality and inclusive design.

SPA and SSSI

8. The Council have identified that the appeal site is located within the zone of influence (7.2km) of the SPA and the Ramsar and Thanet Coast SSSI which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Regulations).
9. The April 2018 judgement (*People Over Wind v Coillte Teoranta*, ref C-323/17) ruling determined that the development cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of mitigation measures agreed between Natural England and the Council.
10. The SPA/SSSI sites are protected and subject to statutory protection as an internationally important habitat for a number of rare and vulnerable birds and for the critically important network for birds on migration. The objectives of the statutory protection seek to ensure the integrity of the site is maintained or restored for birds (qualifying features). The Ramsar site supports wetland invertebrates species of international importance, as well as a large number of nationally scarce species. It also is used by large numbers of migratory birds which recent surveys show there to be a decline in wintering birds. Recreational activity, and in particular dog walking, causes disturbance. New households in the District would increase recreational disturbance, which has the potential to negatively affect birds by causing a decline in their numbers.
11. I agree that the proposed development has the potential to increase disturbance to birds upon the SPA/SSSI through increased recreation pressure from additional households. Adequate mitigation clearly could not be provided on-site. I, therefore, must consider whether measures could be put in place to avoid or mitigate the impact of the pressure arising from the proposed development on the SPA/SSSI and the effectiveness of any proposed measures.
12. The mitigation strategy incorporates wardening at the sites, signage and interpretation, and education. In addition, monitoring and surveys of the site, particularly with regard to visitors and bird numbers, is part of the strategy plan that is linked to the wardening programme. This is to be delivered

- through the Thanet Coast project, run by Thanet District Council, working in partnership with conservation organisations in East Kent, including Bird Wise.
13. Policy SP29 of the Local Plan requires all new residential development to comply with the Strategic Access Management and Monitoring Plan (SAMM) in order to mitigate against the in- combination effect of new development, through the pathway of recreational pressure of the SPA and SSSI. A tariff has been developed and will be applied to new housing according to the number of dwellings built within the zone of influence.
 14. Natural England have confirmed that additional development and associated recreation is likely to impact on the integrity of the European Sites and their qualifying features. For development within the zone of influence Natural England indicates that a financial contribution to the SAMM Strategy is required.
 15. This tariff will be funded by development contributions and directed to annual expenditure to operate the mitigation actions during the Local Plan period and fund the capital investment required in order to secure the mitigation strategy in perpetuity. Elements of the mitigation relate to staff costs that form a large proportion of the costs to provide a co-ordinating role and have been included within the mitigation tariff package. The co-ordinating role would be provided by a small steering group comprising the Council, Natural England and others. The responsibility of this group is to plan, develop, resource and co-ordinate all mitigation activities and works relating to the SPA/SSSI in Thanet.
 16. Both the Council and Natural England have confirmed that the proposed financial contribution to mitigate the effect on the SPA/SSSI is sufficient to avoid an adverse impact on the integrity of the European Site arising from the proposed development.
 17. I consider that in order to mitigate the impact of increased recreational disturbance created by the new households proposed by the planning application, a financial contribution to the SAMM Strategy is necessary. The mitigation measures to be implemented within the SPA/SSSI from collection of the standard SAMMs tariff would ensure that these impacts will not be significant in the long-term.
 18. The Appellant has provided a Unilateral Obligation (UO) to ensure this payment. However, it has not been signed, witnessed or dated on the final page. Furthermore, the Council advise that there is no up-to-date and official Office Copy Entries from Land Registry for the Council to verify that he correct people are signing and that title number/s are correct. The Appellant has been given the opportunity to submit a completed UO but this has not been received within the timeframe given. As such, there is no completed mechanism in place that would secure a financial contribution to the SAMM Strategy, which I have found to be necessary to mitigate the impact of the development upon negatively affected birds.
 19. I conclude that the proposed development does not include appropriate mitigation to ensure that it does not, in combination with other development, have an adverse effect on the SPA/SSSI. Consequently, the proposal would conflict with Policy SP29 of the Local Plan which provides a policy framework for managing the potentially adverse risk that the net increase in development could have upon the SPA/SSSI.

Conclusion

20. Whilst I have found in favour of the appellant in terms of the effect upon the character and appearance of the area, this does not overcome the identified harm in relation to the SPA and SSSI. For the reasons given above, the appeal should be dismissed.

Nicola Davies

INSPECTOR