



Appeal Decision

Site visit made on 9 August 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Appeal Ref: APP/J2210/W/21/3288261

36 Tile Kiln Hill, Blean, Kent CT2 9EE

- 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 Steven Lee against the decision of Canterbury City Council.
 - The application Ref CA/21/02283, dated 16 September 2021, was refused by notice dated 12 November 2021.
 - The development proposed is described as '3 No. 4 Bedroom detached dwellings to the rear of 36 Tile Kiln Hill, Blean, Kent CT2 9EE.'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on (a) the character and appearance of the wider area, with particular regard to the effect on the setting of a designated heritage asset; and (b) nutrient neutrality with particular regard to the Stodmarsh Nature Reserve Special Area of Conservation (SAC) and Ramsar site.

Reasons

Character and Appearance

3. The appeal site is a grassed area of land which extends behind No.36 Tile Kiln Hill and wraps around the rear of Nos. 34 and 32 Tile Kiln Hill. The site also includes the existing parking area to the south of the host building and which would provide the access from Tile Kiln Hill through to the proposed development.
4. The area in the vicinity of the appeal site is characterised by two storey detached and semi-detached properties located on either side of Tile Kiln Hill. The layout and pattern of development follows that of the road, with little development extending east or west beyond these frontage properties. There are gaps between buildings which provide views through to the open countryside. The area generally has a pleasant character of modest linear development framed by countryside beyond and to which the appeal site positively contributes.
5. Although the houses would not be constructed on the highest part of the site, they would nonetheless be comparable in height to the nearest houses on Tile Kiln Hill. As such the development would be visible between properties on Tile Kiln Hill, and noticeable from the main access road between Nos.36 and 34.

6. The proposed development would be akin to a short suburban close. The proposed houses would be set at 90° to Tile Kiln Hill and would be served by a significant length of access road and car parking. In this respect it would not reflect the prevailing pattern of development near to the site and its strong relationship with the main road that runs through the village at this point. The result would also be to erode part of the green space which helps frame the existing linear pattern of development in the area.
7. Given the nature and scale of the proposal, the development would represent a very evident expansion of built form on the eastern side of Tile Kiln Hill with the resulting loss of an important component of the area's character. I therefore find that the proposed development would harm the character and appearance of the area.
8. Although part of the proposed access, which currently provides the parking for No.36, is within the Blean Conservation Area (BCA), the majority of the appeal site and the bulk of development would be adjacent to its boundary and thus within its setting. Paragraph 200 of the Framework requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
9. While a detailed appraisal of the character of the BCA has not been put before me, it appears to me that its significance is that of a village within a rural setting that has expanded over time but retains some older, more traditional buildings. Its linear development and the openness of the locality are the defining features of the BCA and make the greatest contribution to its significance.
10. Replacing the existing parking area to No.36 and utilising it as the access for the new houses would have a neutral effect on the designated heritage asset. However, given my assessment of the character of the BCA and my conclusions as to the effect of the development on the character and appearance of the area, I find that the remaining parts of the development would cause harm to the setting of the BCA.
11. The proposed development would therefore be contrary to Policies SP1, SP4, DBE3, HE1, HE6 and HE8 of the Canterbury District Local Plan 2017 which, amongst other things, seek to ensure new housing is appropriately located, contributes to the character of the area and protects heritage assets such as conservation areas from harmful development.
12. The proposal would also be contrary to Paragraphs 130 and 199 of the National Planning Policy Framework (the 'Framework') which, amongst other things require development to be sympathetic to local character and place great weight on the conservation of designated heritage assets.
13. Given the scale and position of the proposed development, I conclude that the harm I have identified to the designated heritage asset would be moderate. This would be 'less than substantial' in the context of paragraph 199 of the Framework. Nevertheless, considerable importance and great weight should still be given to the conservation of this designated heritage asset when balancing the harm against any public benefits. This is a matter I return to below.

Nutrient Neutrality

14. The appellant indicates that a pre-commencement condition relating to the detail and installation of a treatment works should be acceptable and would overcome the concerns in relation to the Stodmarsh Nature Reserve SAC and Ramsar site.
15. The Stodmarsh Nature Reserve is protected under, amongst other things, the Conservation of Habitats and Species Regulations 2017 (the 'Regulations'). Under these Regulations, a decision maker needs to be convinced that the proposal would not have significant effects on the protected area. Until it is proven by objective evidence that there would not be significant effects from the development, either on its own or in combination with other plans and projects, it must be assumed that any effects would be significant and thus would adversely affect the integrity of the designated site. This requirement therefore establishes a very high bar.
16. As I have no details of the suggested treatment works, I would not be able to screen out at this stage likely significant effects on the integrity of the protected area arising from nutrients associated with the proposed dwelling. Accordingly, a pre-commencement condition of the sort suggested by the appellant would not reach the threshold required by the Regulations.
17. The appellant has also made reference to the option of using a Unilateral Undertaking (UU). Notwithstanding the lack of evidence regarding mitigation, I do not have a signed UU before me to secure any such mitigation.
18. I would need to undertake an Appropriate Assessment in accordance with the Regulations if I was minded to grant planning permission. However, as I have found the proposed development would result in harm contrary to the development plan in respect of the other main issue, there is no need for me to consider this matter further.

Other Matters

19. The appellant has drawn my attention to a development on the opposite side of the road for housing and which it is suggested displays many similarities with the appeal scheme. The Council indicates that it was an existing backland site and therefore the context is different. I have not been provided with full details of this other case so cannot be sure it represents a direct parallel, particularly given the stated previous use of the site.
20. Notwithstanding this lack of information, the existence of this other permission would not overcome the harm caused to the Conservation Area that I have identified. In view of the above and given that I must determine the current appeal on its own merits, the weight I could attribute to this other scheme is limited.

Planning Balance & Conclusion

21. The harm identified to the BCA would be 'less than substantial'. Nevertheless, any harm to the significance of any designated heritage asset should require clear and convincing justification and in accordance with paragraph 202 of the Framework, I must weigh the harm against the public benefits of the proposal.

22. The appellant has not specifically identified any public benefits associated with the scheme. However, the appeal site would provide three additional dwellings with reasonable access to services and would also accord with the Framework's support for windfall sites. However, the site would make only a small contribution towards housing supply. There would be associated social and economic benefits although some of these would be limited by virtue of time and the scale of the proposal. Overall, and for these reasons, the proposal would have limited public benefits.
23. Accordingly, I find that the public benefits would not outweigh the harm caused to the heritage asset, which the Framework identifies as an irreplaceable resource and advises that great weight should be given to its conservation.
24. The appellant refers to Housing Delivery Test results which suggest that the Council has only delivered 65% of its target and on that basis the Local Plan is out of date. If I were to find that the Council was unable to demonstrate a 5-year housing land supply, then Paragraph 11 of the Framework would ordinarily be engaged such that the most important policies for determining the scheme would be out of date. However, the application of policies in the Framework that protect designated heritage assets [one of the areas referred to in footnote 7 to paragraph 11 d) i)] provides a clear reason for refusing the development proposed. Accordingly, the presumption in favour of sustainable development would not therefore apply in this case.
25. I have found that the proposal would cause harm to the character and appearance of the area and the setting of the BCA. Any weight in favour of the scheme is therefore significantly and demonstrably outweighed by the harms I have identified, which would be permanent and long lasting and therefore worthy of substantial weight.
26. The proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan.
27. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR