

Appeal Decision

Site visit made on 22 August 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/L2250/W/22/3290772

Land rear of Willop Close, Dymchurch, Kent TN29 0HU

- 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 Saltwood Estates Ltd against the decision of Folkestone & Hythe District Council.
 - The application, Ref. 20/1212/FH, dated 19 August 2020 was refused by notice dated 24 September 2021.
 - The development proposed is the erection of two three bedroomed dwellings and associated parking.
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Application for Costs

1. An application for an award of costs was made by Mr J Jones, Saltwood Estates Ltd against Folkestone & Hythe District Council. This is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for the erection of two three bedroomed dwellings and associated parking on Land to the rear of Willop Close, Dymchurch, Kent in accordance with the terms of the application, Ref. 20/1212/FH, dated 19 August 2020, subject to the conditions in the attached Schedule.

Main Issue

3. The main issue in the appeal is the effect of the proposed development on the living conditions for the occupiers of neighbouring dwellings as regards outlook and privacy.

Reasons

4. At the heart of the main issue is the effect of the proposed introduction of two-storey houses into an area of bungalows, with the Council's appeal statement referring specifically to Nos. 108 & 109 Hythe Road (to the west and north west of the appeal site respectively) and No. 1 Willop Way to the east.
 5. I acknowledge that because of their greater height the two new dwellings would inevitably increase the potential to affect the outlook from the existing properties. Additionally the first floor bedroom windows would have a view over neighbouring gardens. I recognise that this mixing of single and two-storey dwellings would have an effect that existing occupiers would prefer not to occur.
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6. However, all development has at least some impact its surroundings and a nearby example is the effect of the construction of Nos. 1 and 2 Willop Close to the south east - in particular the relationship between No. 2 and No. 111 Hythe Road whereby the latter now has the significantly higher gable wall of No. 2 on one flank. Furthermore, weight must also be given to the fact that because of the site being in an area of flood risk it is deemed necessary for all new dwellings to be two-storey in height to allow emergency refuge.
7. Turning to detailed consideration of the main issue as applied to each of the three single-storey dwellings referred to, No.1 Willop Way adjoining the north east boundary of the appeal site is the closest neighbouring property to the proposed houses and would be the most affected by the development. Clearly, with the difference in height between the proposed dwellings and No. 1 and their relatively close proximity there will be a noticeable effect on some elements of the existing outlook from No. 1.
 1. However, as regards being 'overbearing', the nearest of the two dwellings would be positioned beyond the existing bungalow and offset from the boundary leaving room for landscaping. Any outlook towards the development from the principal windows of No. 1's north east elevation would be oblique, with the northern and eastern aspects remaining largely unaffected. And although the two-storey flank of the proposed dwelling would be a substantial presence beyond the north western boundary, I note that this area of No. 1's garden is also used for parking and turning.
 2. From the garden area to the south west of No. 1, the effect on the outlook towards the development would be mitigated by the combination of a reasonable distance, an oblique line of sight and a design with a lower front eaves line. These factors similarly combine to preclude any unduly intrusive overlooking towards the existing bungalow, with the absence of any first floor windows in the flanks of the proposed dwelling avoiding any direct overlooking at close quarters. In respect of sunlight, from observation of the path of the sun between its rising in the east and setting in the west, I consider the relative positions of No. 1 and the proposed dwellings would be such as to result in only a limited shadowing effect on No. 1 Willop Way. I note that this issue has not been included in the Council's case for refusal.
 3. As regards both Nos. 108 and 109 Hythe Road, the officer's report observed that *'the proposed layout does not present any serious concerns in regards impacts on these properties'*. I agree with this view, as No. 109 directly to the rear of the site is at 26m distance some 5m more than the long established standard for back to back development. This distance for the most part negates any reasonable concerns as regards outlook and privacy. There would be some slight sense of enclosure of the part of the rear garden closest to the appeal site boundary, but this area is well away from the dwelling on a wide plot only slightly narrower than the appeal site for two houses.
 4. No. 108 is closer, but is on a large plot and with a good sized gap and oblique position relative to the rear of the proposed dwellings. In my view this bungalow would also not be significantly affected by the development. Any impact on both outlook and privacy would be limited and indeed further mitigated by existing vegetation and additional planting, the latter being a requirement of a condition on a permission.

5. In coming to these conclusions I have taken account of the objections of the occupiers of the nearby properties in respect of this issue and fully appreciate their vehement disagreement with the officer's report which recommended approval. I acknowledge that the proposed development would have at least some impact in terms of both outlook and overlooking and the refusal of permission demonstrates that the Planning and Licensing Committee has disagreed with the officer's appraisal.
6. However in planning terms for a development to be 'overbearing', this is normally taken to mean that in the outlook from the windows or an important part or significant extent of the garden of an existing property, a development would result in a significant loss of the sky and/or be perceived as unduly dominant or oppressive, with a heightened sense of enclosure.
7. Also, for there to be an unacceptable degree of overlooking and resultant loss of privacy, a development would need to have significantly intrusive and direct views at close quarters that are clearly over and above the inevitable overlooking that occurs in almost any pattern of residential development of average or higher density. Even allowing for the sensitivity of a two-storey development in an area of existing low profile single storey dwellings, my planning judgement is that on both these factors the effect would not be one of sufficient harm to support the Council's refusal and warrant dismissal of this appeal.
8. On the main issue I therefore conclude that the proposed development would not cause harm to the living conditions for the occupiers of neighbouring dwellings as regards outlook and privacy. Accordingly, there would be no harmful conflict with Policy CSD1 of the Folkestone & Hythe District Council Core Strategy Review 2022; Policy HB1 of the Folkestone & Hythe District Council Places and Policies Local Plan 2020, and paragraph 130f) of the National Planning Policy Framework 2021 ('the Framework').

Other Matters

9. The potential flooding of the site and the adequacy of its drainage in non- flood times are not reasons for refusal and therefore not main issues in this appeal. However, in this regard I note that the residents strongly disagree with the information presented to and eventually accepted by the committee.
10. I have given careful consideration to these objections but note that the application was deferred three times for further information and investigation as regards site drainage and flood risk respectively. As regards site drainage, the final officer's report explains that the further information obtained confirms that the development would not lead to a significant increase in the rate of surface water run off and that this would also be facilitated by a design of the foundations that would be appropriate for the ground conditions on the site.
11. In terms of flood risk, the Environment Agency (the statutory consultee for applications in flood risk zones) does not object to the application on the grounds of flood risk and they have not identified this scheme as having the potential to increase off-site flood risk. I am also satisfied that the procedures followed by the officers as to assessing flood risk were sound and correctly follow Government advice in the 'Planning and Flood Risk' section (paragraphs 159-169) of the Framework.

12. In respect of both site drainage and flood risk (albeit also recognising the overlap of these factors) conditions have been recommended that would further ensure that these matters are not a reason for refusal of permission. I acknowledge that the submissions of residents in objecting to the application on flood risk and drainage are unequivocally to the contrary, but from all that I have seen and read I consider that I should make my decision on the professional evidence submitted by the Council and its statutory consultees.

Conclusion and Conditions

13. For the reasons explained above, I shall allow the appeal and grant planning permission. The final committee report by the officers recommending approval included a comprehensive suite of updated conditions. I have considered these and agree that individually and collectively they are reasonable and necessary as summarised below.
14. There are six development pre-commencement conditions in respect of the submission of details of the design and specification of the foundations; the preparation of a Construction Method Statement; a programme for archaeological work; a desk top study for the identification of previous uses and for potential contaminant sources with details of remediation as appropriate; a tree survey to ensure the safeguarding of protected trees, and the identification of measures to prevent flooding and secure adequate drainage. Given the fact that they were part of the committee report at the time of the refusal and that paragraph 1.4.2 of the appellant's Final Comments on the appeal referred only to 'appropriate conditions', I consider that they have the appellant's prior approval (albeit tacitly) in line with the statutory requirement.
15. These pre-commencement conditions will respectively (i) ensure that the foundations are suitable for the ground conditions and drainage / flood risk; (ii) ensure highway safety and convenience and to safeguard amenity; (iii) safeguard any archaeological interest on the site; (iv) minimise and address land contamination risks and ensure public safety; (v) retain and protect trees for their visual amenity, and (vi) facilitate the disposal of foul and surface water including a SUDS drainage scheme to prevent pollution and ensure the site is properly drained and does not exacerbate the risk of on / off site flooding. (For the same reason a further condition is required to ensure the development is carried out in accordance with the submitted Herrington Consulting Flood Risk Assessment (updated September 2020) including mitigation measures).
16. In addition, there are conditions that require the submission of information prior to the digging of foundations. These are the submission for the Council's approval of (i) further details of foul and surface water disposal; (ii) external materials to ensure the dwellings have a satisfactory appearance; (iii) a soft and hard landscaping scheme to maintain visual amenity and encourage wildlife and diversity; (iv) details of the provision of broadband services for the benefit of future occupiers, and (v) a scheme for the reduction of carbon emissions for the benefit of the environment and to resist climate change.
17. Finally, other conditions to ensure a satisfactory development are (i) a condition to carry out the development in accordance with the approved plans for the avoidance of doubt; (ii) a restriction on hours of construction work to safeguard the amenities of existing residents; (iii) confirmation of the measures

undertaken to enhance biodiversity; (iv) two conditions to ensure that the landscaping of the site is carried out in accordance with agreed details and thereafter maintained; (v) a condition to secure the on-site parking provision and its retention for the convenience of other highway users; (vi) the provision of electric vehicle charging points in the interests of sustainable development; (vii) the preclusion of additional first floor windows or openings to prevent the overlooking of adjoining properties, and (viii) the restriction of some permitted development rights to maintain the amenities of the area.

Martin Andrews

INSPECTOR

Schedule of Conditions

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
- 2) The development shall be carried out in accordance with the following approved plans: Drawing No. Series 20.128: Plans 03 Rev. P; 04; 05; 06; 07; 08;
- 3) No development shall take place until the design and specification for the foundations of the dwelling hereby approved has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out wholly in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- 5) No development shall take place until the applicants, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority;
- 6) (1) No development shall take place until a desk top study has been undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included;
(2) If the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

- (i) A survey of the extent, scale and nature of contamination;
- (ii) An assessment of the potential risks to:
 - Human health;
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Ground waters and surface waters,
 - Ecological systems,
 - Archaeological sites and ancient monuments; and
- (iii) An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11);

(3) If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works;

(4) Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority;

(5) In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority;

- 7) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development

hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details;

- 8) No development shall take place until an updated arboricultural method statement (to include a detailed layout of ground protection measures along the south western boundary of the site; pruning recommendations for the canopies of the Ash trees oversailing the site, and details of an arboricultural watching brief for the duration of any on-site excavations) has been submitted to and approved in writing by the Local Planning Authority. Upon approval, development shall be carried out in accordance with the agreed details;
- 9) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme;
- 10) No development beyond laying of foundations shall take place until details have been submitted to and approved in writing by the Local Planning Authority for the installation of a High Speed wholly Fibre broadband To The Premises (FTTP) connection to the dwellings hereby permitted. Following approval the infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process, and be available for use on the first occupation of the dwellings unless otherwise agreed in writing by the Local Planning Authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP);
- 11) No development beyond the construction of foundations shall take place until details of how the development as a whole will reduce carbon emissions by a minimum of 10 percent above the Target Emission Rate, as defined in the Building Regulation for England approved document L1A: Conservation of Fuel and Power in Dwellings, have been submitted to and approved in writing by the Local Planning Authority. Upon approval the measures shall be implemented as a greed and thereafter retained and maintained in perpetuity;
- 12) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 – 1900 hours; Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority;
- 13) No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted;

- 14) No development shall take place until a detailed surface water drainage / management strategy (including proposal for long-term maintenance and management of any on-site SUDS) has been submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. On approval the scheme shall be implemented as agreed and thereafter maintained in perpetuity;
- 15) The development shall be carried out in accordance with the submitted flood risk assessment Herrington Consulting FRA updated September 2020) and the mitigation measures it details:
 - Finished floor levels shall be set no lower than 3.44m above Ordnance Datum (AOD);
 - All sleeping accommodation to be set on the first floor above 3.74m ODN;
 - Flood risk resilience measures outlined in the FRA (section 7.3) shall be incorporated into the dwellings wherever practicable.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development;
- 16) Within three months of development commencing, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the Local Planning Authority. This includes the planting of native species and the provision of bird/bat boxes. The approved details will be implemented as agreed and thereafter retained;
- 17) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority;
- 18) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed;
- 19) The vehicle parking spaces shown on the approved drawings shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted;
- 20) Prior to the first occupation of any dwelling hereby permitted suitable Electric Vehicle Charging ductwork capable of receiving the underlying infrastructure for a future Electric Vehicle Charging point to serve each dwelling shall have been installed, details of which shall have been

submitted to and agreed in writing by the Local Planning Authority prior to installation;

- 21) No additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the first floor flank walls of the dwellings hereby permitted;
- 22) Upon completion, no further development, whether or not permitted by Classes AA or B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.