



Appeal Decision

Site visit made on 6 September 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/J2210/W/21/3278160

4 Blean Hill, Blean CT2 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Gregory Bunce of Prime Folio against Canterbury City Council.
 - The application Ref CA/20/02414, is dated 27 October 2020.
 - The development proposed is new car park for use of existing public house, and development of existing car park to provide 6 houses with associated vehicle access and parking.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. Only the original applicant has the right of appeal. While initially submitted in the name of Mr Gideon Israel of Lakebridge Ltd., the appeal proceeds in the name of the original applicant, Gregory Bunce of Prime Folio.
3. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council has subsequently advised it objects to the application for the following reasons:

The applicant has failed to provide sufficient information to demonstrate that the development would not have an adverse effect on the Stodmarsh Nature Reserve SAC and RAMSAR or that the proposal would achieve nutrient neutrality. As such, it would be contrary to the Habitat Regulations (as amended) to grant consent for development which, on advice of Natural England, would affect the integrity of a European site. The proposal is therefore contrary to Policies LB5 and LB6 of the Canterbury District Local Plan and National Planning Policy Framework.

The proposed development is located outside of any settlement identified as suitable for residential development within policy SP4 and the proposal does not meet any of the exceptional circumstances listed under policy HD4 where new houses in the countryside would be supported. The proposal would therefore represent an unsustainable and harmful form of development, contrary to policies SP1, SP4 and HD4 of the Canterbury District Local Plan 2017.

The applicant has failed to secure the delivery of necessary measures to mitigate the impacts of the proposed development on Thanet Coast and Sandwich Bay SPA and Thames, Medway and Swale SPA. Without such mitigation measures, it would be contrary to the provisions of the Habitat Regulations and Directive to grant consent for development which, on advice of Natural England, would affect the integrity of a European site. The proposal is therefore contrary to Policies SP1, SP6, LB5 and LB9 of the Canterbury District Local Plan and NPPF.

4. I have had regard to these views in setting out the main issues below.
5. Since the appeal was lodged Natural England (NE) has provided updated its advice in relation to nutrient level pollution in a number of river basin catchments¹ including for the Stodmarsh Special Area of Conservation, Special Protection Area and RAMSAR site (herein Stodmarsh). It also clarified there could be effects upon the Special Protection Area designation, which was not referred to in the Council's reasons it objects to the application. The 2021 Housing Delivery Test (HDT) results were published on 14 January 2022. The Council and the Appellant have been given the opportunity to comment upon the implications of these matters for their cases, which I have taken into account in determining this appeal.

Main Issues

6. The main issues are:

- the effect of the proposed development upon Stodmarsh, the Thanet Coast and Sandwich Bay Special Protection Area (the TSSPA) and the Thames, Medway and Swale Special Protection Area (the TMSSPA) as habitats sites; and,
- whether or not the proposed development would be in a suitable location having regard to policies for the location of new housing.

Reasons

Habitats sites

7. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that where a plan or project is likely to result in a significant effect on a European site (habitats site), a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. In this case the Council objects to the application due to its alleged effects upon three sites (Stodmarsh, the TSSPA and the TMSSPA). Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. The appeal site lies within the catchment of Stodmarsh. Its importance is due to its wetland habitats, reed beds and grazing marshes. The designated qualifying features are its assemblages of wetland invertebrates including the Desmoulin's Whorl Snail, and rare wetland birds, including wintering and/or breeding Bearded Tit, Bittern, Gadwall, Hen Harrier, and Shoveler.

¹ Natural England - Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites – March 2022.

9. The appeal site is also located within identified zones of influence of the TSSPA and the TMSSPA. The TSSPA includes a range of coastal habitats used by a large number of migratory and wintering birds. It supports an important breeding population of Little Tern and important wintering populations of Golden Plover and Turnstone, which are its qualifying features. The TMSSPA is a wetland that provides habitats for important assemblages of wintering and breeding migratory birds and water birds assemblages, and supports notable populations including Dark-bellied Brent Goose and Dunlin. These are its qualifying features.
10. The conservation objectives of all the habitats sites are to maintain or restore the integrity of the sites by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features and species, the population of each of the qualifying features and species, and the distribution of the qualifying features and species within the habitats sites.
11. Nutrient levels (phosphorus and nitrogen) are resulting in eutrophication in parts of Stodmarsh, adversely affecting the protected habitats and species, such that some of the lake units are now in an unfavourable condition. While research is ongoing, Stodmarsh is thought to be at risk from additional nutrient inputs, including from new developments coming forward within its catchment. NE has adopted a precautionary approach that LSEs on Stodmarsh and its designated features and species, due to the increases in nutrients from wastewater from new development, cannot be ruled out².
12. This proposal would result in six additional dwellings within the Stodmarsh catchment, so could result in LSE due to increased nutrient inputs. NE has been consulted advise that the attainment of nutrient neutrality is a way of securing mitigation for new development, and there is an updated methodology to calculate it. The appellant has provided calculations and suggested a variety of planning conditions in respect of a detailed surface water drainage scheme not discharging onto the highway, a detailed foul water drainage scheme to require discharge into sealed cesspits, the emptying of cesspits by a new management company to one four named sewage treatment works outside the catchment, and provision for purchase by the Council in the future.
13. NE is satisfied that tankering foul water out of the catchment is an acceptable means of mitigating the impacts associated with the discharge of foul water. However, it is of the view there is insufficient evidence to determine whether there would be a residual impact associated with surface water run-off.
14. In respect of the proposal to condition a scheme for foul-water disposal by tankering off-site, I have not been provided with written assurance that the named water treatment works would either be willing, or under any obligation, to take wastewater from the proposed development. In addition, once tankers carrying wastewater are outside the appeal site, it is not clear that the deposit and processing of wastewater would be within the appellant's control. Therefore, I am not satisfied this condition meets the tests of being either reasonable or enforceable, and would ensure there is no LSEs on Stodmarsh.

² Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites - For Local Planning Authorities (November 2020).

15. The appellant is of the view surface water run-off may not result in increased nutrients given the level of hard surfacing and vegetated areas would be similar, and the level of fertilisers applied on the site would be unchanged. The appellant's nutrient calculation suggests both the current and proposed land use can be classed as residential urban land so inputs would be the same. However, the area for the new dwellings and car park is currently a public house car park and garden, with little if any area used for a residential land use. Therefore, I am of the view the calculation is not sufficiently rigorous.
16. Vegetation within the appeal site is relatively informal and it is not clear what level of fertiliser is used upon it. The proposal would result in a number of new garden areas, that would be likely to be used for more intensive landscaping, cultivation and ornamental planting, and be subject to pet waste deposit. These are likely to result in an increase in nitrate and phosphate loading into surface water. For similar reasons in respect of that of foul-water, I cannot be certain this could be mitigated by planning condition, and would ensure there is no LSEs on Stodmarsh.
17. Studies have found that a range of outdoor sporting and recreational activities result in disturbance of birds at the TSSPA and the TMSSPA. The proposal would introduce six new dwellings within zones of influence, in which it is identified that future new housing is likely to result in increased visitors and recreational disturbance to TSSPA and TMSSPA and their qualifying features. Therefore, the effects of this scheme alone and in combination with other development would have LSEs on the TSSPA and TMSSPA.
18. The Council has produced a Strategic Access, Management and Monitoring Plan³ for the TSSPA setting out a variety of mitigation measures (SAMMs) delivered through a partnership project to ensure that development, does not have an adverse effect on the integrity of the TSSPA. Mitigation measures include on-going monitoring and surveys, wardening, signage and interpretation, and educational measures. This is funded by a per-dwelling tariff, required to be secured by means of a planning obligation.
19. For the TMSSPA there is a Strategic Access, Management and Monitoring Strategy⁴ setting out a variety of mitigation measures (SAMMs) to mitigate bird disturbance, delivered through a local partnership (Bird Wise project). The SAMMs include wardening, education, interpretation and signage, new and/or enhanced infrastructure, and enforcement and monitoring. This is also funded by a per-dwelling tariff, required to be secured by a planning obligation.
20. NE advocates the principle of designating zones of influence and the identification of the pathways of effects. Based upon the evidence before me, I am satisfied that subject to a payment being secured against the appeal scheme via planning obligations or other suitable mechanisms, the measures would overcome the LSEs on the TSSPA and TMSSPA.
21. The appellant states they will pay the necessary contribution via a planning condition requiring the payment of a specified amount of money to the Council in relation to the TSSPA only. NE has not objected to the condition. However, the Council is of the view a planning obligation is necessary. There is no

³ Strategic Access Management and Monitoring Plan In respect of the Canterbury section of the Thanet Coast and Sandwich Bay SPA, Main Report, Version: Final, November 2017.

⁴ Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy. Unpublished report by Footprint Ecology (2013).

- means of index linking the sum in the condition, to ensure it reflects the costing of mitigation at the time it is used, or guaranteeing it will be only used to deliver the necessary mitigation in the future. Therefore, I do not have sufficient certainty the mitigation is secured or would adequately mitigate the LSE on the TSSPA. Moreover, the condition does not secure a payment to mitigate the effects upon the TMSSPA.
22. Therefore, the proposed development does not make adequate provision to mitigate the recreational disturbance impacts and thus maintain or restore the integrity of the TSSPA and TMSSPA. I cannot be certain that it would not have LSE upon their integrity. The appeal scheme makes no other provision to mitigate the impacts and thus maintain the integrity of the TSSPA and TMSSPA.
23. Applying the precautionary principle, in the absence of appropriate mitigation being secured, the appeal scheme would have significant adverse effects upon the integrity of the TSSPA, TMSSPA and Stodmarsh. For this reason, the appeal scheme would fail to adhere to their conservation objectives. Imperative reasons of overriding public interest do not exist, it has not been put to me there are no alternative solutions, and no compensatory measures will be provided. Therefore, section 63(5) of the Regulations precludes the proposal from proceeding.
24. For the reasons set out above in respect of Stodmarsh the proposal conflicts with the Habitats Regulations and Policies LB5 and LB9 of the Canterbury District Local Plan (2017) (the Local Plan). In respect of the TSSPA and the TMSSPA it conflicts with the Habitats Regulations and Policies SP6, LB5 and LB9 of the Local Plan. In combination and amongst other things the policies seek to avoid a net loss to biodiversity and ensure development that may be likely to have an adverse impact upon the integrity of the habitats sites will not be permitted unless adequate mitigation measures are secured to ensure no adverse effect upon their integrity. It also conflicts with paragraph 180 of the National Planning Policy Framework (2021) (the Framework) which states that if significant harm to biodiversity cannot be avoided or adequately mitigated, then planning permission should be refused.
25. Policy SP1 of the Local Plan refers to the Council taking a positive and proactive approach and applying the presumption in favour of sustainable development in accordance with the Framework. Therefore, it is of less relevance to this main issue than the policies I have set out above.

Location

26. Policy SP4 of the Local Plan sets out the strategic approach to the location of development. The pre-text explains it adopts a sequential approach to the sustainable location of new development, with a settlement hierarchy based upon their size and range of services. New development will be focussed towards named settlements proportionate to their size and hierarchy position. Provision of new housing that of a size, design, scale, character and location appropriate to the character and built form of the local centre of Blean, will be supported within the settlement provided it is not in conflict with other plan policies.
27. The Council has put it to me the development is within the countryside, however, it has provided little substantive reasoning or pointed me towards criteria it has applied to reach this conclusion. The Local Plan does not define

the built confines of villages on the proposals map, and there is little clear explanation of how settlements should be defined. The appellant is of the view the appeal site is approximately 800m from the southern boundary of Blean and 2km from the northern boundary, so is a central part of the local centre.

28. From what I saw, the appeal site forms part of a linear pattern of development along Blean Hill which includes significant clusters of dwellings and other built development both to the north and south of the appeal site. The largest concentration of dwellings and facilities appears to be approximately 300m north of the appeal site. However, there are significant groups of properties either side of the highway to the south, including Blean Primary School which is a clearly a sizeable facility serving the local centre, a wellness centre, and a pet day care facility.
29. Blean Hill outside the appeal and much of it to the north and south had continuous footway and street lighting on the eastern side, with a 30mph speed limit. While I noted a village sign close to the junction with Tyler Hill Road, this was well within the larger concentration of dwellings, therefore, it does not appear to mark the southern boundary of the settlement. Neither could I see any other signage that might demarcate the south of Blean.
30. Given the significant clusters of development either side of the appeal site, the location of the primary school and other facilities to the south, the nature of the highway, its speed limit and street lighting, this is suggestive the appeal site can be considered as part of the local centre for the purposes of Policy SP4. There is no substantive case put to me by the Council that would lead me to an alternative view. Therefore, based upon the limited evidence before me, the appeal site is within the local centre. As I have found the development not to be located in the countryside, Policy HD4 is not relevant to this proposal.
31. The Council's objection to the application is specifically in relation to it being located outside a settlement. For the reasons set out above, I find the proposed development would be in a suitable location having regard to policies for the location of new housing, in compliance with Policy SP4 of the Local Plan, the relevant provisions of which I have set out above.
32. Policy SP1 of the Local Plan refers to the Council taking a positive and proactive approach and applying the presumption in favour of sustainable development in accordance with the Framework. Therefore, it is of less relevance to this main issue than Policy SP4.

Other Matters

33. The Council's objection to the application in respect of Policy SP4 appears to be only in respect of the principle of its location, and has not substantiated or reasoned harm or policy conflicts with regard to any other matters set out within the policy. The appeal site is located within the Blean Conservation Area (BCA), within which Section 72(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing its character or appearance. I have noted interested party representations in respect of matters including heritage assets, character and appearance, and assets of community value.
34. The appellant has also provided evidence in respect of the aforementioned matter and other matters to advocate compliance with relevant policies and

benefits of this proposal. There would be economic and social benefits, including in respect of housing land supply and delivery through the provision of the appeal scheme, and there is likely to be other benefits such as in relation to minor biodiversity enhancements on the site.

35. However, Regulation 63(5) of the Regulations 2017 states that the competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site. Therefore, even if I were minded to take the view the proposal would result in all the benefits set out by the appellant including preserving or enhancing the character and appearance of the BCA, I cannot allow the appeal.

Conclusion

36. While I have taken the view the proposal would not conflict with Policy SP4 of the Local Plan, in-light of my findings above in respect of Stodmarsh, the TSSPA and the TMSSPA the proposed development would be contrary to policies of the development plan and the National Planning Policy Framework. Moreover, it would conflict with the Habitats Regulations, under which as the competent authority, I cannot allow this appeal. Therefore, the appeal is dismissed and planning permission is refused.

Dan Szymanski

INSPECTOR