



Appeal Decision

Site visit made on 3 November 2022

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/J2210/W/21/3283600

Seotamot, Littlebourne Road, Canterbury CT3 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Townscape Littlebourne Road Ltd against the decision of Canterbury City Council.
 - The application Ref CA/19/10380, dated 20 December 2019, was refused by notice dated 26 March 2021.
 - The development proposed is for an 80 bedroom care home (C2 use) and replacement dwelling house and detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to the refusal of an outline application with access and layout for consideration at this stage. With that in mind, I have deleted reference to 'outline application' and 'access and layout' from the proposal in the heading on the basis that they do not form part of the development proposed.
3. During consideration of the application by the Council amended application forms and plans were submitted. These amended the proposal by reducing its extent, removing seven extra care bungalows, relocating the care home and altering its scale and design. The Council reconsulted on these amended proposals and made its decision on them. I too have used the amended details in making my decision. The description of the proposal in the heading reflects the amended proposal and is taken from the amended application form which is dated 2 October 2020.

Main Issues

4. The main issues are the effect on:
 - habitats sites;
 - highway safety; and
 - the character and appearance of the area.

Reasons

5. The proposal is to demolish the dwelling and replace it to the western side of the site. On the eastern side of the site would be an 80 bedroomed care home.

The existing access would be utilised, although slightly remodelled, and there would be an area laid out for parking in front of the care home. An access road to the rear of the care home would run between it and the replacement dwelling.

Habitat sites

6. The appeal site lies within the Zone of Influence of the Stodmarsh Nature Reserve Special Area of Conservation (SAC) and Ramsar site. In this appeal I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended). For the purposes of these regulations this site represents a 'European site' but is generally known as a 'habitats site'.
7. Under the terms of the Habitats Regulations before deciding whether to give permission for a proposal which is likely to have a significant effect on a habitats site, either on its own or in combination with other plans or projects, which is not directly connected with or necessary to the management of the site, I must make an appropriate assessment of the implications of the proposal in view of that site's conservation objectives. I can only grant planning permission after having ascertained that the proposal will not adversely affect the integrity of the European site unless there are imperative reasons of overriding public interest and appropriate compensation is secured.
8. As the appellant indicates the SAC and Ramsar site is designated because of its rare mix of plant and invertebrate species and its use by over-wintering birds. The proposed development would result in additional people living within the Zone of Influence of the habitats site and their waste water would be likely to result in increased levels of phosphorous and nitrogen which could adversely affect the integrity of the site.
9. The appellant notes that the affected Councils and Natural England have been working towards a potential solution on this matter, but I have not been informed that one is yet available. Indeed, the Government has published a Written Ministerial Statement on this issue seeking to improve water quality and tackle nutrient pollution. In its final comments on the appeal the appellant concedes that it is "unable to provide appropriate mitigation to achieve nutrient neutral development. We therefore accept that our appeal will fail on [this] issue".
10. The proposed development will result in additional people living within the catchment of the Stodmarsh SAC and Ramsar site. The waste water from those people results in increased levels of nutrients which in turn leads to eutrophication of the SAC and Ramsar site. This means that it would be in a less favourable condition for the species for which it has been designated than without the proposal either on its own or in combination with other plans or projects.
11. Without a solution secured I can only conclude as an appropriate assessment that the proposal in combination with other plans or projects would adversely affect the integrity of the SAC and Ramsar site. That means I cannot, by law, grant planning permission unless there are no alternative solutions so that the proposal must be carried out for imperative reasons of overriding public interest. No such reasons have been put forward and I consider that such overriding reasons do not exist.

12. Consequently, the proposal would have an adverse effect on a habitat site and therefore would be contrary to Policies LB5 and LB6 of the Canterbury District Local Plan (the Local Plan) which seek to protect sites of international conservation importance and sites of special scientific interest. Under the terms of Regulation 63(5) of the Habitats Regulations I am obligated to dismiss the appeal.

Highway Safety

13. On this issue there is little between the parties, with the parties agreeing that to ensure that the site was accessible and safe improvements to local highway infrastructure are necessary. These works would consist of:
- improvements to the eastbound and westbound bus-stops (including built out of the existing footway, border kerbs, tactile paving, relocation of the timetable and flagpole);
 - provision of a new 2 metre crossing to the southern side of Littlebourne Road; and
 - provision of a 1.8 metre footway on either side of the access to connect to the existing footway along Littlebourne Road.
14. Having visited the site and noted the lack of a ready crossing of Littlebourne Road I agree such measures are necessary to ensure highway safety and appropriate opportunities to promote sustainable transport modes can be taken up. This is in line with paragraph 110 of the National Planning Policy Framework (the Framework). Without them the proposal would not be in an accessible location.
15. The Council has suggested that these matters should be resolved by completion of a legal agreement. The appellant accepts this but, in light of its comments in relation to habitats sites set out above, has not completed the necessary legal agreement.
16. Without the works secured, the proposed development would not be located in an accessible location and give rise to highway safety issues for those needing to cross the road to get to the westbound bus stop. As such the proposal would be contrary to Policies T1 and T9 of the Local Plan which seek the use of public transport, ensure car parking is at an appropriate level and that transport infrastructure measures will be secured through legal agreements.

Character and appearance

17. The appeal site lies on the north side of Littlebourne Road (the A257) approximately 150m to the east of its junction with Stodmarsh Road. The appeal site is in three parts, a large, detached dwelling, Seotamot, to the east of the entrance set within a garden surrounded by vegetation, an open area to the west upon which is located a semi-derelict building, and a second large open area to the rear of the dwelling. The site is effectively flat and has an area of approximately 1.2 hectares.
18. To the rear of the appeal site is frontage development facing Stodmarsh Road, although further to the northeast there is development in depth at The Mount. This is a mixture of single and two storey detached dwellings. Along Littlebourne Road development is more varied. There is a mixture of frontage

development and some development in depth, particularly at Polo Field Drive. Beyond Polo Field Drive are extensive sports facilities and beyond that is further frontage development but this is more sporadic.

19. To the immediate east of the appeal site is a care home, Highland House, which at the time of my site visit was being extensively extended, particularly to the north and east, to provide a 37 bedroom extension.
20. Policy SP1 of the Local Plan sets out the presumption of sustainable development which is largely based on what is now paragraph 11 of the Framework, although based on an earlier version of the Framework. However, it refers to "relevant policies are out of date" rather than "the most important policies for determining the application are out-of-date". For reasons explained below, in the context of this appeal this does not make a material difference.
21. Policy SP4 of the Local Plan sets out the strategic approach to the location of development with the urban area of Canterbury being one of the principal focus locations for development. In the open countryside development will be permitted if required for agricultural and forestry purposes. Policy DBE3 of the Local Plan seeks high quality, sustainable inclusive design and sets out various criteria for consideration. Policy QL10 of the Local Plan supports the provision of new medical, health and social care facilities subject to relevant design policies in the Local Plan.
22. The site is located outside the defined urban edge of Canterbury and thus for planning purposes is in the countryside. However, in my view the site is not in the 'open countryside'. Rather it is within an area of frontage and other development which could not be described as sporadic and has clearly become and is becoming more consolidated with developments such as at Polo Field Drive and at Highland House. Policy SP4 of the Local Plan does not cover this situation.
23. Even if 'open countryside' and 'countryside' are synonymous there are other matters to be taken into account. Paragraph 80 of the Framework indicates that planning decisions should avoid the development of isolated homes in the countryside. While the Courts have made clear that in this context 'isolated' means from a settlement, in my view the immediate vicinity of the appeal site constitutes a settlement for these purposes and consequently this proposal would not represent isolated new homes in the countryside.
24. While clearly the proposal would result in an increase in building in the area, it would not represent a coalescence in the area since coalescence is the act of bringing together. The area, with the recent and emerging development, represents a whole at present. This additional building would not alter or change the character of this area.
25. The Council has indicated that it considers that site is not located sustainably. However, the residents are unlikely to take many trips from the site. Most journeys to and from the care home will be by staff and visitors.
26. In this context the site is on a bus route and, as discussed above, the physical provision in the area could be enhanced. Paragraph 110 of the Framework seeks to ensure development has appropriate opportunities to promote sustainable transport modes. Facilities for other sustainable transport modes in addition to public transport, such as cycling provision, could form part of the

detailed design at any reserved matters stage. Without the necessary legal agreement, the site is not in an accessible location.

27. Overall, I consider that the proposal would be in keeping with the character and appearance of the area and would comply with Policies DBE3 and QL10 of the Local Plan as set out above, but due to the lack of secured improvements to the highway network would not be an accessible location.

Other Matters

28. The Council cannot demonstrate a five year supply of land for housing and is also below the 75% figure set out in footnote 8 of the Framework in respect of the Housing Delivery Test. This means, in line with the presumption in favour of sustainable development set out in paragraph 11 of the Framework, that the most important policies for determining the application are considered to be out-of-date. Permission should therefore be granted unless either the application of policies in the Framework to protect areas or assets of particular importance provides a clear reason to refuse the proposal or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. Footnote 7 sets out those areas or assets of particular importance, and these include habitats sites. Paragraph 182 of the Framework also states that the presumption in favour of sustainable development does not apply where a site would have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the proposal will not adversely affect the integrity of the site.
30. As set out above, this would not be the case and consequently, the effect on the habitats site represents a clear reason to refuse the proposal. The unmitigated effect on highway safety also represents a significant and demonstrable reason to refuse permission. The proposal would therefore also be contrary to Policy SP1 of the Local Plan which is caveated in similar terms to the Framework in respect of the effect on habitats sites and in relation to significant and demonstrable harm.

Conclusion

31. In light of the above, while the proposal would be in keeping with the character and appearance of the area, the effect on a habitat site and the lack of a legal agreement to secure the necessary highway works represent a clear, significant and demonstrable reason to withhold consent.
32. The proposed development would be contrary to the development plan taken as a whole and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be dismissed.

RJ Jackson

INSPECTOR