



Appeal Decisions

Site visit made on 30 November 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal A - Ref: APP/J2210/W/21/3280630

Billmeir, Molehill Road, Chestfield, CT5 3PA

- 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 C Wells against the decision of Canterbury City Council.
- The application Ref 21/00730, dated 19 March 2021, was refused by notice dated 14 July 2021.

The development proposed is erection of 4 bedroom dwelling within the curtilage of Billmeir together with parking and access and alteration to parking and access to existing dwelling.

Appeal B - Ref: APP/J2210/W/21/3287695

Billmeir, Molehill Road, Chestfield, CT5 3PA

- 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 C Wells against the decision of Canterbury City Council.
 - The application Ref 21/01912, dated 29 July 2021, was refused by notice dated 22 September 2021.
 - The development proposed is erection of 4 bedroom dwelling within the curtilage of Billmeir together with parking and access and alteration to parking and access to existing dwelling.
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Decisions

1. **Appeal A** - The appeal is allowed and planning permission is granted for erection of 4 bedroom dwelling within the curtilage of Billmeir together with parking and access and alteration to parking and access to existing dwelling at Billmeir, Molehill Road, Chestfield, CT5 3PA in accordance with the terms of the application, Ref 21/00730, dated 19 March 2021, subject to the conditions in the attached schedule.
2. **Appeal B** - The appeal is allowed and planning permission is granted for erection of 4 bedroom dwelling within the curtilage of Billmeir together with parking and access and alteration to parking and access to existing dwelling at Billmeir, Molehill Road, Chestfield, CT5 3PA in accordance with the terms of the application, Ref 21/01912, dated 29 July 2021, subject to the conditions in the attached schedule.

Preliminary Matters

3. The proposals are identical but further supporting information was submitted to accompany the Appeal B application.

Main issues

4. In both appeals these are:

- Whether future occupiers of the proposed dwelling would be at risk of flooding having regard to local and national policies; and
- The effect on the integrity of the Thames, Medway and Swale Estuaries and Thanet Coast and Sandwich Bay Special Protection Areas (SPAs).

Reasons

Flooding

5. The appeals site comprises land in front and to the side of Billmeir. The proposed house would replace an existing garage and would be located adjacent to Farley Lodge. A ditch runs along the front boundary of the site. The land is classified as lying within Flood Zones 2 and 3a by the Environment Agency. It refers to the area as being partially at risk of fluvial flooding. The appellant's flood risk assessment (FRA) refers to risks from the surrounding drainage network following an extreme rainfall event.
6. The Council considers that the proposals fail the sequential test referred to in the National Planning Policy Framework. However, Policy CC6 of the Canterbury District Local Plan accepts minor infill development such as this within Zones 2 and 3, as well as development on previously-developed land. This is subject to the provisions of other Local Plan policies and to the risks attached in each case based on the particular circumstances that apply.
7. In this respect, Local Plan Policy CC4 on flood risk requires development proposals within Flood Zones 2 and 3 to be subject to an FRA. There is no requirement in that policy, nor in Policy CC6, to undertake a sequential test or a subsequent exceptions test. Whilst both are referred to in the supporting text, this does not have the status of development plan policy. Policy CC6 therefore makes a specific allowance for certain types of development within flood risk areas. This interpretation is supported by Policy CC5. This expressly refers to sequential and exception tests for sites in Flood Zones 2 and 3 which have not been previously developed. Policy CC6, on the other hand, does not refer to those tests.
8. Where development takes place in areas of highest risk, national policy expects that it should be made safe for its lifetime without increasing flood risk elsewhere. To that end, the FRA recommends a number of mitigation measures including setting the ground floor level above the maximum predicted flood level, limiting sleeping accommodation to the upper floor and including an attenuation basin to provide compensatory flood storage. With these in place, the Environment Agency considers that planning permission could be granted and there is no evidence to the contrary. Therefore, the criteria for allowing development in areas at risk of flooding, as set out in paragraph 167 of the Framework, can be demonstrated.
9. In conclusion, any risks are within acceptable limits given the safety measures that would be incorporated. The findings of the FRA could be secured by conditions in line with Policy CC4. As a result, the proposals would accord with Policy CC6 which accepts minor infill development within Flood Zones 2 and 3.

The compliance with relevant development plan policies outweighs the need to undertake a sequential test as set out in national policy and advice.

Integrity of the SPAs

10. The site is within the zone of influence of the Thames, Medway and Swale Estuaries and Thanet Coast and Sandwich Bay SPAs. In combination with other development in Canterbury, the proposals have the potential to create recreational disturbance in those areas by increasing the resident population. There would therefore be a likely significant effect on the SPAs. In these circumstances, Local Plan Policy SP6 explains that new developments should fund management and monitoring measures to mitigate the impacts.
11. A planning obligation dated 24 November 2021 was submitted for Appeal B. The Council raised some detailed concerns about whether that undertaking would secure the mitigation. Subsequently the appellant has made direct payment to the Council supported by an obligation dated 15 December 2022.
12. The Planning Practice Guidance on *Appropriate Assessment* indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice. There is no indication that the sum paid is insufficient and a monitoring fee has been included. The undertaking commits the owners to immediately paying the SPA contributions and this has been done. Furthermore, that document confirms the purpose of the payment and therefore the way in which the money should be spent. The Council is a responsible and accountable public body. In these circumstances, I am satisfied that the financial contribution would lead to effective mitigation.
13. In this way harmful effects would be prevented. As a result, following an appropriate assessment, the proposals would not adversely affect the integrity of the SPAs. There would therefore be no conflict with Policy SP6 or with Local Plan Policy LB5 which protects sites of international conservation importance.

Other Matters

14. The site is within the urban area of Whitstable and the building would fit comfortably into the street scene between Billmeir and Farley Lodge and would not appear cramped. Its relationship alongside other properties would be conventional so there would be no significant overlooking or overshadowing of neighbouring dwellings and no overbearing impact. The implications for road traffic of a single dwelling would be minimal. These concerns, and other points made, do not amount to objections to the proposals.

Conditions

15. In the interests of certainty the plans should be confirmed. The mitigation and resilience measures specified in the FRA should be incorporated to minimise the risks from flooding for occupiers of the dwelling. The parking and turning areas for both the proposed and existing houses should be provided to avoid on-street parking.
16. The proposals would have a limited ecological impact. The Framework seeks to enhance the natural environment but there is no indication that the improvements sought by condition are directly related to the proposals or justified by local policy. The Appeal B application states that it is intended to

connect to the foul sewer and there is no evidence that details of this are required by planning condition, given other controls in place.

Conclusion

17. The proposals would accord with the development plan and there are no material considerations which outweigh this finding. Therefore, for the reasons given, the appeals should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal A - Ref: APP/J2210/W/21/3280630

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawings entitled block plan and location plan, site layout and street scene elevation and drawing nos MR/20/7/2, MR/20/7/3, MR/20/7/4, MR/20/7/5, MR/20/7/6 and MR/20/7/7.
- 3) The dwelling hereby permitted shall not be occupied until the altered drive and parking has been provided as shown on the site layout. Thereafter that area shall be retained for the parking and manoeuvring of vehicles.
- 4) The finished floor level of the development hereby permitted shall be a minimum of 16.2m AODN. Any sleeping accommodation shall be at first floor level only.
- 5) No development above foundation level shall take place until details of any internal flood resistance and resilience measures have been submitted to and approved in writing by the local planning authority. The details shall also include confirmation that the occupiers will sign up to the Environment Agency's early flood warning service and a flood warning and evacuation plan for the development hereby permitted. The approved details and measures shall be implemented prior to the occupation of the dwelling, or such longer period as may be agreed in writing by the local planning authority, and thereafter retained.
- 6) The compensatory floodplain storage shall be provided prior to the occupation of the dwelling in accordance with the Flood Risk Assessment by Herrington Consulting Limited dated July 2020 and the Technical Note: Addendum to Drainage Strategy dated 14 June 2021.

Appeal B - Ref: APP/J2210/W/21/3287695

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